

**S291092**

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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**CALVARY CHAPEL SAN JOSE; and MIKE MCCLURE, an  
individual**

*Petitioners,*

vs.

**THE PEOPLE OF THE STATE OF CALIFORNIA, COUNTY OF  
SANTA CLARA; and SARA H., CODY, M.D., in her official capacity  
as Health Officer for the County of Santa Clara**

*Respondents.*

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**REQUEST FOR JUDICIAL NOTICE**

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**ADVOCATES FOR FAITH & FREEDOM**

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Attorneys for *Petitioners*

## REQUEST FOR JUDICIAL NOTICE

Petitioners hereby respectfully request that, pursuant to Evidence Code section 452, this Court take judicial notice of the following:

1. Verified Complaint for Declaratory Relief, *Calvary Chapel San Jose v. Cody*, 5:20-cv-03794 VKD (ND Cal., June 9, 2020) attached as Exhibit A.

2. First Amended Complaint for Declaratory and Injunctive Relief, *Calvary Chapel San Jose v. Cody*, 5:20-cv-03794 VKD (ND Cal., Nov. 25, 2020), attached as Exhibit B.

3. Order Granting Motion to Dismiss and Stay Under *Younger Abstention Doctrine*, *Calvary Chapel San Jose v. Cody*, 5:20-cv-03794 VKD (ND Cal., March 10, 2023), attached as Exhibit C.

These documents submitted are true and correct copies of documents contained in the relevant court's files. Petitioners request that the Court take judicial notice of the above-mentioned exhibits, as each is relevant to the appeal. Exhibit A is the federal complaint filed in *Calvary Chapel San Jose v. Cody*, 5:20-cv-03794 VKD (ND Cal., June 9, 2020) where Petitioners were seeking relief from the constitutional violations surrounding the public health orders. Exhibit B is the First Amended Complaint filed in that same case. And Exhibit

C is an Order pertaining to these claims. These documents show that Petitioners were also seeking judicial relief for their constitutional violations stemming from the acts of the County and details the various public health orders and notices of violation. Of particular interest is Exhibit B which was filed November 25, 2020, or 16 days after the Nov. 9 Notice of Violation was allegedly served on Calvary Church. Yet, there is no mention of this NOV.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on May 27, 2025, at Murrieta, California.



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Robert H. Tyler, Esq.  
Attorney for Petitioners

**CERTIFICATE OF SERVICE**

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On May 27, 2025, I served a copy of the following document(s) described as:

**REQUEST FOR JUDICIAL NOTICE**

on the interested party(ies) in this action by-email or electronic service [C.C.P. § 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

  
\_\_\_\_\_  
Robert H. Tyler

## SERVICE LIST

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EXHIBIT “A”

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19 Attorneys for Plaintiffs

20 **UNITED STATES DISTRICT COURT**  
 21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 22 **SAN JOSE DIVISION**

23 **CALVARY CHAPEL SAN JOSE**, a  
 24 California Non-Profit Corporation;  
 25 **PASTOR MIKE MCCLURE**, an  
 26 individual; **SOUTHRIDGE BAPTIST**  
 27 **CHURCH OF SAN JOSE**  
 28 **CALIFORNIA dba SOUTHRIDGE**  
**CHURCH**, a California Non-Profit  
 Corporation; **PASTOR MICAIAH**  
**IRMLER**, an individual;

Plaintiffs,

Case No.:

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

1 vs.

2 **SARA H. CODY, M.D.**, in her official  
3 capacity as Santa Clara County Public  
4 Health Officer; **MIKE WASSERMAN**, in  
5 his official capacity as a Santa Clara  
6 County Supervisor; **CINDY CHAVEZ**, in  
7 her official capacity as a Santa Clara  
8 County Supervisor; **DAVE CORTESE**, in  
9 his official capacity as a Santa Clara  
10 County Supervisor; **SUSAN**  
11 **ELLENBERG**, in her official capacity as a  
12 Santa Clara County Supervisor; and **JOE**  
13 **SIMITIAN**, in his official capacity as a  
14 Santa Clara County Supervisor;

15 Defendants.

## 16 INTRODUCTION

17 1. This Action primarily presents facial and as-applied challenges to the most  
18 recent Stay-at-Home Order of the Health Officer of the County of Santa Clara dated May  
19 18, 2020 (“County Order”) which violates Plaintiffs’ constitutional rights by banning  
20 indoor religious worship services.

21 2. The May 18, 2020 County Order includes updates, effective June 5, 2020.  
22 Prior to the updates, the County of Santa Clara (“County”) banned all drive-in and in-  
23 person worship services from March 16, 2020 to June 5, 2020.

24 3. The June 5, 2020 updates allow drive-in worship services with up to 100  
25 cars and outdoor services for 25 people or less. However, indoor church services remain  
26 completely banned for an indefinite period of time.

27 4. Although Plaintiffs appreciate the County’s significant efforts to protect the  
28 health and safety of its residents, the current pandemic does not give the County the power  
to indefinitely restrict any and all constitutional rights.

///

1 5. Now more than ever, religion and religious worship is central to thousands  
2 of Santa Clara County residents, and corporate worship provides a critical opportunity  
3 for members of the community to seek comfort and solace.

4 6. According to the Census Bureau, the COVID-19 pandemic has resulted in  
5 one third of Americans showing signs of clinical anxiety or depression.<sup>1</sup>

6 7. The Census Bureau has confirmed what Plaintiffs have experienced with  
7 their congregants: their church members are experiencing a significant increase of  
8 anxiety, loneliness, depression, grief, and marital issues since the quarantine started.

9 8. The United States is facing the highest unemployment rate since the Great  
10 Depression. When combined with social isolation and other stressors, this increases  
11 deaths of despair (a term for an alarming rise in early deaths among young and mid-life  
12 Americans, from suicide, drug overdoses, and alcoholism).<sup>2</sup>

13 9. A recent modeling study from the Well Being Trust, relying, in part, upon  
14 unemployment data from the Great Recession of 2008-2009, warns of the likelihood that  
15 75,000 Americans will die from suicide due to the economic conditions. The Well Being  
16 Trust further warns that a higher estimate may be more accurate considering the negative  
17 impact of isolation and uncertainty during the shutdown.<sup>3</sup>

18 10. Children are likewise negatively affected by the Covid-19 crisis. According  
19 to another study, post-traumatic stress scores were four times higher in children who had  
20 been quarantined than children who were not.<sup>4</sup>

21  
22 <sup>1</sup> See Center for Disease Control and Prevention, National Center for Health Statistics, “Household Pulse Survey,”  
23 <https://www.cdc.gov/nchs/covid19/pulse/mental-health.htm>; See also Gaby Galvin, Coronavirus Survey: One-Third of U.S.  
24 Adults Have Symptoms of Depression or Anxiety, US NEWS (May 27, 2020) [https://www.usnews.com/news/healthiest-](https://www.usnews.com/news/healthiest-communities/articles/2020-05-27/one-third-of-us-adults-have-signs-of-depression-anxiety-during-pandemic)  
25 [communities/articles/2020-05-27/one-third-of-us-adults-have-signs-of-depression-anxiety-during-pandemic](https://www.usnews.com/news/healthiest-communities/articles/2020-05-27/one-third-of-us-adults-have-signs-of-depression-anxiety-during-pandemic).

26 <sup>2</sup> See Bethany Ao and Aubrey Whelan, Impact of COVID-19 shutdown — and now police brutality — may cause increase  
27 in ‘deaths of despair’, THE PHILADELPHIA INQUIRER (June 1, 2020)  
28 [https://www.inquirer.com/health/coronavirus/coronavirus-covid-19-deaths-of-despair-anxiety-depression-unemployment-](https://www.inquirer.com/health/coronavirus/coronavirus-covid-19-deaths-of-despair-anxiety-depression-unemployment-20200601.html)  
29 [20200601.html](https://www.inquirer.com/health/coronavirus/coronavirus-covid-19-deaths-of-despair-anxiety-depression-unemployment-20200601.html).

30 <sup>3</sup> See The COVID Pandemic Could Lead to 75,000 Additional Deaths from Alcohol and Drug Misuse and Suicide,  
31 WELL BEING TRUST [https://wellbeingtrust.org/areas-of-focus/policy-and-advocacy/reports/projected-deaths-of-](https://wellbeingtrust.org/areas-of-focus/policy-and-advocacy/reports/projected-deaths-of-despair-during-covid-19/)  
32 [despair-during-covid-19/](https://wellbeingtrust.org/areas-of-focus/policy-and-advocacy/reports/projected-deaths-of-despair-during-covid-19/).

33 <sup>4</sup> See Samantha K. Brooks and Rebecca K. Webster, et.al, The psychological impact of quarantine and how to reduce it:  
34 rapid review of the evidence, THE LANCET (March 14, 2020)  
35 [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30460-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30460-8/fulltext).

1 11. The Kaiser Family Foundation conducted a study from March 25-30, 2020  
2 and found that 45 percent of adults say the pandemic has affected their mental health, and  
3 19 percent say it has had a major impact.<sup>5</sup>

4 12. According to CNN, the Disaster Distress Helpline, a federal crisis hotline,  
5 saw an increase of 891% in calls for help in March 2020 compared to March 2019.<sup>6</sup>

6 13. Reports of persons relapsing and/or overdosing on opioids and other drugs  
7 due to the stress of the shutdown are widespread.<sup>7</sup>

8 14. Further exacerbating the issue, as of June 1, 2020, the County has  
9 experienced numerous acts of violence against first responders and peaceful protesters  
10 and millions of dollars in damage to both public and private property amid ongoing  
11 protests over the police killing of George Floyd in Minneapolis.<sup>8</sup> This violence,  
12 vandalism, and looting is unprecedented, especially in the city of San Jose, where  
13 Plaintiffs are located.

14 15. The spiritual services of houses of worship are essential to the health and  
15 welfare of the people of Santa Clara County, especially during this time of devastation  
16 and despair.

17 16. A study published on May 6, 2020, in JAMA Psychiatry found “that  
18 religious service attendance is associated with a lower risk of death from despair among  
19 registered nurses and health care professionals. These results may be important in  
20 understanding trends in deaths from despair in the general population.”<sup>9</sup>

21  
22 <sup>5</sup> See Joel Achenbach, Coronavirus is harming the mental health of tens of millions of people in U.S., new poll finds, THE  
23 WASHINGTON POST (April 2, 2020) [https://www.washingtonpost.com/health/coronavirus-is-harming-the-mental-health-of-tens-of-millions-of-people-in-us-new-poll-finds/2020/04/02/565e6744-74ee-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/health/coronavirus-is-harming-the-mental-health-of-tens-of-millions-of-people-in-us-new-poll-finds/2020/04/02/565e6744-74ee-11ea-85cb-8670579b863d_story.html).

24 <sup>6</sup> See Amanda Jackson, A crisis mental-health hotline has seen an 891% spike in calls, CNN (April 10, 2020)  
<https://www.cnn.com/2020/04/10/us/disaster-hotline-call-increase-wellness-trnd/index.html>.

25 <sup>7</sup> See Harmeet Kaur, The opioid epidemic was already a national crisis. Covid-19 could be making things worse, CNN NEWS  
(May 7, 2020) <https://www.cnn.com/2020/05/07/health/opioid-epidemic-covid19-pandemic-trnd/index.html>.

26 See Haley Hudson, COVID 19 is causing people to relapse, ADDICTION CENTER (April 30, 2020)  
<https://www.addictioncenter.com/news/2020/04/covid-19-is-causing-people-to-relapse/>.

27 <sup>8</sup>See Matt Kawahara, San Jose imposes curfew in bid to reduce violence amid George Floyd protests, SAN  
FRANCISCO CHRONICLE (May 31, 2020) <https://www.sfchronicle.com/bayarea/article/San-Jose-imposes-curfew-in-bid-to-reduce-violence-15307218.php>.

28 <sup>9</sup>See Religious Service Attendance and Deaths Related to Drugs, Alcohol, and Suicide Among US Health Care Professionals,  
JAMA PSYCHIATRY (May 6, 2020) <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2765488>.

1 17. According to a poll conducted by Plaintiff Southridge Baptist Church of San  
2 Jose California (“Southridge Church”) of 4,000 people who have attended Southridge  
3 Church, 79% of people polled stated that attending a religious service would help their  
4 mental health and the mental health issues they are struggling with.

5 18. Yet it is unlawful in Santa Clara County for even two individuals from  
6 different households to worship together inside a church, even if all Center for Disease  
7 Control (“CDC”) and California guidelines applicable to houses of worship are fully  
8 implemented.

9 19. The May 18, 2020 County Order allows a whole host of other activities it  
10 has subjectively deemed acceptable and relatively safe in a pandemic, including in-store  
11 shopping at retail and shopping centers, television, radio, and other media services, real  
12 estate offices, hardware stores, farmers’ markets, bicycle supply shops, airports, outdoor  
13 dining at restaurants, grocery stores, dog groomers, recreational institutions, and summer  
14 camps.

15 20. In addition, the County Order requires that hosts of “Small Outdoor  
16 Ceremonies and Religious Gatherings ... maintain a list with the names and contact  
17 information of all participants” and “shall assist the County Public Health Department in  
18 any case investigation and contact tracing associated with the gathering.” No other  
19 activities or gatherings are required to maintain such a list.

20 21. Defendants, collectively and individually, have no compelling justification  
21 for their discriminatory treatment of places of worship, nor have they attempted in any  
22 way to tailor their regulations to the least restrictive means necessary to meet any arguable  
23 compelling interest.

24 **PARTIES – PLAINTIFFS**

25 22. Plaintiff CALVARY CHAPEL SAN JOSE (“CCSJ”), a California non-  
26 profit corporation, is a Christian church organized exclusively for religious purposes.  
27 CCSJ is located in the city of San Jose, California.

28

1 23. Plaintiff MIKE MCCLURE is a resident of Santa Clara County and the lead  
2 pastor of CCSJ.

3 24. Plaintiff SOUTHRIDGE CHURCH is a domestic non-profit corporation  
4 Christian church organized exclusively for religious purposes within the meaning of  
5 Section 501(c)(3) of the Internal Revenue Code. Southridge Church is located in the City  
6 of San Jose, California.

7 25. Plaintiff MICAIAH IRMLER is a resident of Santa Clara County and the  
8 lead pastor of Southridge Church.

9 **PARTIES – DEFENDANTS**

10 26. Defendant SARA H. CODY, M.D. is the Public Health Officer for Santa  
11 Clara County, California. She is sued in her official capacity only. She signed the Santa  
12 Clara County “Stay at Home” Orders dated March 16, 2020, March 31, 2020, April 29,  
13 2020 and May 18, 2020 (collectively “County Orders”).

14 27. Defendants MIKE WASSERMAN, CINDY CHAVEZ, DAVE CORTESE,  
15 SUSAN ELLENBERG, and JOE SIMITIAN are each sued in their official capacities as  
16 a members of the Santa Clara County Board of Supervisors, which exercises broad  
17 legislative, executive, and quasi-judicial authority under California law, including the  
18 supervision of the county sheriff and public health officials. *See, e.g.*, Cal. Gov’t. Code §  
19 25000, *et seq.*; Cal. Health & Safety Code § 101000.

20 **JURISDICTION AND VENUE**

21 28. This civil rights action raises federal questions under the United States  
22 Constitution, specifically the First and Fourteenth Amendments, and under federal law,  
23 particularly 42 U.S.C. § 1983.

24 29. This Court has subject matter jurisdiction over the federal claims pursuant  
25 to 28 U.S.C. §§ 1331 and 1343.

26 30. This action also arises under Article I, §§ 2, 3 and 4 of the California  
27 Constitution (freedom of speech, right of assembly, and religious free exercise).  
28

1 31. This Court has supplemental jurisdiction over the state claims pursuant to  
2 28 U.S.C. § 1367.

3 32. This Court has authority to grant the requested declaratory relief under the  
4 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, implemented through Rule 57  
5 of the Federal Rules of Civil Procedure. This Court is also authorized to grant injunctive  
6 relief and damages under 28 U.S.C. § 1343, pursuant to Rule 65 of the Federal Rules of  
7 Civil Procedure, and reasonable attorney’s fees and costs under 42 U.S.C. § 1988.

8 33. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1)–(2) because all  
9 Defendants are situated in this judicial district, and a substantial part of the events or  
10 omissions giving rise to Plaintiffs’ claims occurred in this district.

11 **FACTUAL BACKGROUND**

12 **A. Governor Newsom’s Executive Order**

13 34. On March 4, 2020, Governor Gavin Newsom declared a State Emergency  
14 because of the threat of COVID-19.<sup>10</sup>

15 35. On March 19, 2020, Governor Gavin Newsom issued Executive Order N-  
16 33-20 (“State Order”), which prohibited all in-person worship services in California for  
17 an indefinite period until the threat of the pandemic has subsided as determined  
18 exclusively by the Governor. A true and correct copy of this Executive Order is attached  
19 as Exhibit 1.

20 36. On May 19, 2020, the United States Department of Justice wrote Governor  
21 Newsom a letter explaining that Governor Newsom’s State Order was likely  
22 unconstitutional based on “unequal treatment of faith communities.” A true and correct  
23 copy of this Letter is attached as Exhibit 2.

24  
25  
26  
27  
28 <sup>10</sup> See Proclamation of a State of Emergency, EXECUTIVE DEPARTMENT STATE OF CALIFORNIA  
<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

1 37. On May 22, 2020, President Donald Trump announced that new CDC  
2 guidance will classify houses of worship as “essential,” and he called on all governors to  
3 allow houses of worship to immediately reopen.<sup>11</sup>

4 38. On May 22, 2020, the CDC issued “Interim Guidance for Communities of  
5 Faith” that outlines precautions for houses of worship to take when reopening to keep  
6 their staff and congregations safe. A true and correct copy of this guidance is attached as  
7 Exhibit 3.

8 39. On May 22, 2020, Governor Gavin Newsom explained that the State of  
9 California has “been very aggressive in trying to put together guidelines that will do  
10 justice to people’s health and their fundamental need and desire to practice their faith.”<sup>12</sup>

11 40. On May 25, 2020, Governor Gavin Newsom announced the re-opening of  
12 places of worship in California. This was accomplished by the California Department of  
13 Public Health issuing guidance for houses of worship to support a safe, clean environment  
14 for staff and congregants. A true and correct copy of these guidelines is attached as  
15 Exhibit 4.

16 **B. Santa Clara County Orders Prohibiting Non-Essential Gatherings**

17 41. The recent County Order dated May 18, 2020 prohibits “all public and  
18 private gatherings...except for the limited purposes expressly permitted in this Order.” A  
19 true and correct copy of the Santa Clara Order is attached as Exhibit 5.

20 42. The County had three previous similar orders: the first dated March 16,  
21 2020, the second dated March 31, 2020, and the third dated April 29, 2020. True and  
22 correct copies of these orders are attached as Exhibits 6, 7, and 8, respectively.

23 43. By these orders, the County continued to ban drive-in services even after the  
24 State declared such services permissible. On April 13, 2020, after a civil rights lawsuit  
25

26 <sup>11</sup>Marisa Shultz, Trump announces that houses of worship are essential calls on governors to open them up, FOX NEWS  
27 (May 22, 2020) <https://www.foxnews.com/politics/trump-announces-that-houses-of-worship-are-essential-calls-on-governors-to-open-them-up>.

28 <sup>12</sup> Newsom Promises Guidelines For Reopening Houses Of Worship By Monday Despite Trump Order, CBS SF BAY AREA  
(May 22, 2020) <https://sanfrancisco.cbslocal.com/2020/05/22/newsom-guidelines-religious-gatherings-houses-worship-trump-order/>.

1 was filed against the State, California Attorney General Xavier Becerra explained in  
2 opposition papers to a Temporary Restraining Order that drive-in religious services were  
3 permitted under Governor Newsom’s Executive Stay-At-Home Order with no limit  
4 placed on the number of cars permitted (*Gish v. Newsom*, 5:20-cv-00755-JGB-KK,  
5 Document 13 (E.D. Cal. April 13, 2020) (“Indeed, drive-in worship services are permitted  
6 under the existing Executive Order.”).

7 44. The County updated its May 18, 2020 County Order on June 5, 2020. The  
8 County published an Executive Summary of the June 5, 2020 updates, attached hereto as  
9 Exhibit 9; a chart listing places to be open under the new updates, attached hereto as  
10 Exhibit 10; Appendix C-1 Additional Businesses Allowed to Operate Effective June 5,  
11 2020, attached hereto as Exhibit 11; and Appendix C-2: Allowed Additional Activities  
12 Effective June 5, 2020, attached hereto as Exhibit 12.

13 45. As of June 5, 2020, the County Order allows individuals the unlimited ability  
14 to leave their residence for in-store shopping at retail and shopping centers, television,  
15 radio, and other media services, real estate offices, farmers’ markets, bicycle supply  
16 shops, airports, outdoor dining, grocery stores, recreational institutions, summer camps,  
17 and summer school.

18 46. The County continues to ban indoor religious service, even after the State  
19 permitted houses of worship to start meeting on May 25, 2020. The County’s Frequently  
20 Asked Questions Page<sup>13</sup> asks the following: “Can I leave home to go to my church,  
21 synagogue, or mosque?” The answer states the following: “No. For your safety as well  
22 as the safety of your fellow worshippers, we need to help each other fight the spread of  
23 COVID-19 by staying at home. Places of worship may offer remote access to services,  
24 such as by email, video streaming, or teleconference.” A true and correct copy of the  
25 question and answer is attached as Exhibit 13.

26 47. “Outdoor museums, historical sites, and gardens” are allowed to open  
27 without a limitation on the number of people. Exhibit 11.

28 \_\_\_\_\_  
<sup>13</sup> This page can also be found online at <https://www.sccgov.org/sites/covid19/Pages/public-health-orders.aspx>.

1 48. Restaurants are now open for outdoor dining and are not subject to the  
2 restriction of 25 or fewer persons the County applies to outdoor religious services.  
3 Restaurants are permitted to have unlimited outdoor seating, as long a social distancing  
4 protocols are followed. Exhibit 11.

5 49. Summer camps and summer schools are now open and are not subject to the  
6 maximum restriction of 25 or fewer persons the County applies to outdoor religious  
7 services nor are they required to meet outdoors only. The only numerical requirement is  
8 that children are to meet in stable groups of less than 12 people. Exhibit 11.

9 50. In-store retail is now open and is not subject to the maximum restriction of  
10 25 or fewer persons the County applies to outdoor religious services. The only numerical  
11 requirement is that retail is limited to one customer for each 200 square feet of floor space.  
12 A ten thousand square foot store, for example, could have as many as 50 customers at a  
13 time. Exhibit 10.

14 51. In addition, the County Order requires the hosts of “Small Outdoor  
15 Ceremonies and Religious Gatherings” to “maintain a list with the names and contact  
16 information of all participants” and “assist the County Public Health Department in any  
17 case investigation and contact tracing associated with the gathering.” Exhibit 12. No other  
18 activities or gatherings are required to maintain such a list.

19 52. The County has publicly acknowledged that the right to attend protests  
20 regarding racial injustice is a “fundamental right that is critical to the health of our  
21 democracy,” yet it has not acknowledged the fundamental right to attend worship  
22 services. A true and correct copy of two Facebook posts by the Santa Clara Department  
23 of Public Health is attached as Exhibit 14.

24 53. The County Order states, “Failure to comply with any of the provisions of  
25 this Order constitutes an imminent threat and menace to public health, constitutes a public  
26 nuisance, and is punishable by fine, imprisonment, or both.” Thus, violation of the order  
27 risks criminal culpability. Exhibit 5.

28

1 54. As of June 5, 2020, the County had a cumulative total of 2892 COVID-19  
2 cases and 144 deaths; long-term care facilities accounted for 61 of the 144 deaths.<sup>14</sup>

3 55. Approximately two million people live in Santa Clara County.<sup>15</sup>

4 56. The County's March 16, 2020 Order explains that "it is essential to slow  
5 virus transmission as much as possible to prevent the health care system from being  
6 overwhelmed... By reducing the spread of the COVID-19 virus, this Order helps preserve  
7 critical and limited healthcare capacity in the County." Exhibit 6.

8 57. As of June 5, 2020, the County had a total of 165 unoccupied ICU beds, with  
9 only 14 beds occupied by ("confirmed and suspected") COVID-19 patients. The County  
10 had 840 available acute hospital beds with only 40 beds occupied by COVID-19 patients.  
11 The County had an additional 1231 surge beds with COVID-19 patients occupying none  
12 of the surge beds.<sup>16</sup>

13 **C. The Religious Beliefs and Practices of Calvary Chapel San Jose**

14 58. CCSJ is a domestic nonprofit corporation organized under the laws of the  
15 State of California.

16 59. Presently, CCSJ holds services at 1175 Hillsdale Avenue, San Jose,  
17 California.

18 60. Prior to COVID-19, CCSJ held one service on Sunday mornings and one  
19 service on Wednesday evenings. The services typically last less than two hours.

20 61. CCSJ has an average of 600 people who attend its Sunday morning services.  
21 CCSJ's building is 18,000 square feet and the capacity is 1,800 people.

22 62. CCSJ has a sincerely and deeply held religious belief that it is essential for  
23 them as Christians to assemble and regularly gather in person for the teaching of God's  
24 Word, prayer, worship, baptism, communion, and fellowship. This is based on scriptures  
25

26 <sup>14</sup> See Coronavirus (COVID-19) Data Dashboard, Santa Clara County Emergency Operations Center (last visited June 5,  
27 2020) <https://www.sccgov.org/sites/covid19/Pages/dashboard.aspx>.

<sup>15</sup> See Quick Facts Santa Clara County, United States Census Bureau  
<https://www.census.gov/quickfacts/santaclaracountycalifornia>.

28 <sup>16</sup> See Coronavirus (COVID-19) Data Dashboard, Santa Clara County Emergency Operations Center (last visited June 5,  
2020) <https://www.sccgov.org/sites/covid19/Pages/dashboard.aspx>.

1 from the Bible, including Hebrews 10:25, Acts 2:40-47, and Acts 5:40-42. These  
2 activities are primarily fulfilled in the gathering of the Church body for worship services  
3 at the same location on Sunday mornings.

4 63. Based on the Bible, CCSJ believes that we are eternal beings in this  
5 temporary world, and that God's Word (the Bible) is even more essential than food based  
6 on the following scripture in Matthew 4:4: "[Jesus] answered, 'It is written, 'Man shall  
7 not live by bread alone, but by every word that comes from the mouth of God.'" Indeed,  
8 the joyful duty to assemble together, in person, for worship services is a central tenet of  
9 the Christian faith, both believed and practiced by the Church according to the Bible, a  
10 tenet that is especially important to maintain during times of turmoil and trouble in the  
11 world: "And let us consider how to stir up one another to love and good works, not  
12 neglecting to meet together, as is the habit of some, but encouraging one another, and all  
13 the more as you see the Day drawing near." (Hebrews 10:24–25.)

14 64. CCSJ also believes that the Bible requires the church to keep one another's  
15 confidence and trust, to be discreet, and to refrain from sharing private information about  
16 others. (Proverbs 16:28; Proverbs 20:19; Proverbs 25:9; 1 Timothy 5:13; and 2 Timothy  
17 2:16.)

18 65. CCSJ's congregation is multi-racial and represents a cross-section of  
19 society, from rich to poor and of all ages. Its congregation also includes members and  
20 visitors running the gamut of essential workers. These essential workers and service  
21 providers receive spiritual support, comfort, guidance, and shelter from the ministry of  
22 the CCSJ's personnel and other members. This also includes members that do not have  
23 the technological ability or equipment necessary to watch church services online.

24 66. Many in CCSJ's congregation are transplants from other states and countries  
25 who came to San Jose for economic opportunities, leaving behind family and friends.

26 67. The mandated closure of CCSJ is having significant and detrimental  
27 secondary effects on the citizens of San Jose. It is preventing the numerous ministries and  
28

1 social services provided by churches to the poor, unemployed, and distressed. The  
2 humanitarian and spiritual support provided by CCSJ's ministries are innumerable.

3 68. These include in-person student and youth ministries where youth are  
4 provided with emotional and spiritual support, and a safe place to receive mentorship and  
5 counseling.

6 69. CCSJ has an extensive in-person pastoral counseling ministry for its adult  
7 congregants as well, including grief counseling, crisis counseling, prayer, and other  
8 mental health support for those struggling with anxiety, depression, stress, marital issues,  
9 and loneliness.

10 70. CCSJ also has approximately 20 community groups that meet together on  
11 Wednesdays for Bible studies, counseling, prayer, and emotional support to one another.

12 71. CCSJ has a ministry specific to the Spanish speaking community whereby  
13 it provides innumerable material, emotional, and spiritual support.

14 72. Every 2-3 months, CCSJ hosts homeless outreach events where they provide  
15 bikes, hair-cuts, dentistry, food, and other material items as well as spiritual, mental, and  
16 emotional support.

17 73. Since the County's initial March 16, 2020 Order, CCSJ has not been able to  
18 engage with the community and its congregants to provide necessary social services and  
19 humanitarian and spiritual support. Although it continues to try to do so to the extent  
20 possible, it is extremely limited by the County's Order.

21 74. CCSJ has seen an over fifty percent increase in mental and emotional  
22 distress within its church members since COVID-19 pandemic and the March 16, 2020  
23 Order.

24 **D. The Religious Beliefs of Southridge Church**

25 75. Southridge Church was incorporated as a domestic nonprofit corporation  
26 organized under the laws of the State of California in October of 2013.

27  
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1           76. Presently, Southridge holds services in the auditorium at Oak Grove High  
2 School, located at 285 Blossom Hill Road, San Jose, California. Southridge does not own  
3 property.

4           77. Prior to COVID-19, Southridge routinely held three Sunday services at  
5 9:00am, 10:30am, and 5:00pm. Approximately 150 people attend each service. The  
6 capacity of the auditorium is 344 people.

7           78. Southridge’s mission is to reach the San Jose community and, through  
8 demonstration of their devotion to God, witness to the local community pursuant to their  
9 religious tenets. (Matthew 28:18-20.) Additionally, Southridge aims to practice  
10 exemplification and evangelism as commanded by Christ through the gospel. (Mark  
11 15:15; 1 Corinthians 12:12, 15:58; Ephesians 1:22-23.)

12           79. Southridge has a sincerely and deeply held religious belief that it is essential  
13 for them as Christians to assemble and regularly gather in-person for the teaching of  
14 God’s Word, prayer, worship, baptism, communion and fellowship. This is based on  
15 scriptures from the Bible, including Hebrews 10:25, Acts 2:40-47, and Acts 5:40-42.  
16 These activities are primarily fulfilled in the gathering of the Church body for worship  
17 services.

18           80. Based on the Bible, Southridge believes that we are eternal beings in this  
19 temporary world, and that God’s Word (the Bible) is even more essential than food based  
20 on the following scripture in Matthew 4:4: “[Jesus] answered, ‘It is written, “Man shall  
21 not live by bread alone, but by every word that comes from the mouth of God.”’” Indeed,  
22 the joyful duty to assemble together, in person, for worship services is a central tenet of  
23 the Christian faith, both believed and practiced by the Church according to the Bible, a  
24 tenet that is especially important to maintain during times of turmoil and trouble in the  
25 world: “And let us consider how to stir up one another to love and good works, not  
26 neglecting to meet together, as is the habit of some, but encouraging one another, and all  
27 the more as you see the Day drawing near.” Hebrews 10:24–25.

28

1 81. Southridge also believes that the Bible requires the church to keep one  
2 another's confidence and trust, to be discreet, and to refrain from sharing private  
3 information about others. (Proverbs 16:28; Proverbs 20:19; Proverbs 25:9; 1 Timothy  
4 5:13; and 2 Timothy 2:16.)

5 82. Southridge's congregation is multi-racial and represents a cross-section of  
6 society, from rich to poor and of all ages. The Church's congregation also includes  
7 members and visitors running the gamut of essential workers. These essential workers  
8 and service providers receive spiritual support, comfort, guidance, and shelter from the  
9 ministry of the Church's personnel and its members.

10 83. Many in Southridge's congregation are transplants from other states and  
11 countries who came to San Jose for economic opportunities, leaving behind family and  
12 friends.

13 84. The mandated closure of Southridge is having a significant and detrimental  
14 secondary effects on the citizens of San Jose. It is preventing the numerous ministries and  
15 social services provided by churches to the poor, unemployed and distressed. The  
16 humanitarian and spiritual support provided by Southridge's ministries are innumerable.

17 85. These include in-person student and youth ministries where youth are  
18 provided with emotional and spiritual support, and a safe place to receive mentorship and  
19 counseling.

20 86. Every month prior to COVID-19, the Southridge congregation hosts a  
21 homeless outreach and supplies homeless with blankets, socks, toiletries, food, in  
22 addition to prayer, counseling, and spiritual support.

23 87. Southridge has an extensive in-person counseling ministry for its adult  
24 congregants as well, including grief counseling, crisis counseling, prayer, and other  
25 mental health support for those struggling with anxiety, depression, stress, marital issues,  
26 and loneliness.

27 88. Southridge also provides financial support to its congregants in need by  
28 allocating a percentage of donations it receives to give back to its congregants.

1 89. Since the County’s initial March 16, 2020 Order, Southridge has not been  
2 able to engage with the community and its congregants to provide necessary social  
3 services and humanitarian and spiritual support. Although it continues to try to do so to  
4 the extent possible, it is extremely limited by the County’s Order.

5 90. Southridge has seen a fifty percent increase in mental and emotional issues  
6 in its community since COVID-19 pandemic and the March 16, 2020 Order.

7 91. In order to strategize about how to help its community, Southridge  
8 conducted a survey to 4,000 people who have attended its church. According to the  
9 survey, 79% of the 4,000 stated that attending church in-person would help their mental  
10 and emotional health.

11 **FIRST CAUSE OF ACTION**

12 **THE ORDERS VIOLATE PLAINTIFFS’ RIGHT TO FREE EXERCISE OF**  
13 **RELIGION UNDER THE FIRST AMENDMENT TO THE U.S.**

14 **CONSTITUTION**

15 **(By all Plaintiffs against all Defendants)**

16 92. Plaintiffs incorporate by reference the allegations in the preceding  
17 paragraphs, as if fully set forth herein.

18 93. The Free Exercise Clause of the First Amendment to the United States  
19 Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendants  
20 from abridging Plaintiffs’ right to free exercise of religion.

21 94. Southridge and CCSJ have sincerely held religious beliefs that the Bible is  
22 the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its  
23 teachings.

24 95. Southridge and CCSJ have sincerely held religious beliefs, rooted in the  
25 Bible, that followers of Jesus Christ are not to forsake the assembling of themselves  
26 together.

27 96. The County Orders, on their face and as applied, prohibit all faith-based  
28 assemblies and gatherings in Plaintiffs’ respective places of worship, including leased

1 buildings or parking lots, even if Plaintiffs follow CDC and state guidelines for houses of  
2 worship, which is a violation of Plaintiffs’ right to the free exercise of religion.

3 97. The County Orders mandate that Plaintiffs’ record “names and contact  
4 information” of all people that attend religious services and use that information to “assist  
5 the County Public Health Department in any case investigation and contact tracing”  
6 associated with the religious gatherings, is a violation of Plaintiffs’ right to the free  
7 exercise of religion.

8 98. The County Orders, on their face and as applied, target Plaintiffs’ sincerely  
9 held religious beliefs and practices.

10 99. The County Orders, on their face and as applied, impermissibly burden  
11 Plaintiffs’ sincerely held religious beliefs, compel Plaintiffs to either change those beliefs  
12 or to act in contradiction to them, and force Plaintiffs to choose between the teachings  
13 and requirements of its sincerely held religious beliefs or the mandates in Defendants’  
14 County Orders.

15 100. The County Orders, on their face and as applied, place Plaintiffs in an  
16 irresolvable conflict between compliance with the orders and adherence to their sincerely  
17 held religious beliefs.

18 101. The County Orders, on their face and as applied, put substantial pressure on  
19 Plaintiffs to violate their sincerely held religious beliefs by ignoring the fundamental  
20 teachings and tenets of their religious texts including those tenets requiring assembly.

21 102. The County Orders, on their face and as applied, are neither neutral nor  
22 generally applicable, but rather specifically and discriminatorily target the religious  
23 beliefs, speech, assembly, and viewpoint of Plaintiffs.

24 103. The County Orders, on their face and as applied, constitute a substantial  
25 burden on Plaintiffs’ sincerely held religious beliefs as they are prevented from practicing  
26 the teachings of their religious texts.

27 104. The County’s limitation of religious worship services largely to “email,  
28 video streaming, or teleconference to video streaming” substantially burdens houses of

1 worship because they have to rely on internet based platforms that can refuse to provide  
2 services to the houses of worship for any reason, including discriminatory reasons.<sup>17</sup>

3 105. Defendants lack a compelling, legitimate, or rational interest in the County  
4 Orders' application of differential standards for churches and faith-based gatherings than  
5 those applicable to similar gatherings and secular businesses.

6 106. Even if the County Orders' restrictions on faith-based gatherings were  
7 supported by a compelling interest, which they are not, they do not employ the least  
8 restrictive means to accomplish the government's purported interest and are not narrowly  
9 tailored to said interest.

10 107. The County Orders fail to accommodate Plaintiffs' sincerely held religious  
11 beliefs. Instead, the County orders intentionally aim to frustrate Plaintiffs' practices.

12 108. The County Orders specifically target Plaintiffs' sincerely held religious  
13 beliefs, and the Orders set up a system of individualized exemptions that permit certain  
14 other similarly situated businesses or services to continue operations under certain  
15 guidelines while prohibiting faith-based gatherings, such as Plaintiffs, from operating  
16 under similar guidelines.

17 109. The County Orders, on their face and as applied, constitute a religious  
18 gerrymander. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534,  
19 (1993).

20 110. The County Orders, on their face and as applied, have caused, are causing,  
21 and will continue to cause Plaintiffs' immediate and irreparable harm, and actual and  
22 undue hardship.

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25 <sup>17</sup> See *Riggs v. MySpace, Inc.*, 444 F. App'x 986 (9th Cir. 2011) (holding that the federal Communications  
26 Decency Act provides blanket immunity for an interactive computer service that decides to delete user  
27 accounts); See also *United States Executive Order on Preventing Censorship*, May 28, 2020 (explaining the  
28 harm of blanket immunity for interactive computer services that "wield immense, if not unprecedented,  
power to shape the interpretation of public events; to censor, delete, or disappear information; and to  
control what people see or do not see"), <https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>.

1 111. Plaintiffs have no adequate remedy at law to correct the continuing  
2 deprivation of their constitutional rights.

3 112. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants  
4 as hereinafter set forth in the prayer for relief.

5 **SECOND CAUSE OF ACTION**

6 **THE ORDERS VIOLATE PLAINTIFFS’ RIGHT TO FREE EXERCISE AND**  
7 **ENJOYMENT OF RELIGION UNDER ARTICLE I, §4 OF THE CALIFORNIA**  
8 **CONSTITUTION**

9 **(By all Plaintiffs against all Defendants)**

10 113. Plaintiffs incorporate by reference the allegations in the preceding  
11 paragraphs, as if fully set forth herein.

12 114. Article I, § 4 of the Constitution of the State of California states, “Free  
13 exercise and enjoyment of religion without discrimination or preference are guaranteed.”

14 115. “[T]he religion clauses of the California Constitution are read more broadly  
15 than their counterparts in the federal Constitution.” *Carpenter v. City and County of San*  
16 *Francisco*, 93 F.3d 627, 629 (1996).

17 116. Southridge and CCSJ have sincerely held religious beliefs that the Bible is  
18 the infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its  
19 teachings.

20 117. Southridge and CCSJ have sincerely held religious beliefs, rooted in the  
21 Bible, that followers of Jesus Christ are not to forsake the assembling of themselves  
22 together.

23 118. The County Orders, on their face and as applied, prohibit all faith-based  
24 assemblies and gatherings in Plaintiffs’ respective places of worship, including leased  
25 buildings or parking lots, even if Plaintiffs follow CDC and state guidelines for houses of  
26 worship, which is a violation of Plaintiffs’ right to the free exercise of religion.

27 119. The County Orders also mandate that Plaintiffs’ record “names and contact  
28 information” of all people that attend religious services and use that information to “assist

1 the County Public Health Department in any case investigation and contact tracing”  
2 associated with the religious gatherings, which is a violation of Plaintiffs’ right to the free  
3 exercise of religion.

4 120. The County Orders, on their face and as applied, target Plaintiffs’ sincerely  
5 held religious beliefs and practices.

6 121. The County Orders, on their face and as applied, impermissibly burden  
7 Plaintiffs’ sincerely held religious beliefs, compel Plaintiffs to either change those beliefs  
8 or to act in contradiction to them, and force Plaintiffs to choose between the teachings  
9 and requirements of its sincerely held religious beliefs or the mandates in Defendants’  
10 County Orders.

11 122. The County Orders, on their face and as applied, place Plaintiffs in an  
12 irresolvable conflict between compliance with the orders and adherence to their sincerely  
13 held religious beliefs.

14 123. The County Orders, on their face and as applied, put substantial pressure on  
15 Plaintiffs to violate their sincerely held religious beliefs by ignoring the fundamental  
16 teachings and tenets of their religious text including those tenets concerning assembly.

17 124. The County Orders, on their face and as applied, are neither neutral nor  
18 generally applicable, but rather specifically and discriminatorily target the religious  
19 beliefs, speech, assembly, and viewpoint of Plaintiffs.

20 125. The County Orders, on their face and as applied, constitute a substantial  
21 burden on Plaintiffs’ sincerely held religious beliefs as they are prevented from practicing  
22 the teachings of their religious texts.

23 126. The County’s limitation of religious worship services largely to “email,  
24 video streaming, or teleconference to video streaming” substantially burdens houses of  
25 worship because they have to rely on internet based platforms that can refuse to provide  
26 services to the houses of worship for any reason, including discriminatory reasons.<sup>18</sup>

27 \_\_\_\_\_  
28 <sup>18</sup> See *Riggs v. MySpace, Inc.*, 444 F. App’x 986 (9th Cir. 2011) (holding that the federal Communications Decency Act provides blanket immunity for an interactive computer service that decides to delete user

1 127. Defendants lack a compelling, legitimate, or rational interest in the County  
2 Orders' application of differential standards for churches and faith-based gatherings than  
3 those applicable to similar gatherings and secular businesses.

4 128. Even if the County Orders' restriction on faith-based gatherings were  
5 supported by a compelling interest, which they are not, they do not employ the least  
6 restrictive means to accomplish the government's purported interest and are not narrowly  
7 tailored to said interest.

8 129. The County Orders fail to accommodate Plaintiffs' sincerely held religious  
9 beliefs. Instead, the County orders intentionally aim to frustrate Plaintiffs' practices.

10 130. The County Orders, specifically target Plaintiffs' sincerely held religious  
11 beliefs, and the Orders set up a system of individualized exemptions that permit certain  
12 other similarly situated businesses or services to continue operations under certain  
13 guidelines while prohibiting faith-based gatherings, such as Plaintiffs', from operating  
14 under similar guidelines.

15 131. The County Orders, on their face and as applied, constitute a religious  
16 gerrymander. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534,  
17 (1993).

18 132. The County Orders, on their face and as applied, have caused, are causing,  
19 and will continue to cause Plaintiffs' immediate and irreparable harm, and actual and  
20 undue hardship.

21 133. Plaintiffs have no adequate remedy at law to correct the continuing  
22 deprivation of their constitutional rights.

23 134. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants  
24 as hereinafter set forth in the prayer for relief.

25  
26 \_\_\_\_\_  
27 accounts); See also *United States Executive Order on Preventing Censorship*, May 28, 2020 (explaining the  
28 harm of blanket immunity for interactive computer services that "wield immense, if not unprecedented,  
power to shape the interpretation of public events; to censor, delete, or disappear information; and to  
control what people see or do not see"), [https://www.whitehouse.gov/presidential-actions/executive-  
order-preventing-online-censorship/](https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/).

**THIRD CAUSE OF ACTION**

**THE ORDERS VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT OF THE U.S. CONSTITUTION**

**(By all Plaintiffs against all Defendants)**

135. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

136. The Orders and Defendants’ enforcement thereof violate the First Amendment, both facially and as-applied to Plaintiffs. The Establishment Clause of the “First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (citing *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)). The Establishment Clause applies to the states through the Due Process Clause of the Fourteenth Amendment. *Everson v. Board of Ed. of Ewing*, 330 U.S. 1 (1947).

137. The Orders, as stated, advance no secular purpose. Defendants have made numerous exceptions to their Orders, permitting similarly situated secular activities but not indoor religious worship and limiting drive-in and outdoor services. Defendants have largely limited worship services to “email, video streaming, or teleconference.”

138. The County’s limitation of religious worship services largely to “email, video streaming, or teleconference to video streaming” substantially burdens houses of worship because they have to rely on internet based platforms that can refuse to provide services to the houses of worship for any reason, including discriminatory reasons.<sup>19</sup>

139. The Orders and Defendants’ *ad hoc* enforcement of them have the primary effect of inhibiting religious activity.

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<sup>19</sup> See *Riggs v. MySpace, Inc.*, 444 F. App’x 986 (9th Cir. 2011) (holding that the federal Communications Decency Act provides blanket immunity for an interactive computer service that decides to delete user accounts); See also *United States Executive Order on Preventing Censorship*, May 28, 2020 (explaining the harm of blanket immunity for interactive computer services that “wield immense, if not unprecedented, power to shape the interpretation of public events; to censor, delete, or disappear information; and to control what people see or do not see”), <https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>.

1 140. Defendants have failed to avoid excessive government entanglement  
2 with religion. Defendants permit only some forms of religious observance, such as  
3 livestreamed, at-home religious activities.

4 141. There is no historical precedent in the United States for inhibiting religious  
5 practices on terms more restrictive than those imposed on identical secular activities, as  
6 Defendants do now.

7 142. The County Orders, on their face and as applied, have caused, are causing,  
8 and will continue to cause Plaintiffs’ immediate and irreparable harm, and actual and  
9 undue hardship.

10 143. Plaintiffs have no adequate remedy at law to correct the continuing  
11 deprivation of their constitutional rights.

12 144. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants  
13 as hereinafter set forth in the prayer for relief.

14 **FOURTH CAUSE OF ACTION**

15 **THE ORDERS VIOLATE PLAINTIFFS’ RIGHT TO PRIVACY UNDER**  
16 **ARTICLE I, §1 OF THE CALIFORNIA CONSTITUTION**

17 **(By all Plaintiffs against all Defendants)**

18 145. Plaintiffs incorporate by reference the allegations in the preceding  
19 paragraphs, as if fully set forth herein.

20 146. Article I § 1 of the California Constitution expressly protects privacy: “All  
21 people are by nature free and independent and have inalienable rights. Among these are  
22 enjoying and defending life and liberty, acquiring, possessing, and protecting property,  
23 and pursuing and obtaining safety, happiness, and **privacy.**”

24 147. The Orders and Defendants’ enforcement thereof implicate Plaintiffs’  
25 legally protected privacy interest because the Orders mandate that Plaintiffs record  
26 “names and contact information” of all people that attend religious services and use that  
27 information to “assist the County Public Health Department in any case investigation and  
28 contact tracing” associated with the religious gatherings. Failure to do so constitutes a

1 “threat and menace to public health, constitutes a public nuisance, and is punishable by  
2 fine, imprisonment, or both.”

3 148. When the government invades the privacy protected by California’s  
4 Constitution, it must show that the need for this intrusion outweighs the individual’s  
5 privacy interests and that less intrusive measures would be ineffective. No governmental  
6 interest justifies this broad intrusion and burden caused by Defendants’ mandate that  
7 churches record the names and contact information of anyone who attends church for  
8 government use.

9 149. The County Orders have caused, are causing, and will continue to cause  
10 Plaintiffs’ immediate and irreparable harm, and actual and undue hardship.

11 150. Plaintiffs have no adequate remedy at law to correct the continuing  
12 deprivation of their constitutional rights.

13 151. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants  
14 as hereinafter set forth in the prayer for relief.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for relief as follows:

17 A. That this Court issue a Preliminary Injunction enjoining Defendants,  
18 Defendants’ officers, agents, employees, attorneys, and all other persons acting in active  
19 concert or participation with them, from enforcing the County Orders so that:

20 i. Defendants will not apply the County Orders in any manner as to infringe  
21 Plaintiffs’ constitutional and statutory rights by discriminating against their right to  
22 assembly, speech, and free exercise of religion.

23 ii. Defendants will apply the County Orders in a manner that treats Plaintiffs’  
24 faith-based gathering on equal terms and in an equal manner with that afforded other non-  
25 faith-based gatherings;

26 iii. Defendants will permit Plaintiffs to continue to meet so long as Plaintiffs  
27 comply with the CDC and state guidelines for houses of worship; and  
28

1           iv. Defendants will permit Plaintiffs the opportunity to comport their behavior  
2 to any further limitations or restrictions that Defendants may impose in any future  
3 modification, revision, or amendment of the County Orders or similar directive,  
4 instruction, ordinance, or other legally operative mechanisms.

5           B. That this Court issue a Permanent Injunction enjoining Defendants,  
6 Defendants' officers, agents, employees, attorneys, and all other persons acting in active  
7 concert or participation with them, from enforcing the County Orders so that:

8           i. Defendants will not apply the County Orders in any manner as to infringe  
9 Plaintiffs' constitutional and statutory rights by discriminating against their free exercise  
10 of religion as outlined herein;

11           ii. Defendants will apply the County Orders in a manner that treats Plaintiffs'  
12 faith-based gatherings on equal terms and in an equal manner with that afforded other  
13 non-faith-based gatherings;

14           iii. Defendants will permit faith-based gatherings to continue to meet so long as  
15 they comply with the CDC and state guidelines for houses of worship; and

16           iv. Defendants will permit Plaintiffs the opportunity to comport their behavior  
17 to any further limitations or restrictions that Defendants may impose in any future  
18 modification, revision, or amendment of the County Orders or similar directive,  
19 instruction, ordinance, or other legally operative mechanisms.

20           C. That this Court render a Declaratory Judgment declaring that the County  
21 Orders both on their face and as applied by Defendants are unconstitutional under the  
22 United States Constitution and California Constitution, and declaring that:

23           i. Defendants have violated Plaintiffs' right to free exercise of religion by  
24 impermissibly prohibiting faith-based gatherings, substantially burdening their sincerely  
25 held religious beliefs and applying criteria that are neither neutral nor generally applicable  
26 to religious and non-religious gatherings;

27  
28



**VERIFICATION OF COMPLAINT**

On behalf of Southridge Church and as an individual, I, Pastor Micaiah Irmeler, declare as follows:

1. I am a party to this action.
2. I have read the foregoing complaint and know of the contents thereof.
3. Based on my own knowledge, the contents of the foregoing complaint are true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 9, 2020, at San Jose, California.

  
\_\_\_\_\_  
Pastor Micaiah Irmeler

**VERIFICATION OF COMPLAINT**

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On behalf of Calvary Chapel San Jose and as an individual, I, Pastor Mike McClure, declare as follows:

- 1. I am a party to this action.
- 2. I have read the foregoing complaint and know of the contents thereof.
- 3. Based on my own knowledge, the contents of the foregoing complaint are true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 9, 2020 at San Jose, California.




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Pastor Mike McClure

# EXHIBIT “1”

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

**ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020**

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

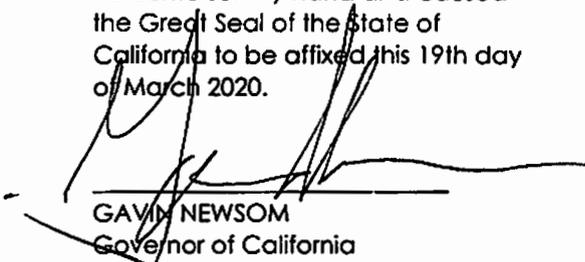
The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of March 2020.

  
\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# EXHIBIT “2”



**U.S. Department of Justice**

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 19, 2020

The Honorable Gavin Newsom  
Governor of California  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

Dear Governor Newsom:

We are writing to you to raise several civil rights concerns with the treatment of places of worship in Executive Orders N-33-20 and N-60-20 and documents relating to the California Reopening Plan.

Of course, we recognize the duty that you have to protect the health and safety of Californians in the face of a pandemic that is unprecedented in our lifetimes. You and other leaders around the country are called on to balance multiple competing interests and evaluate the constantly changing information available to you about COVID-19, and make your best judgment on courses of action.

Attorney General William P. Barr recently issued a statement on *Religious Practice and Social Distancing*, in conjunction with a Mississippi case in which the Department of Justice participated regarding restrictions on worship. In the statement, the Attorney General emphasized the need to practice social distancing to control the spread of COVID-19. He also noted that temporary restrictions that would be unacceptable in normal circumstances may be justified. But, “even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity.” Simply put, there is no pandemic exception to the U.S. Constitution and its Bill of Rights.

Laws that do not treat religious activities equally with comparable nonreligious activities are subject to heightened scrutiny under the Free Exercise Clause of the First Amendment. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993). Laws that are not both neutral toward religion and generally applicable are invalid unless the government can prove that they further a compelling interest and are pursued through the least restrictive means possible. Religious gatherings may not be singled out for unequal treatment compared to other nonreligious gatherings that have the same effect on the government’s public health interest, absent the most compelling reasons.

Executive Order N-33-20 (March 19, 2020) ordered Californians to remain at home except to engage in authorized necessary activities as laid out by the Public Health Officer at the time and as modified going forward. The Public Health Officer's April 28 "essential workforce" list does not appear to treat religious activities and comparable nonreligious activities the same.

The list includes "faith-based services" but only if "provided through streaming or other technologies." In-person religious services are thus apparently prohibited even if they adhere to social distancing standards.

The list of nonreligious workers who are not so restricted by the Executive Order and essential workforce list when telework "is not practical" is expansive. For example, the list includes "Workers supporting the entertainment industries, studios, and other related establishments, provided they follow covid-19 public health guidance around social distancing." Likewise, "workers supporting ecommerce" are included as essential, regardless of whether the product they are selling and shipping are life-preserving products or not. This facially discriminates against religious exercise. California has not shown why interactions in offices and studios of the entertainment industry, and in-person operations to facilitate nonessential ecommerce, are included on the list as being allowed with social distancing where telework is not practical, while gatherings with social distancing for purposes of religious worship are forbidden, regardless of whether remote worship is practical or not.

Even more pronounced unequal treatment of faith communities is evident in California's Reopening Plan, as set forth in Executive Order N-60-20 (May 4, 2020), and in the documents the California Department of Public Health produced pursuant to it, including the "Resilience Roadmap" (<https://covid19.ca.gov/roadmap/>) and "County Variance Attestations" (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Local-Variance-Attestations.aspx>). Places of worship are not permitted to hold religious worship services until Stage 3. However, in Stage 2, schools, restaurants, factories, offices, shopping malls, swap meets, and others are permitted to operate with social distancing. And as noted, ecommerce and entertainment industry activities are already permitted with social distancing. This constitutes precisely the kind of differential treatment the Supreme Court identified in the *Lukumi* decision in which the government is not willing to impose on certain activities the same restrictions it is willing to impose on constitutionally protected religious worship. While it is true that social distancing requirements applied to places of worship may inevitably result in much smaller congregations than some faith groups would like, in our experience with other controversies around the country, many places of worship are quite content to operate at 15-25% of capacity in a way that allows for social distancing between family groups.

The Department of Justice does not seek to dictate how States such as California determine what degree of activity and personal interaction should be allowed to protect the safety of their citizens. However, we are charged with upholding the Constitution and federal statutory protections for civil rights. Whichever level of restrictions you adopt, these civil rights protections mandate equal treatment of persons and activities of a secular and religious nature.

We recognize that three U.S. District Courts have denied Temporary Restraining Orders (TRO's) sought by plaintiffs against Executive Order N-33-20, *Abiding Place Ministries v. Wooten*, No. 3:20-cv-00683 (S.D. Cal. April 10, 2020) (no written opinion); *Gish v. Newsom*, No. 5:20-CV-755 (C.D. Cal. Apr. 23, 2020); *Cross Culture Christian Ctr. v. Newsom*, No. 2:20-CV-00832 (E.D. Cal. May 5, 2020), and one denied a TRO against the Reopening Plan, which is

now on appeal to the Ninth Circuit. *South Bay United Pentecostal Church v. Newsom*, No. 3:20-cv-865 (S.D. Cal. May 15, 2020) (oral transcript ruling). These TRO decisions do not justify California's actions. The *Abiding Place*, *Gish*, and *Cross Culture* TRO decisions do not address the Stage 2 reopening, and *South Bay United Pentecostal* does not describe why worship services can be distinguished from schools, restaurants, factories or other places Stage 2 permits people to come together. Other decisions around the country have followed *Lukumi* to make clear that reopening plans cannot unfairly burden religious services as California has done. *See, e.g., Robert v. Neace*, No. 20-5465 (6th Cir. May 11, 2020).

Religion and religious worship continue to be central to the lives of millions of Americans. This is true now more than ever. Religious communities have rallied to protect their communities from the spread of this disease by making services available online, in parking lots, or outdoors, by indoor services with a majority of pews empty, and in numerous other creative ways that otherwise comply with social distancing and sanitation guidelines. We believe, for the reasons outlined above, that the Constitution calls for California to do more to accommodate religious worship, including in Stage 2 of the Reopening Plan.

Thank you for your prompt attention to this matter. Should you wish to discuss further, please contact United States Attorney for the Eastern District of California McGregor Scott at (916) 554-2730 or [mcgregor.scott@usdoj.gov](mailto:mcgregor.scott@usdoj.gov).

Sincerely,

*Eric S. Dreiband*  
05/19/2020

Eric S. Dreiband  
Assistant Attorney General  
Civil Rights Division

McGregor W. Scott  
United States Attorney  
Eastern District of California

Nicola T. Hanna  
United States Attorney  
Central District of California

David L. Anderson  
United States Attorney  
Northern District of California

Robert S. Brewer  
United States Attorney  
Southern District of California

cc: The Honorable Xavier Becerra  
Attorney General of California

# EXHIBIT “3”



Centers for Disease Control and Prevention  
CDC 24/7: Saving Lives, Protecting People™

## Coronavirus Disease 2019 (COVID-19)

### Interim Guidance for Communities of Faith

CDC offers the following general considerations to help communities of faith discern how best to practice their beliefs while keeping their staff and congregations safe. Millions of Americans embrace worship as an essential part of life. For many faith traditions, gathering together for worship is at the heart of what it means to be a community of faith. But as Americans are now aware, gatherings present a risk for increasing spread of COVID-19 during this Public Health Emergency. CDC offers these suggestions for faith communities to consider and accept, reject, or modify, consistent with their own faith traditions, in the course of preparing to reconvene for in-person gatherings while still working to prevent the spread of COVID-19.

This guidance is not intended to infringe on rights protected by the First Amendment to the U.S. Constitution or any other federal law, including the Religious Freedom Restoration Act of 1993 (RFRA). The federal government may not prescribe standards for interactions of faith communities in houses of worship, and in accordance with the First Amendment, no faith community should be asked to adopt any mitigation strategies that are more stringent than the mitigation strategies asked of similarly situated entities or activities.

In addition, we note that while many types of gatherings are important for civic and economic well-being, religious worship has particularly profound significance to communities and individuals, including as a right protected by the First Amendment. State and local authorities are reminded to take this vital right into account when establishing their own re-opening plans.

### Scaling Up Operations

- Establish and maintain communication with local and State authorities to determine current mitigation levels in your community.
- Provide protections for staff and congregants at [higher risk for severe illness](#) from COVID-19. Offer options for staff at [higher risk for severe illness](#) (including older adults and people of all ages with certain underlying medical conditions) that limit their exposure risk. Offer options for congregants at [higher risk of severe illness](#) that limit their exposure risk (e.g., remote participation in services).
- Consistent with applicable federal and State laws and regulations, put in place policies that protect the privacy and confidentiality of people at [higher risk for severe illness](#) regarding underlying medical conditions.
- Encourage any organizations that share or use the facilities to also follow these considerations as applicable.
- If your community provides social services in the facility as part of its mission, consult CDC's information for [schools](#) and [businesses and workplaces](#), as relevant, for helpful information.

### Safety Actions

#### Promote [healthy hygiene practices](#)

- Encourage staff and congregants to maintain good hand hygiene, [washing hands](#) with soap and water for at least 20 seconds.
- Have adequate supplies to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60 percent alcohol (for those who can safely use hand sanitizer), tissues, and no-touch trash cans.
- Encourage staff and congregants to cover coughs and sneezes with a tissue or use the inside of their elbow. Used tissues should be thrown in the trash and hands washed.
- Whenever soap and water are not readily available, hand sanitizer with at least 60% alcohol can be used.
- Consider posting signs on how to [stop the spread](#)  of COVID-19 and how to [promote everyday protective measures](#) , such as [washing hands](#), covering coughs and sneezes, and [properly wearing a face covering](#) .

## Cloth face coverings

- Encourage use of [cloth face coverings](#) among staff and congregants. Face coverings are most essential when [social distancing](#) is difficult. Note: [Cloth face coverings](#) should not be placed on children younger than 2 years old, anyone who has trouble breathing or is unconscious, and anyone who is incapacitated or otherwise unable to remove the cloth face covering without assistance. [Cloth face coverings](#) are meant to protect other people in case the wearer is unknowingly infected but does not have symptoms.

## Intensify cleaning, disinfection, and ventilation

- [Clean and disinfect](#) frequently touched surfaces at least daily and shared objects in between uses.
- Develop a schedule of increased, routine cleaning and disinfection.
- Avoid use of items that are not easily cleaned, sanitized, or disinfected.
- Ensure [safe and correct application](#) of disinfectants and keep them away from children.
- Cleaning products should not be used near children, and staff should ensure that there is adequate ventilation when using these products to prevent children or themselves from inhaling toxic fumes.
- Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, etc. Do not open windows and doors if they pose a safety risk to children using the facility.
- If your faith community offers multiple services, consider scheduling services far enough apart to allow time for cleaning and disinfecting high-touch surfaces between services. [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

## Promote social distancing

- Take steps to limit the size of gatherings in accordance with the guidance and directives of state and local authorities and subject to the protections of the First Amendment and any other applicable federal law.
- Promote [social distancing](#) at services and other gatherings, ensuring that clergy, staff, choir, volunteers and attendees at the services follow social distancing, as circumstances and faith traditions allow, to lessen their risk.
- Consider holding services and gatherings in a large, well-ventilated area or outdoors, as circumstances and faith traditions allow.
- Consider appropriate mitigation measures, including taking steps to limit the size of gatherings maintaining [social distancing](#), at other gatherings such as funerals, weddings, religious education classes, youth events, support groups and any other programming, where consistent with the faith tradition.
- Provide physical guides, such as tape on floors or walkways and signs on walls, to ensure that staff and children remain at least 6 feet apart in lines and at other times (e.g. guides for creating "one-way routes" in hallways).

## Take steps to minimize community sharing of worship materials and other items

- Consistent with the community's faith tradition, consider temporarily limiting the sharing of frequently touched objects, such as worship aids, prayer rugs, prayer books, hymnals, religious texts and other bulletins, books, or other items passed or shared among congregants, and encouraging congregants to bring their own such items, if possible, or photocopying or projecting prayers, songs, and texts using electronic means.
- Modify the methods used to receive financial contributions. Consider a stationary collection box, the main, or electronic methods of collection regular financial contributions instead of shared collection trays or baskets.
- Consider whether physical contact (e.g., shaking hands, hugging, or kissing) can be limited among members of the faith community.
- If food is offered at any event, consider pre-packaged options, and avoid buffet or family-style meals if possible.

## Nursery/Childcare

- If a nursery or childcare will be provided during services and events, refer to CDC's information on [preventing the spread of COVID-19 in childcare settings](#) and adapt as needed for your setting.
- If holding summer day camps, refer to CDC's information on [youth and summer camps](#) and adapt as needed.

## Staffing and Training

- Train all clergy and staff in the above safety actions. Consider conducting the training virtually, or, if in-person, ensure that [social distancing](#) is maintained.

## Monitoring and Preparing

### Check for [signs and symptoms](#)

- Encourage staff or congregants who are sick or who have had close contact with a person with COVID-19 to stay home. Share CDC's criteria for staying home with staff and congregants so that they know how to care for themselves and others. Consider posting signs at entrances with this information.

## Plan for when a staff member or congregant becomes sick

- Identify an area to separate anyone who exhibits [symptoms](#) of COVID-19 during hours of operation, and ensure that children are not left without adult supervision.
- Establish procedures for safely transporting anyone who becomes [sick](#) at the facility to their home or a healthcare facility.
- Notify local health officials if a person diagnosed with COVID-19 has been in the facility and communicate with staff and congregants about potential exposure while maintaining confidentiality as required by the [Americans with Disabilities Act \(ADA\)](#) [↗](#) or other applicable laws and in accordance with religious practices.
- Advise those with [exposure](#) to a person diagnosed with COVID-19 to [stay home and self-monitor](#) for symptoms, and follow [CDC guidance](#) if symptoms develop.
- Close off areas used by the [sick](#) person and do not use the area until after cleaning and disinfection. Ensure [safe and correct application](#) of disinfectants and keep disinfectant products away from children.

- Advise staff and congregants with [symptoms](#) of COVID-19 or who have tested positive for COVID-19 not to return to the facility until they have met CDC's [criteria to discontinue home isolation](#).

## Maintain healthy operations

- Implement flexible sick leave and related flexible policies and practices for staff (e.g., allow work from home, if feasible), and provide requested reasonable accommodation absent undue hardship to individuals with disabilities under the [Americans with Disabilities Act \(ADA\)](#) [↗](#) or other applicable laws and in accordance with religious practices.
- Monitor absenteeism and create a roster of trained back-up staff.
- Designate a staff person to be responsible for responding to COVID-19 concerns. Staff, clergy, volunteers, and congregants should know who this person is and how to contact them if they become sick or are around others diagnosed with COVID-19. This person should also be aware of state or local regulatory agency policies related to group gatherings.
- As volunteers often perform important duties (e.g., greeters, ushers, childcare), consider similar monitoring, planning, and training for them. Consider that volunteer and staffing may need to increase to implement cleaning and safety protocols and to accommodate additional services with reduced attendance.
- Communicate clearly with staff and congregants about actions being taken to protect their health.

## Signs and Messages

- Post [signs](#) in highly visible locations (e.g., entrances, restrooms, gathering halls/community rooms/gyms) that [promote everyday protective measures](#) [↗](#) and describe how to [stop the spread](#) [↗](#) of germs (such as by [properly washing hands](#) and [properly wearing a cloth face covering](#) [↗](#) ).
- Include messages (for example, [videos](#)) about behaviors that prevent the spread of COVID-19 when communicating with staff and congregants (such as in emails and on community websites and [social media accounts](#)).
- Find freely available CDC print and digital resources on CDC's [communications resources](#) main page.

## Closing

- Check [state](#) and [local](#) [↗](#) health department notices daily about transmission in the community and adjust operations.
- In the event a person diagnosed with COVID-19 is determined to have been in the building and poses a risk to the community, it is strongly suggested to dismiss attendees, then properly clean and disinfect the area and the building where the individual was present before resuming activities.

Page last reviewed: May 23, 2020

Content source: [National Center for Immunization and Respiratory Diseases \(NCIRD\), Division of Viral Diseases](#)

**EXHIBIT “4”**



# COVID-19 INDUSTRY GUIDANCE:

## Places of Worship and Providers of Religious Services and Cultural Ceremonies

May 25, 2020

[covid19.ca.gov](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Industry-Guidance-Places-of-Worship-and-Providers-of-Religious-Services-and-Cultural-Ceremonies.aspx)



## OVERVIEW

On March 19, 2020, the State Public Health Officer and Director of the California Department of Public Health issued an order requiring most Californians to stay at home to disrupt the spread of COVID-19 among the population.

The impact of COVID-19 on the health of Californians is not yet fully known. Reported illness ranges from very mild (some people have no symptoms) to severe illness that may result in death. Certain groups, including people aged 65 or older and those with serious underlying medical conditions, such as heart or lung disease or diabetes, are at higher risk of hospitalization and serious complications. Transmission is most likely when people are in close contact with an infected person, even if that person does not have any symptoms or has not yet developed symptoms.

Precise information about the number and rates of COVID-19 by industry or occupational groups, including among critical infrastructure workers, is not available at this time. There have been multiple outbreaks in a range of workplaces, indicating that workers are at risk of acquiring or transmitting COVID-19 infection. Examples of these workplaces include places of worship, long-term care facilities, prisons, food production, warehouses, meat processing plants, and grocery stores.

As stay-at-home orders are modified, it is essential that all possible steps be taken to ensure the safety of workers and the public.

Key prevention practices include:

- ✓ physical distancing to the maximum extent possible,
- ✓ use of face coverings by employees and volunteers (where respiratory protection is not required) and congregants/visitors,
- ✓ frequent handwashing and regular cleaning and disinfection,
- ✓ training employees and volunteers on these and other elements of the COVID-19 prevention plan.

In addition, it will be critical to have in place appropriate processes to identify new cases of illness in workplaces and, when they are identified, to intervene quickly and work with public health authorities to halt the spread of the virus.

## PURPOSE

This document provides guidance for places of worship and providers of religious services and cultural ceremonies (referred to collectively as “places of worship”) to support a safe, clean environment for employees, interns and trainees, volunteers, scholars, and all other types of workers (referred to collectively as “staff”) as well as congregants, worshippers, visitors, etc. (referred to collectively as “visitors” or “congregants”).

This guidance does not obligate places of worship to resume in-person activity. Further, it is strongly recommended that places of worship continue to facilitate remote services and other related activities for those who are vulnerable to COVID19 including older adults and those with co-morbidities.

Even with adherence to physical distancing, convening in a congregational setting of multiple different households to practice a personal faith carries a relatively higher risk for widespread transmission of the COVID-19 virus, and may result in increased rates of infection, hospitalization, and death, especially among more vulnerable populations. In particular, activities such as singing and group recitation negate the risk-reduction achieved through six feet of physical distancing.

\*Places of worship must therefore limit attendance to 25% of building capacity or a maximum of 100 attendees, whichever is lower. This limitation will be in effect for the first 21-days of a county public health department's approval of religious services and cultural ceremonies activities at places of worship within their jurisdictions.

Upon 21-days, the California Department of Public Health, in consultation with county Departments of Public Health, will review and assess the impact of these imposed limits on public health and provide further direction as part of a phased-in restoration of activities in places of worship.

**NOTE:** This guidance is not intended for food preparation and service, delivery of items to those in need, childcare and daycare services, school and educational activities, in-home caregiving, counseling, office work, and other activities that places and organizations of worship may provide. Organizations that perform these activities must follow applicable guidance on the [COVID-19 Resilience Roadmap website](#).

The guidance is not intended to revoke or repeal any employee rights, either statutory, regulatory or collectively bargained, and is not exhaustive, as it does not include county health orders, nor is it a substitute for any existing safety and health-related regulatory requirements such as those of Cal/OSHA.<sup>1</sup> Stay current on changes to public health guidance and state/local orders, as the COVID-19 situation continues. Cal/OSHA has more safety and health guidance on their Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus [webpage](#). The CDC has additional guidance [for community- and faith-based organizations](#).



## Workplace Specific Plan

- Establish a written, workplace-specific COVID-19 prevention plan at every location, perform a comprehensive risk assessment of all work areas, and designate a person at each workplace to implement the plan.
- Identify contact information for the local health department where the workplace is located for communicating information about COVID-19 outbreaks among staff and congregants/visitors.
- Train and communicate with staff and employee representatives on the plan.
- Regularly evaluate workplaces for compliance with the plan and document and correct deficiencies identified.
- Investigate any COVID-19 illness and determine if any work-related factors could have contributed to risk of infection. Update the plan as needed to prevent further cases.
- Identify close contacts (within six feet for 15 minutes or more) of an infected staff member and take steps to isolate COVID-19 positive staff and close contacts.
- Adhere to the guidelines below. Failure to do so could result in workplace illnesses that may cause operations to be temporarily closed or limited.



## Topics for Employee and Volunteer Training

- Information on [COVID-19](#), how to prevent it from spreading, and which underlying health conditions may make individuals more susceptible to contracting the virus.
- Self-screening at home, including temperature and/or symptom checks using [CDC guidelines](#).
- The importance of not coming to work or participating in activities if staff have symptoms of COVID-19 as [described by the CDC](#), such as a frequent cough, fever, difficulty breathing, chills, muscle pain, sore throat, recent loss of taste or smell, or if they or someone they live with have been diagnosed with COVID-19.

- To seek medical attention if their symptoms become severe, including persistent pain or pressure in the chest, confusion, or bluish lips or face. Updates and further details are available on [CDC's webpage](#).
- The importance of frequent handwashing with soap and water, including scrubbing with soap for 20 seconds (or using hand sanitizer with at least 60% ethanol or 70% isopropanol when staff cannot get to a sink or handwashing station, per [CDC guidelines](#)).
- The importance of physical distancing, both at work and off work time (see Physical Distancing section below).
- Proper use of face coverings, including:
  - Face coverings do not protect the wearer and are not personal protective equipment (PPE).
  - Face coverings can help protect people near the wearer, but do not replace the need for physical distancing and frequent handwashing.
  - Face coverings must cover the nose and mouth.
  - Employees should wash or sanitize hands before and after using or adjusting face coverings.
  - Avoid touching the eyes, nose, and mouth.
  - Face coverings should be washed after each shift.
- Ensure all types of staff including temporary, contract, and volunteer workers are also properly trained in COVID-19 prevention policies and have necessary PPE. Discuss these responsibilities ahead of time with organizations supplying temporary, contract, and/or volunteer staff.
- Information on employer or government-sponsored leave benefits the employee may be entitled to receive that would make it financially easier to stay at home. See additional information on [government programs supporting sick leave and worker's compensation for COVID-19](#), including employee's sick leave rights under the [Families First Coronavirus Response Act](#) and employee's rights to workers' compensation benefits and presumption of the work-relatedness of COVID-19 pursuant to the Governor's [Executive Order N-62-20](#).



## Individual Control Measures and Screening

- Provide temperature and/or symptom screenings for all staff at the beginning of their shift. Make sure the temperature/symptom screener avoids close contact with staff to the extent possible. Both screeners and staff should wear face coverings for the screening.
- If requiring self-screening at home, which is an appropriate alternative to providing it at the establishment, ensure that screening was performed prior to the worker and/or volunteer leaving the home for their shift and follows [CDC guidelines](#), as described in the Topics for Employee Training section above.
- Encourage staff and congregants/visitors who are sick or exhibiting symptoms of COVID-19, or who have family members who are ill, to stay home.
- Employers should provide and ensure workers and volunteers use all required protective equipment, including eye protection and gloves, where necessary.
- Places of worship should consider where disposable gloves use may be helpful to supplement frequent handwashing or use of hand sanitizer; examples are for staff who are screening others for symptoms or handling commonly touched items. All workers and volunteers should wear gloves when handling items contaminated by body fluids.
- Face coverings are strongly recommended when staff are in the vicinity of others. Workers and volunteers should have face coverings available and wear them when at all facilities, in offices, when making home visits as part of providing services, or in a vehicle during work-related travel with others. Face coverings must not be shared. Places of worship are generally encouraged to provide face coverings but must provide them when required by employer rules or these guidelines.
- Staff, volunteers, etc. should not enter the home or visit someone who as tested positive for, exhibited symptoms of, or has been in contact with someone infected with COVID-19 for an appropriate waiting period as [described by CDC guidelines](#).
- Places of worship must take reasonable measures, including posting signage in strategic and highly-visible locations, to remind congregants/visitors that they should use face coverings and practice physical distancing whenever possible. Babies and children under age two should not wear face coverings, in accordance with [CDC guidelines](#).

- Use social media, website, texts, email, newsletters, etc., to communicate the steps being taken to protect congregants/visitors and staff so that they are familiar with the policies (including to stay home if experiencing symptoms or are at increased risk of becoming sick, face coverings, physical distancing, handwashing and/or sanitizing, and cough etiquette), before arriving at the facility. Staff and volunteers are strongly encouraged to remind congregants/visitors of these practices with announcements during services or on welcoming guests.
- Congregants/visitors should be screened for temperature and/or symptoms upon arrival to places of worship and asked to use hand sanitizer and to wear face coverings.



## Cleaning and Disinfecting Protocols

- Perform thorough cleaning of high traffic areas such as lobbies, halls, chapels, meeting rooms, offices, libraries, and study areas and areas of ingress and egress including stairways, stairwells, handrails, and elevator controls. Frequently disinfect commonly used surfaces including doorknobs, toilets, handwashing facilities, pulpits and podiums, donation boxes or plates, altars, and pews and seating areas.
- Establish frequent cleaning and disinfection of personal work areas such as desks and cubicles and supply the necessary cleaning products. Provide time for workers to implement cleaning practices during their shift. Cleaning assignments should be assigned during working hours as part of the staff's job duties.
- Discourage sharing items used in worship and services (such as prayer books, cushions, prayer rugs, etc.) whenever possible and provide single-use or digital copies or ask congregants/visitors to bring personal items instead. Avoid sharing work equipment and supplies, such as phones, office equipment, computers, etc., wherever possible. Never share PPE.
- Where such items must be shared, disinfect between shifts or uses, whichever is more frequent, including the following: shared office equipment (copiers, fax machines, printers, telephones, keyboards, staplers, etc.) and items in shared worship items, etc., with a cleaner appropriate for the surface.
- Ensure that sanitary facilities stay operational and stocked at all times and provide additional soap, paper towels, and hand sanitizer when needed. Consider more frequently cleaning and disinfecting handwashing facilities that are used more often. Use signage to reinforce handwashing.

- Disinfect microphones and stands, music stands, instruments and other items on pulpits and podiums between each use. Consult equipment manufacturers to determine appropriate disinfection steps, particularly for soft, porous surfaces such as foam mufflers.
- Consider using disposable seat covers for congregants/visitors, particularly on porous surfaces or where a facility has multiple daily services. Discard and replace seat covers between each use. Provide disposable or washable covers on pillows used as seating on floors and change/wash them after each use.
- Install hand sanitizer dispensers, touchless whenever possible, at entrances and contact areas such as meeting rooms, lobbies, and elevator landings.
- When choosing cleaning chemicals, establishments should use products approved for use against COVID-19 on the [Environmental Protection Agency \(EPA\)-approved](#) list and follow product instructions. Use disinfectants labeled to be effective against emerging viral pathogens, diluted household bleach solutions (5 tablespoons per gallon of water), or alcohol solutions with at least 70% alcohol that are appropriate for the surface. Provide staff training on manufacturer's directions and Cal/OSHA requirements for safe use. Workers and volunteers using cleaners or disinfectants should wear gloves or other protective equipment as required by the product instructions.
- Wash religious garments and linens after each service or event, at the highest water setting possible. Ask congregants/visitors to bring their own storage bags for personal garments and shoes. Staff, congregants, and visitors should wear gloves when handling others' dirty linens, shoes, etc.
- Discontinue passing offering plates and similar items that move between people. Use alternative giving options such as secure drop boxes that do not require opening/closing and can be cleaned and disinfected. Consider implementing digital systems that allow congregants/visitors to make touch-free offerings.
- Mark walking paths between spaces designated for congregants/visitors to sit/kneel so that people do not walk where someone may touch their head to the floor.
- During meetings and services, introduce fresh outside air, for example by opening doors/windows (weather permitting) and operating ventilation systems.
- Consider installing portable high-efficiency air cleaners, upgrading the building's air filters to the highest efficiency possible, and making other

modifications to increase the quantity of outside air and ventilation in worship areas, offices, and other spaces.



## Physical Distancing Guidelines

- Places of worship should continue to provide services through alternative methods (such as via internet live and/or recorded streaming, telephone, drive-in, etc.) whenever possible.
- Consider holding in-person meetings and providing in-person services outside whenever possible.
- Implement measures to ensure physical distancing of at least six feet between workers, staff, congregants/visitors, etc. This can include use of physical partitions or visual cues (e.g., floor or pew markings or signs to indicate where people should sit and stand). Reconfigure seating and standing areas to maintain physical distancing of six feet or more between congregants/visitors from different households. Consider limiting seating to alternate rows. Members of the same household may be seated together but should maintain at least six feet of distance from other households.
- Consider dedicating staff to help people maintain distances during activities.
- Shorten services to limit the length of time congregants/visitors spend at facilities whenever possible. This could include limiting speeches, asking congregants/visitors to put on garments at home before arrival, etc.
- Close places of worship for visitation outside of scheduled services, meetings, etc., whenever possible.
- Consider implementing a reservation system to limit the number of congregants/visitors attending facilities at a time. This can include the use of digital platforms or other types of tools.
- Encourage congregants/visitors to meet with the same group, particularly when services meet frequently and/or require a certain number of people to be present. This can reduce the spread of transmission by minimizing the number of different individuals who come into close contact with each other.
- Consider offering additional meeting times (per day or per week) so that fewer guests attend meetings and services at one time. Clean meeting areas between each use as described in this guidance.

- Discontinue large gatherings that encourage congregants/visitors to travel and break physical distances during activities, such as concerts, large holiday and life event celebrations and remembrances.
- Children should remain in the care of those in their household unit and not interact with children of other parties at any time while visiting facilities. Close play areas and discontinue activities and services for children where physical distancing of at least six feet cannot be maintained.
- Encourage congregants/visitors to physically distance themselves from others outside their household, avoid touching surfaces, and to leave the facility if they do not feel well.
- Consider limiting touching for religious and/or cultural purposes, such as holding hands, to members of the same household.
- Dedicate staff to direct guests to meeting rooms upon entry to places of worship rather than congregating in lobbies or common areas. Consider using ushers to help people find places to sit and stand that are at least six feet apart from other guests/household groups. Ask congregants/visitors to arrive and leave in a single group to minimize crossflow of people. Welcome and dismiss congregants/visitors from altars, podiums, meeting rooms, etc. in an orderly way to maintain physical distancing and minimize crossflow of traffic, to the extent possible.
- Prop or hold doors open during peak periods when congregants/visitors are entering and exiting facilities, if possible and in accordance with security and safety protocols.
- Close or restrict common areas, such as break rooms, kitchenettes, foyers, etc. where people are likely to congregate and interact. Consider installing barriers or increase physical distance between tables/seating when there is continued use of these areas.
- Turn off public drinking water fountains and place signs informing congregants/visitors they are inoperable.
- Remove from service or find low-community touch alternatives for communal/religious water containers such as fonts, sinks, and vessels. Empty and change water between uses. Where there is a possibility of contaminant splash, staff, congregants, visitors, etc., are strongly encouraged to use equipment to protect the eyes, nose, and mouth using a combination of face coverings, protective glasses, and/or face shields. Reusable protective equipment such as shields and glasses should be properly disinfected between uses.
- When washing is a required activity, modify practices whenever possible to limit splashing and the need to clean and disinfect washing facilities.

Encourage necessary washing to be performed at home prior to entering a facility, if possible.

- Reconfigure podiums and speaker areas, office spaces, meeting rooms, conference rooms, etc., to allow for at least six feet between people. Face coverings are strongly recommended at all times for congregants/visitors and staff, especially when physical distance of at least six feet is not possible.
- Establish directional hallways and passageways for foot traffic, if possible, and designate separate routes for entry and exit into meeting rooms, offices, etc., to help maintain physical distancing and lessen the instances of people closely passing each other.
- Limit the number of individuals riding in an elevator and ensure the use of face coverings. Post signage regarding these policies.
- Utilize practices, when feasible and necessary, to limit the number of staff and congregants/visitors in office, meeting spaces, etc., at one time. This may include scheduling (e.g. staggering start/end times), establishing alternating days for onsite reporting, returning to places of worship in phases, or continued use of telework when feasible.
- Consider offering workers and volunteers who request modified duties options that minimize their contact with congregants/visitors and other staff (e.g., office duties rather than working as an usher or managing administrative needs through telework).
- Stagger staff breaks, in compliance with wage and hour regulations, to maintain physical distancing protocols.
- Discontinue nonessential travel and encourage distance meetings via phone and internet.
- Close self-service item selection such as pamphlet displays and bookshelves and provide these items to congregants/visitors individually as necessary. Consider delivering items and information electronically.
- Consider limiting the number of people that use the restroom at one time to allow for physical distancing.
- Discourage staff, congregants, visitors, etc., from engaging in handshakes, hugs, and similar greetings that break physical distance. Take reasonable measures to remind people to wave or use other greetings.
- Reconfigure parking lots to limit congregation points and ensure proper separation (e.g., closing every other space). If performing drive-in

services, ensure vehicle windows and doors are closed if six feet of distance is not possible between vehicles.

- Continue to support non-in person attendance of services and other related activities by those who are vulnerable to COVID19 including older adults and those with co-morbidities.



## Considerations for Places of Worship

- Discontinue offering self-service food and beverages. Do not hold potlucks or similar family-style eating and drinking events that increase the risk of cross contamination. If food and beverages must be served, provide items in single-serve, disposable containers whenever possible. Employees or volunteers serving food should wash hands frequently and wear disposable gloves and face coverings.
- Strongly consider discontinuing singing, group recitation, and other practices and performances where there is increased likelihood for transmission from contaminated exhaled droplets. Modify practices such as limiting the number people reciting or singing, ensuring physical distancing greater than six feet between people, or opt to celebrate these practices outside with physical distancing, etc., if these practices cannot be discontinued.
- Consider modifying practices that are specific to particular faith traditions that might encourage the spread of COVID-19. Examples are discontinuing kissing of ritual objects, allowing rites to be performed by fewer people, avoiding the use of a common cup, offering communion in the hand instead of on the tongue, providing pre-packed communion items on chairs prior to service, etc., in accordance with [CDC guidelines](#).



## Considerations for Funerals

- Consider reduced visitor capacity and stagger visitation times at funerals, wakes, etc., if possible. Follow all cleaning and disinfection measures as described in this guidance. Whenever possible, remind visitors to maintain physical distance from each other, from staff and volunteers, and from the deceased.
- Consider modifying religious or cultural practices when washing or shrouding bodies of those who have died from COVID-19, in accordance with guidance from [CDPH](#) and the [CDC](#). If washing the body or shrouding are important religious or cultural practices, work with funeral home staff and families to reduce exposure as much as possible. All people

participating in these activities must wear disposable gloves and if there will be splashing of fluids, people must use additional protective equipment including protection for the eyes, nose, and mouth, such as face shields.

- Consult and comply with local guidance regarding limits on gathering sizes, travel, holding funerals for those who died from COVID-19, etc.
- Consider other recommendations and modifications of services related to places of worship outlined above, as applicable for funeral services.

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<sup>1</sup>Additional requirements must be considered for vulnerable populations. Places of worship must comply with all [Cal/OSHA](#) standards and be prepared to adhere to its guidance as well as guidance from the [Centers for Disease Control and Prevention \(CDC\)](#) and the [California Department of Public Health \(CDPH\)](#). Additionally, places of worship must be prepared to alter their operations as those guidelines change.



# EXHIBIT “5”

**County of Santa Clara  
Public Health Department**



Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> Floor  
San José, CA 95126  
408.792.3798

**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SANTA CLARA DIRECTING  
ALL INDIVIDUALS IN THE COUNTY TO CONTINUE SHELTERING AT  
THEIR PLACE OF RESIDENCE EXCEPT FOR IDENTIFIED NEEDS AND  
ACTIVITIES, IN COMPLIANCE WITH SPECIFIED REQUIREMENTS;  
CONTINUING TO EXEMPT HOMELESS INDIVIDUALS FROM THE ORDER  
BUT URGING GOVERNMENT AGENCIES TO PROVIDE THEM SHELTER;  
REQUIRING ALL BUSINESSES AND RECREATION FACILITIES THAT  
ARE ALLOWED TO OPERATE TO IMPLEMENT SOCIAL DISTANCING,  
FACE COVERING, AND CLEANING PROTOCOLS; AND DIRECTING ALL  
BUSINESSES, FACILITY OPERATORS, AND GOVERNMENTAL AGENCIES  
TO CONTINUE THE TEMPORARY CLOSURE OF ALL OTHER  
OPERATIONS NOT ALLOWED UNDER THIS ORDER**

**DATE OF ORDER: MAY 18, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; Cal. Penal Code §§ 69, 148(a)(1); Santa Clara County Ordinance Code § A1-28.)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the April 29, 2020 Order of the Health Officer directing all individuals to shelter in place (“Prior Order”). This Order amends, clarifies, and continues certain terms of the Prior Order to ensure continued social distancing and limit person-to-person contact to reduce the rate of transmission of Novel Coronavirus Disease 2019 (“COVID-19”). This Order continues to restrict most activity, travel, and governmental and business functions to essential needs and to the Outdoor Activities and Outdoor Businesses that the prior Order allowed to resume. But in light of progress achieved in slowing the spread of COVID-19 in the County of Santa Clara (“County”) and neighboring counties, the Order allows a limited number of Additional Businesses and Additional Activities (as defined in Section 15 below and described in Appendix C-1 and C-2) to resume operating, subject to specified conditions and safety precautions to reduce associated risk of COVID-19 transmission. This gradual and measured resumption of activity is designed to manage the overall volume, duration, and intensity of person-to-person contact to prevent a surge in COVID-19 cases in the County and

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Susan Ellenberg, S. Joseph Simitian  
County Executive: Jeffrey V. Smith

neighboring counties. As further provided in Section 11 below, the Health Officer will continue to monitor the risks of the activities and businesses allowed under this Order based on the COVID-19 Indicators (as defined in Section 11) and other data. The businesses and activities allowed under this Order may be modified as necessary based on the Health Officer's analysis of that data. As of the effective date and time of this Order set forth in Section 18 below, all individuals, businesses, and government agencies in the County are required to follow the provisions of this Order.

2. The primary intent of this Order is to ensure that County residents continue to shelter in their places of residence to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services. This Order allows a limited number of Additional Businesses and Additional Activities to resume while the Health Officer continues to assess the transmissibility and clinical severity of COVID-19 and monitors indicators described in Section 11. All provisions of this Order must be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
3. All individuals currently living within the County are ordered to shelter at their place of residence. They may leave their residence only for Essential Activities as defined in Section 15.a, Outdoor Activities as defined in Section 15.m, and Additional Activities as defined in Section 15.o; Essential Governmental Functions as defined in Section 15.d; Essential Travel as defined in Section 15.i; to work for Essential Businesses as defined in Section 15.f, Outdoor Businesses as defined in Section 15.l, and Additional Businesses as defined in Section 15.o; or to perform Minimum Basic Operations for other businesses with facilities that must remain temporarily closed, as provided in Section 15.g. For clarity, individuals who do not currently reside in the County must comply with all applicable requirements of the Order when in the County. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 15.k, except as expressly provided in this Order. All people (except for children under the age of six, and people who have trouble breathing or are unable to remove a face covering without assistance) must wear face coverings at all times when at a business facility or using public transportation, and are otherwise strongly urged to wear face coverings as provided in the Health Officer's April 17, 2020 Critical Guidance on Facial Coverings (the "Face Covering Guidance").
5. All businesses with a facility in the County, except Essential Businesses, Outdoor Businesses, and Additional Businesses, as defined in Section 15, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 15. For clarity, all businesses may continue operations consisting exclusively of owners, personnel, volunteers, or contractors performing activities at their own residences (i.e.,

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working from home). All Essential Businesses are strongly encouraged to remain open. But all businesses are directed to maximize the number of personnel who work from home. Essential Businesses, Outdoor Businesses, and Additional Businesses may only assign those personnel who cannot perform their job duties from home to work outside the home. Outdoor Businesses must conduct all business and transactions involving members of the public outdoors.

6. As a condition of operating under this Order, the operators of all businesses must prepare or update, implement, and distribute to their personnel a Social Distancing Protocol for each of their facilities in the County frequented by personnel or members of the public and post accompanying materials, as specified in Section 15.h. In addition to the Social Distancing Protocol, all businesses allowed to operate under this Order must follow any industry-specific guidance issued by the Health Officer related to COVID-19 and any conditions on operation specified in this Order, including those specified in Appendix C-1. Except as otherwise provided in Appendix C-1, businesses that include an Essential Business or Outdoor Business component at their facilities alongside other components must, to the extent feasible, scale down their operations to the Essential Business and Outdoor Business components only; provided, however, mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products.
7. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel, Essential Activities, Outdoor Activities, or Additional Activities together.
8. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel, as defined below in Section 15.i, is prohibited. People may use public transit only for purposes of performing Essential Activities, Outdoor Activities, or Additional Activities, or to travel to and from Essential Businesses, Outdoor Businesses, or Additional Businesses, to maintain Essential Governmental Functions, or to perform Minimum Basic Operations at businesses that are not allowed to resume operations at their facilities. Transit agencies and people riding on public transit must comply with Social Distancing Requirements, as defined in Section 15.k, to the greatest extent feasible, and personnel and passengers must wear face coverings. This Order allows travel into or out of the County only to perform Essential Activities, Outdoor Activities, or Additional Activities; to operate, perform work for, or access a business allowed to operate under this Order; to perform Minimum Basic Operations at other businesses; or to maintain Essential Governmental Functions.
9. This Order is issued based on evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; continued uncertainty regarding the degree of undetected asymptomatic transmission; scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health

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complications, including death, from COVID-19; and further evidence that others, including younger and otherwise healthy people, are also at risk for serious outcomes. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Further, evidence shows that the virus can survive for hours to days on surfaces and be indirectly transmitted between individuals. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other direct or indirect interpersonal interactions can result in preventable transmission of the virus.

10. The collective efforts taken to date regarding this public health emergency have slowed the virus' trajectory, but the emergency and the attendant risk to public health remain significant. As of May 16, 2020, there are 2,453 confirmed cases of COVID-19 in the County (up from 123 on March 15, 2020, just before the first shelter-in-place order). The cumulative number of confirmed cases continues to increase, though the rate of increase has slowed in the weeks leading up to this Order. Evidence suggests that the restrictions on mobility and social distancing requirements imposed by the Prior Order (and the orders that preceded it) are slowing the rate of increase in community transmission and confirmed cases by limiting interactions among people, consistent with scientific evidence of the efficacy of similar measures in other parts of the country and world.
11. The local health officers who jointly issued the Prior Order are monitoring several key indicators ("COVID-19 Indicators"), which are among the many factors informing their decisions whether to modify existing shelter-in-place restrictions. Progress on several of these COVID-19 Indicators makes it appropriate, at this time, to allow certain Additional Businesses to resume operations and Additional Activities to take place under specified conditions, as set forth in Section 15.1. But the continued prevalence of the virus that causes COVID-19 requires most activities and business functions to remain restricted, and those activities that are allowed to occur must do so subject to social distancing and other infection control practices identified by the Health Officer. Evaluation of the COVID-19 Indicators will be critical to determinations by the local health officers regarding whether the restrictions imposed by this Order will be further modified. The Health Officer will continually review whether modifications to the Order are warranted based on: (1) progress on the COVID-19 Indicators; (2) developments in epidemiological and diagnostic methods for tracing, diagnosing, treating, or testing for COVID-19; and (3) scientific understanding of the transmission dynamics and clinical impact of COVID-19. The COVID-19 Indicators include, but are not limited to, the following:
  - a. The trend of the number of new COVID-19 cases and hospitalizations per day.
  - b. The capacity of hospitals and the health system in the County and region, including acute care beds and Intensive Care Unit beds, to provide care for COVID-19 patients and other patients, including during a surge in COVID-19 cases.

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- c. The supply of personal protective equipment (PPE) available for hospital staff and other healthcare providers and personnel who need PPE to safely respond to and treat COVID-19 patients.
  - d. The ability and capacity to quickly and accurately test persons to determine whether they are COVID-19 positive, especially those in vulnerable populations or high-risk settings or occupations.
  - e. The ability to conduct case investigation and contact tracing for the volume of cases and associated contacts that will continue to occur, isolating confirmed cases and quarantining persons who have had contact with confirmed cases.
12. The scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission to help (a) protect the most vulnerable; (b) prevent the health care system from being overwhelmed; (c) prevent long-term chronic health conditions, such as cardiovascular, kidney, and respiratory damage and loss of limbs from blood clotting; and (d) prevent deaths. Continuation of the Prior Order is necessary to slow the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the County and advancing toward a point in the public health emergency where transmission can be controlled. At the same time, since the Prior Order was issued the County has continued to make progress in expanding health system capacity and healthcare resources and in slowing community transmission of COVID-19. In light of progress on these indicators, and subject to continued monitoring and potential public health-based responses, in addition to those already allowed to operate under the Prior Order as Essential Businesses and Outdoor Businesses, it is appropriate at this time to begin allowing operation of specified Additional Businesses. These businesses are identified based on health-related considerations and transmission risk factors including, but not limited to, the intensity and quantity of contacts and the ability to substantially mitigate transmission risks associated with their operations.
13. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the February 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, and the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency.
14. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer (the “State Shelter Order”), which set baseline statewide restrictions on non-residential business activities, effective until further notice, and the Governor’s March 19, 2020 Executive Order N-33-20 directing California residents to follow the State Shelter Order. The May 4, 2020 Executive Order issued by Governor Newsom and May 7, 2020 Order of the State Public

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Health Officer permit certain businesses to reopen if a local health officer believes the conditions in that jurisdiction warrant it, but expressly acknowledge the authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than those implemented by the State Public Health Officer. This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this County, which are necessary to control the public health emergency as it is evolving within the County and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the County will worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that all businesses with facilities that are allowed to operate under the Order comply with the Social Distancing Requirements. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County. In addition, to the extent any federal guidelines allow activities that are not allowed by this Order, this Order controls and those activities are not allowed.

#### 15. Definitions and Exemptions.

- a. For the purposes of this Order, individuals may leave their residence only to perform the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are:
  - i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, or visiting a health care professional.
  - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, or products necessary to maintain the habitability, sanitation, and operation of residences.
  - iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:

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1. Outdoor recreation activity at parks, beaches, and other open spaces must comply with any restrictions on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking, or closing the area to all public access;
  2. Except as otherwise provided in Appendix C-2, use of outdoor recreational areas and facilities with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, gym equipment, climbing walls, picnic areas, dog parks, pools, spas, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers;
  3. Except as otherwise provided in Appendix C-2, sports or activities that include the use of shared equipment or physical contact between participants may only be engaged in by members of the same household or living unit; and
  4. Use of shared outdoor facilities for recreational activities that may occur outside of residences consistent with the restrictions set forth in subsections 1, 2, and 3, above, including, but not limited to, golf courses, skate parks, and athletic fields, must, before they may begin, comply with social distancing and health/safety protocols posted at the site and any other restrictions, including prohibitions, on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19.
- iv. To perform work for or access an Essential Business, Outdoor Business, or Additional Business; or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations, as defined in this Section.
  - v. To provide necessary care for a family member or pet in another household who has no other source of care.
  - vi. To attend a funeral with no more than 10 individuals present.
  - vii. To move residences. When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention.
  - viii. To engage in Additional Activities, as specified in Appendix C-2.
- b. For the purposes of this Order, individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations”

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also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.

- c. For the purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, recycling, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate personnel, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new personnel or contractors to perform such functions. Each governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.
- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- f. For the purposes of this Order, “Essential Businesses” are:
  - i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a

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significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.

- iii. Food cultivation, including farming, livestock, and fishing;
- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- v. Construction, but only as permitted under the State Shelter Order and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into this Order by this reference. Public works projects shall also be subject to Appendix B, except if other protocols are specified by the Health Officer;
- vi. Newspapers, television, radio, and other media services;
- vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services. This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business;
- viii. Bicycle repair and supply shops;
- ix. Banks and related financial institutions;
- x. Service providers that enable real estate transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other residential real estate viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when the occupant is present in the residence);
- xi. Hardware stores;
- xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, or operation of residences and Essential Businesses;
- xiii. Businesses providing mailing and shipping services, including post office boxes;
- xiv. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, or as allowed under subparagraph (xxvi), provided that social distancing of six feet per person is maintained to the greatest extent possible;
- xv. Laundromats, drycleaners, and laundry service providers;
- xvi. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;

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- xvii. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains;
- xviii. Businesses that supply other Essential Businesses with the support or supplies necessary to operate, but only to the extent that they support or supply these Essential Businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts;
- xix. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;
- xx. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
- xxi. Home-based care for seniors, adults, children, and pets;
- xxii. Residential facilities and shelters for seniors, adults, and children;
- xxiii. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities or in relation to death or incapacity;
- xxiv. Services to assist individuals in finding employment with Essential Businesses;
- xxv. Moving services that facilitate residential or commercial moves that are allowed under this Order; and
- xxvi. Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages that enable owners, employees, volunteers, and contractors for Essential Businesses, Essential Governmental Functions, Outdoor Businesses, Additional Businesses, or Minimum Basic Operations to work as allowed under this Order. To the extent possible, these operations must comply with the following conditions:
  - 1. They must be carried out in stable groups of 12 or fewer children (“stable” means that the same 12 or fewer children are in the same group each day).
  - 2. Children shall not change from one group to another.
  - 3. If more than one group of children is at one facility, each group shall be in a separate room. Groups shall not mix with each other.
  - 4. Providers or educators shall remain solely with one group of children.

The Health Officer will carefully monitor the changing public health situation as well as any changes to the State Shelter Order. In the event that the State relaxes restrictions on childcare and related institutions and programs, the Health Officer will consider whether to similarly relax the restrictions imposed by this Order.

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- g. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, personnel, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
  - i. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions. For clarity, this section does not permit businesses to provide curbside pickup to customers.
  - ii. The minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
  
- h. For the purposes of this Order, all businesses that are operating at facilities in the County visited or used by the public or personnel must, as a condition of such operation, prepare a “Social Distancing Protocol” for each of these facilities; provided, however, that construction activities shall instead comply with the Construction Project Safety Protocols set forth in Appendix B and not the Social Distancing Protocol. The Social Distancing Protocol must be substantially in the form attached to this Order as Appendix A, and it must be updated from prior versions to address new requirements listed in this Order or in related guidance or directives from the Health Officer. The COVID-19 PREPARED Sign and Social Distancing Protocol Visitor Information Sheet, which are included in Appendix A, must be printed and posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and personnel. A full copy of the Social Distancing Protocol must also be provided to each person performing work at the facility. All businesses subject to this paragraph shall implement the Social Distancing Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing Protocol must explain how the business is achieving the applicable requirements in the Appendix A template, including but not limited to the following:
  - i. Training personnel on COVID-19 information, self-screening for symptoms, testing guidelines, how to prevent COVID-19 from spreading, and measures in the Social Distancing Protocol;
  - ii. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete Essential Business activity;
  - iii. Requiring face coverings to be worn by all persons entering the facility, other than those exempted from face covering requirements (e.g., young children);
  - iv. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
  - v. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and

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- personnel, and in locations where there is high-frequency employee interaction with members of the public (e.g., cashiers);
- vi. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
  - vii. Regularly disinfecting other high-touch surfaces;
  - viii. Posting a sign at the entrance of the facility informing all personnel and customers that they should: not enter the facility if they have any COVID-19 symptoms; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, one's elbow; wear a face covering to enter; and not shake hands or engage in any unnecessary physical contact; and
  - ix. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention's guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).
- i. For the purposes of this Order, "Essential Travel" means travel for any of the following purposes:
- i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, Minimum Basic Operations, Outdoor Activities, Outdoor Businesses, Additional Activities, and Additional Businesses.
  - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the County.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
  - vii. Travel to manage after-death arrangements and burial.
  - viii. Travel to arrange for shelter or avoid homelessness.
  - ix. Travel to avoid domestic violence or child abuse.
  - x. Travel for parental custody arrangements.
  - xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
- j. For purposes of this Order, "residences" include hotels, motels, shared rental units, and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.
- k. For purposes of this Order, "Social Distancing Requirements" means:

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- i. Maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit;
- ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19;
- iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands);
- iv. Wearing a face covering when out in public, consistent with the Health Officer's Face Covering Guidance; and
- v. Avoiding all social interaction outside the household when sick with a fever, cough, or other COVID-19 symptoms.

All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order. Outdoor Activities, Outdoor Businesses, Additional Activities, and Additional Businesses must strictly adhere to these Social Distancing Requirements.

- l. For purposes of this Order, "Outdoor Businesses" means:
  - i. The following businesses that normally operated primarily outdoors prior to March 16, 2020, and where there is the ability to fully maintain social distancing of at least six feet between all persons:
    1. Businesses primarily operated outdoors, such as wholesale and retail plant nurseries, agricultural operations, and garden centers.
    2. Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services.

For clarity, "Outdoor Businesses" do not include outdoor restaurants, cafes, or bars. Except as otherwise provided in Appendix C, they also do not include businesses that promote large, coordinated, and prolonged gatherings, such as outdoor concert venues and amusement parks.

- m. For purposes of this Order, "Outdoor Activities" means:
  - i. To obtain goods, services, or supplies from, or perform work for, an Outdoor Business.
  - ii. To engage in outdoor recreation as permitted in Section 15.a.
- n. For purposes of this Order, "Additional Business" means any business, entity, or other organization identified as an Additional Business in Appendix C-1, which will be updated as warranted based on the Health Officer's ongoing evaluation of the COVID-19 Indicators and other data. In addition to the other requirements in this Order, operation of those Additional Businesses is subject to any conditions and health and

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safety requirements set forth in Appendix C-1 and in any industry-specific guidance issued by the Health Officer.

- o. For purposes of this Order, “Additional Activities” means:
  - i. To obtain goods, services, or supplies from, or perform work for, Additional Businesses identified in Appendix C-1, subject to requirements in this Order, and any conditions and health and safety requirements set forth in this Order or in any industry-specific guidance issued by the Health Officer.
  - ii. To engage in outdoor recreation activities or other activities set forth in Appendix C-2, subject to any conditions and health and safety requirements set forth therein.

- 16. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).
- 17. Pursuant to Government Code sections 26602 and 41601, Health and Safety Code section 101029, and Santa Clara County Ordinance Code section A1-34 *et seq.*, the Health Officer requests that the Sheriff, all chiefs of police in the County, and all enforcement officers ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
- 18. This Order shall become effective at 12:01 a.m. on May 22, 2020 and will continue to be in effect until it is rescinded, superseded, or amended in writing by the Health Officer.
- 19. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website ([www.sccphd.org](http://www.sccphd.org)); and (3) provided to any member of the public requesting a copy of this Order.

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20. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Sara H. Cody, M.D.  
Health Officer of the County of Santa Clara

Dated: 5/18/2020

Approved as to form and legality:

  
\_\_\_\_\_  
James R. Williams  
County Counsel

Dated: 5/18/2020

Attachments: Appendix A – Social Distancing Protocol  
Appendix B-1 – Small Construction Project Safety Protocol  
Appendix B-2 – Large Construction Project Safety Protocol  
Appendix C-1 – Additional Businesses  
Appendix C-2 – Additional Activities

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# EXHIBIT “6”

**County of Santa Clara  
Public Health Department**



Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> Floor  
San José, CA 95126  
408.792.3798

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**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SANTA CLARA DIRECTING  
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR  
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO PROVIDE  
OR RECEIVE CERTAIN ESSENTIAL SERVICES OR ENGAGE IN CERTAIN  
ESSENTIAL ACTIVITIES AND WORK FOR ESSENTIAL BUSINESSES AND  
GOVERNMENTAL SERVICES; EXEMPTING INDIVIDUALS  
EXPERIENCING HOMELESSNESS FROM THE SHELTER IN PLACE  
ORDER BUT URGING THEM TO FIND SHELTER AND GOVERNMENT  
AGENCIES TO PROVIDE IT; DIRECTING ALL BUSINESSES AND  
GOVERNMENTAL AGENCIES TO CEASE NON-ESSENTIAL OPERATIONS  
AT PHYSICAL LOCATIONS IN THE COUNTY; PROHIBITING ALL NON-  
ESSENTIAL GATHERINGS OF ANY NUMBER OF INDIVIDUALS; AND  
ORDERING CESSATION OF ALL NON-ESSENTIAL TRAVEL**

**DATE OF ORDER: MARCH 16, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.
2. All individuals currently living within Santa Clara County (the “County”) are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Susan Ellenberg, S. Joseph Simitian  
County Executive: Jeffrey V. Smith

any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to utilize Social Distancing Requirements in their operation).

3. All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including, but not limited to, when any customers are standing in line.
4. All public and private gatherings of any number of people occurring outside a household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.
5. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.
6. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited

Order of the County Health Officer  
to Shelter in Place

healthcare capacity in the County.

7. This Order also is issued in light of the existence of 123 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing this Order, as of 5 p.m. on March 15, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the February 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, and the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency.
9. This Order comes after the release of substantial guidance from the County Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including a variety of prior orders to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19.
10. Definitions and Exemptions.
  - a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
    - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
    - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.

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- iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.
  - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
  - v. To care for a family member or pet in another household.
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.
- c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.
- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions. Each governmental entity shall identify and designate appropriate employees or contractors to continue providing and carrying out any Essential Governmental Functions. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined in this Section, to the extent possible.
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.

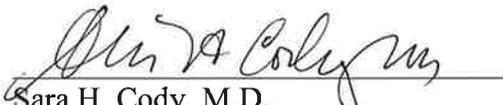
- f. For the purposes of this Order, “Essential Businesses” means:
- i. Healthcare Operations and Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
  - iii. Food cultivation, including farming, livestock, and fishing;
  - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
  - v. Newspapers, television, radio, and other media services;
  - vi. Gas stations and auto-supply, auto-repair, and related facilities;
  - vii. Banks and related financial institutions;
  - viii. Hardware stores;
  - ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
  - x. Businesses providing mailing and shipping services, including post office boxes;
  - xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
  - xii. Laundromats, drycleaners, and laundry service providers;
  - xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
  - xiv. Businesses that supply products needed for people to work from home;
  - xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;
  - xvi. Businesses that ship or deliver groceries, food, goods or services directly to residences;
  - xvii. Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
  - xviii. Home-based care for seniors, adults, or children;
  - xix. Residential facilities and shelters for seniors, adults, and children;

- xx. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- xxi. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:
  - 1. Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).
  - 2. Children shall not change from one group to another.
  - 3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
  - 4. Childcare providers shall remain solely with one group of children.
- g. For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
  - i. The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.
  - ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
- h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section below.
  - i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
  - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the jurisdiction.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
- i. For purposes of this Order, residences include hotels, motels, shared rental units and similar facilities.
- j. For purposes of this Order, “Social Distancing Requirements” includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer,

covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat to public health.
12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
13. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website ([www.sccphd.org](http://www.sccphd.org)); and (3) provided to any member of the public requesting a copy of this Order.
14. If any provision of this Order to the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**

  
Sara H. Cody, M.D.  
Health Officer of the County of Santa Clara

Dated: 3/16/20

Approved as to form and legality:

  
James R. Williams  
County Counsel

Dated: 3/16/2020

Order of the County Health Officer  
to Shelter in Place

# EXHIBIT “7”

**County of Santa Clara**  
**Public Health Department**

Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> Floor  
San José, CA 95126  
408.792.3798



**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SANTA CLARA DIRECTING  
ALL INDIVIDUALS LIVING IN THE COUNTY TO CONTINUE  
SHELTERING AT THEIR PLACE OF RESIDENCE EXCEPT FOR  
ESSENTIAL NEEDS; CONTINUING TO EXEMPT HOMELESS  
INDIVIDUALS FROM THE ORDER BUT URGING GOVERNMENT  
AGENCIES TO PROVIDE THEM SHELTER AND HAND SANITATION  
FACILITIES; RESTRICTING ACCESS TO RECREATION AREAS;  
REQUIRING ESSENTIAL BUSINESSES TO IMPLEMENT SOCIAL  
DISTANCING PROTOCOLS; CLARIFYING AND FURTHER LIMITING  
ESSENTIAL BUSINESS ACTIVITIES, INCLUDING CONSTRUCTION; AND  
DIRECTING ALL BUSINESSES AND GOVERNMENTAL OPERATIONS TO  
FURTHER CEASE NON-ESSENTIAL OPERATIONS**

**DATE OF ORDER: MARCH 31, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; Cal. Penal Code §§ 69, 148(a)(1); Santa Clara County Ordinance Code § A1-28.)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the March 16, 2020 Order of the Health Officer directing all individuals to shelter in place (“Prior Shelter Order”). This Order clarifies, strengthens, and extends certain terms of the Prior Shelter Order to increase social distancing and reduce person-to-person contact in order to further slow transmission of Novel Coronavirus Disease 2019 (“COVID-19”). As of the effective date and time of this Order set forth in Section 16 below, all individuals, businesses, and government agencies in the County of Santa Clara (“County”) are required to follow the provisions of this Order.
2. The intent of this Order is to ensure that the maximum number of people shelter in their places of residence to the maximum extent feasible to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services to those in need. All provisions of this Order must be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.

3. All individuals currently living within the County are ordered to shelter at their place of residence. They may leave their residence only for Essential Activities, Essential Governmental Functions, Essential Travel, to work for Essential Businesses, or to perform Minimum Basic Operations for non-essential businesses, all as defined in Section 13. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 13.k, except as expressly provided in this Order.
5. All businesses with a facility in the County, except Essential Businesses, as defined in Section 13.f, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 13.g. For clarity, all businesses may continue operations consisting exclusively of owners, employees, volunteers, or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. But Essential Businesses are directed to maximize the number of employees who work from home. Essential Businesses may only assign those employees who cannot perform their job duties from home to work outside the home. All Essential Businesses shall prepare, post, and implement a Social Distancing Protocol at each of their facilities at which they are maintaining operations, as specified in Section 13.h. Businesses that include an Essential Business component at their facilities alongside non-essential components must, to the extent feasible, scale down their operations to the Essential Business component only; provided, however, that mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products. Essential Businesses must follow industry-specific guidance issued by the Health Officer related to COVID-19.
6. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel or Essential Activities together.
7. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel, as defined below in Section 13.i, is prohibited. People may use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses, maintain Essential Governmental Functions, or to perform Minimum Basic Operations at non-essential businesses. Transit agencies and people riding on public transit must comply with Social Distancing Requirements, as defined in Section 13.k, to the greatest extent feasible. This Order allows travel into or out of the County only to perform Essential Activities, operate Essential

Businesses, maintain Essential Governmental Functions, or perform Minimum Basic Operations at non-essential businesses.

8. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other interpersonal interactions can result in preventable transmission of the virus. This public health emergency has substantially worsened since the County issued the Prior Shelter Order on March 16, 2020, with a significant escalation in the number of positive cases, hospitalizations, and deaths, and increasing strain on health care resources. At the same time, evidence suggests that the restrictions on mobility and social distancing requirements imposed by the Prior Shelter Order are slowing the rate of increase in community transmission and confirmed cases by limiting interactions among people, consistent with scientific evidence of the efficacy of similar measures in other parts of the country and world. The scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission as much as possible to protect the most vulnerable, to prevent the health care system from being overwhelmed, and to prevent deaths. Extension of the Prior Shelter Order and strengthening of its restrictions are necessary to further reduce the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the County and advancing toward a point in the public health emergency where transmission can be controlled.
9. This Order is also issued in light of the existence, as of March 29, 2020, of 848 cases of COVID-19 in the County, as well as at least 2,092 confirmed cases (up from 258 confirmed cases on March 15, 2020, just before the Prior Shelter Order) and at least 51 deaths (up from three deaths on March 15, 2020) in the seven Bay Area jurisdictions jointly issuing this Order, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. This Order is necessary to slow the rate of spread, and the Health Officer will re-evaluate it as further data becomes available.
10. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the February 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, and the February 10, 2020 Resolution

Order of the County Health Officer  
to Shelter in Place – March 31, 2020

of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency.

11. This Order is issued in light of evidence that the Prior Shelter Order has been generally effective in increasing social distancing, but that at this time additional restrictions are necessary to further mitigate the rate of transmission of COVID-19, to prevent the health care system from being overwhelmed, and prevent death. This Order comes after the release of substantial guidance from the County Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including an increasing number of orders imposing similar social distancing requirements and mobility restrictions to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19, as changing circumstances dictate.
12. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer (the “State Shelter Order”) , which set baseline statewide restrictions on non-residential business activities effective until further notice, as well as the Governor’s March 19, 2020 Executive Order N-33-20 directing California residents to follow the State Shelter Order. The State Shelter Order was complementary to the Prior Shelter Order. This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this County, which are necessary to control the public health emergency as it is evolving within the County and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the County will worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order, including limiting such travel to performance of Essential Travel or Essential Activities; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that Essential Businesses comply with the Social Distancing Requirements. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County.
13. Definitions and Exemptions.
  - a. For the purposes of this Order, individuals may leave their residence only to perform the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the

extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are:

- i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, or visiting a health care professional.
- ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, products needed to work from home, or products necessary to maintain the habitability, sanitation, and operation of residences.
- iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:
  1. Outdoor recreation activity at parks, beaches, and other open spaces must be in conformance with any restrictions on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking, or closure to all public access;
  2. Use of recreational areas with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, outdoor gym equipment, picnic areas, dog parks, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers;
  3. Use of shared facilities for recreational activities outside of residences, including, but not limited to, golf courses, tennis and pickle ball courts, rock parks, climbing walls, pools, spas, shooting and archery ranges, gyms, disc golf, and basketball courts is prohibited and those areas must be closed for recreational purposes, including by signage and, as appropriate, by physical barriers. Such facilities may be repurposed during the emergency to provide essential services needed to address the COVID-19 pandemic; and
  4. Sports or activities that include the use of shared equipment may only be engaged in by members of the same household or living unit.
- iv. To perform work for an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations, as defined in this Section.
- v. To provide necessary care for a family member or pet in another household who has no other source of care.
- vi. To attend a funeral with no more than 10 individuals present.
- vii. To move residences, but only if it is not possible to defer an already planned move, if the move is necessitated by safety, sanitation, or habitability reasons,

or if the move is necessary to preserve access to shelter. When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention.

- b. For the purposes of this Order, individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.
- c. For the purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate employees, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new employees or contractors to perform such functions. Each governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.
- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.

- f. For the purposes of this Order, “Essential Businesses” are:
- i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.
  - iii. Food cultivation, including farming, livestock, and fishing;
  - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
  - v. Construction, but only of the types listed in this subparagraph below:
    1. Projects immediately necessary to the maintenance, operation, or repair of Essential Infrastructure;
    2. Projects associated with Healthcare Operations, including creating or expanding Healthcare Operations, provided that such construction is directly related to the COVID-19 response;
    3. Affordable housing that is or will be income-restricted, including multi-unit or mixed-use developments containing at least 10% income-restricted units;
    4. Public works projects if specifically designated as an Essential Governmental Function by the lead governmental agency;
    5. Shelters and temporary housing, but not including hotels or motels;
    6. Projects immediately necessary to provide critical non-commercial services to individuals experiencing homelessness, elderly persons, persons who are economically disadvantaged, and persons with special needs;
    7. Construction necessary to ensure that existing construction sites that must be shut down under this Order are left in a safe and secure manner, but only to the extent necessary to do so; and
    8. Construction or repair necessary to ensure that residences and buildings containing Essential Businesses are safe, sanitary, or habitable to the extent such construction or repair cannot reasonably be delayed;
  - vi. Newspapers, television, radio, and other media services;
  - vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services (and not, by way of example, car sales or car washes). This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business;

- viii. Bicycle repair and supply shops;
- ix. Banks and related financial institutions;
- x. Service providers that enable residential transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other residential viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when the occupant is still residing in the residence);
- xi. Hardware stores;
- xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, and operation of residences and Essential Businesses, but not for cosmetic or other purposes;
- xiii. Arborists, landscapers, gardeners, and similar service professionals, but only to the limited extent necessary to maintain the habitability, sanitation, operation of businesses or residences, or the safety of residents, employees, or the public (such as fire safety or tree trimming to prevent a dangerous condition), and not for cosmetic or other purposes (such as upkeep);
- xiv. Businesses providing mailing and shipping services, including post office boxes;
- xv. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
- xvi. Laundromats, drycleaners, and laundry service providers;
- xvii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
- xviii. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains;
- xix. Businesses that supply other Essential Businesses with the support or supplies necessary to operate, but only to the extent that they support or supply these Essential Businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts;
- xx. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;

- xxi. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
  - xxii. Home-based care for seniors, adults, children, and pets;
  - xxiii. Residential facilities and shelters for seniors, adults, and children;
  - xxiv. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities;
  - xxv. Services to assist individuals in finding employment with Essential Businesses;
  - xxvi. Moving services that facilitate residential or commercial moves that are allowed under this Order;
  - xxvii. Childcare facilities providing services that enable owners, employees, volunteers, and contractors for Essential Businesses, Essential Governmental Functions, or Minimum Basic Operations to work as allowed under this Order. Children of owners, employees, volunteers, and contractors who are not exempt under this Order may not attend childcare facilities. To the extent possible, childcare facilities must operate under the following conditions:
    - 1. Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).
    - 2. Children shall not change from one group to another.
    - 3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
    - 4. Childcare providers shall remain solely with one group of children.
- g. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, employees, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions.
  - ii. The minimum necessary activities to facilitate owners, employees, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
- h. For the purposes of this Order, all Essential Businesses must prepare and post by no later than 11:59 p.m. on April 2, 2020 a “Social Distancing Protocol” for each of their facilities in the County frequented by the public or employees. The Social Distancing Protocol must be substantially in the form attached to this Order as Appendix A. The Social Distancing Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Social Distancing Protocol must also be provided to each employee performing work at the facility. All Essential Businesses shall implement the Social Distancing Protocol and

provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing Protocol must explain how the business is achieving the following, as applicable:

- i. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete the Essential Business activity;
  - ii. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
  - iii. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and employees, and in locations where there is high-frequency employee interaction with members of the public (e.g. cashiers);
  - iv. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
  - v. Regularly disinfecting other high-touch surfaces; and
  - vi. Posting a sign at the entrance of the facility informing all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into one's elbow; not shake hands or engage in any unnecessary physical contact.
  - vii. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention's guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).
- i. For the purposes of this Order, "Essential Travel" means travel for any of the following purposes:
- i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
  - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the County.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
  - vii. Travel to manage after-death arrangements and burial.
  - viii. Travel to arrange for shelter or avoid homelessness.
  - ix. Travel to avoid domestic violence or child abuse.
  - x. Travel for parental custody arrangements.

- xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
- j. For purposes of this Order, “residences” include hotels, motels, shared rental units and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.
- k. For purposes of this Order, “Social Distancing Requirements” means:
  - i. Maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit;
  - ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19;
  - iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands); and
  - iv. Avoiding all social interaction outside the household when sick with a fever or cough.

All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order.

- 14. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).
- 15. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.

16. This Order shall become effective at 11:59 p.m. on March 31, 2020 and will continue to be in effect until 11:59 p.m. on May 3, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
17. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website ([www.sccphd.org](http://www.sccphd.org)); and (3) provided to any member of the public requesting a copy of this Order.
18. If any provision of this Order to its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**

  
Sara H. Cody, M.D.  
Health Officer of the County of Santa Clara

Dated: 3/31/2020

Approved as to form and legality:

  
James R. Williams  
County Counsel

Dated: 3/31/2020

Attachments: Appendix A – Social Distancing Protocol

**Appendix A: Social Distancing Protocol**

Business name: Click or tap here to enter text.

Facility Address: Click or tap here to enter text.

Approximate gross square footage of space open to the public: Click or tap here to enter text.

**Businesses must implement all applicable measures listed below, and be prepared to explain why any measure that is not implemented is inapplicable to the business.**

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**Signage:**

Signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, into one's elbow; and not shake hands or engage in any unnecessary physical contact.

Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.

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**Measures To Protect Employee Health (check all that apply to the facility):**

Everyone who can carry out their work duties from home has been directed to do so.

All employees have been told not to come to work if sick.

Symptom checks are being conducted before employees may enter the work space.

All desks or individual work stations are separated by at least six feet.

Break rooms, bathrooms, and other common areas are being disinfected frequently, on the following schedule:

Break rooms:

Bathrooms:

Other (Click or tap here to enter text.): Click or tap here to enter text.

Disinfectant and related supplies are available to all employees at the following location(s):

Hand sanitizer effective against COVID-19 is available to all employees at the following location(s):

Soap and water are available to all employees at the following location(s):

Copies of this Protocol have been distributed to all employees.

Optional—Describe other measures: Click or tap here to enter text.

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**Measures To Prevent Crowds From Gathering (check all that apply to the facility):**

Limit the number of customers in the store at any one time to Click or tap here to enter text.[insert maximum number here], which allows for customers and employees to easily maintain at least six-foot distance from one another at all practicable times.

Post an employee at the door to ensure that the maximum number of customers in the facility set forth above is not exceeded.

Placing per-person limits on goods that are selling out quickly to reduce crowds and lines. Explain:

Optional—Describe other measures: Click or tap here to enter text.

**Appendix A: Social Distancing Protocol**

**Measures To Keep People At Least Six Feet Apart (check all that apply to the facility)**

- Placing signs outside the store reminding people to be at least six feet apart, including when in line.
- Placing tape or other markings at least six feet apart in customer line areas inside the store and on sidewalks at public entrances with signs directing customers to use the markings to maintain distance.
- Separate order areas from delivery areas to prevent customers from gathering.
- All employees have been instructed to maintain at least six feet distance from customers and from each other, except employees may momentarily come closer when necessary to accept payment, deliver goods or services, or as otherwise necessary.
- Optional—Describe other measures: Click or tap here to enter text.

**Measures To Prevent Unnecessary Contact (check all that apply to the facility):**

- Preventing people from self-serving any items that are food-related.
  - Lids for cups and food-bar type items are provided by staff; not to customers to grab.
  - Bulk-item food bins are not available for customer self-service use.
- Not permitting customers to bring their own bags, mugs, or other reusable items from home.
- Providing for contactless payment systems or, if not feasible, sanitizing payment systems regularly. Describe:
- Optional—Describe other measures (e.g. providing senior-only hours): Click or tap here to enter text.

**Measures To Increase Sanitization (check all that apply to the facility):**

- Disinfecting wipes that are effective against COVID-19 are available near shopping carts and shopping baskets.
- Employee(s) assigned to disinfect carts and baskets regularly.
- Hand sanitizer, soap and water, or effective disinfectant is available to the public at or near the entrance of the facility, at checkout counters, and anywhere else inside the store or immediately outside where people have direct interactions.
- Disinfecting all payment portals, pens, and styluses after each use.
- Disinfecting all high-contact surfaces frequently.
- Optional—Describe other measures: Click or tap here to enter text.

\* Any additional measures not included here should be listed on separate pages, which the business should attach to this document.

**You may contact the following person with any questions or comments about this protocol:**

**Name:** Click or tap here to enter text.

**Phone number:** Click or tap here to enter text.

**EXHIBIT “8”**

**County of Santa Clara**  
**Public Health Department**



Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> Floor  
San José, CA 95126  
408.792.3798

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**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SANTA CLARA DIRECTING  
ALL INDIVIDUALS IN THE COUNTY TO CONTINUE SHELTERING AT  
THEIR PLACE OF RESIDENCE EXCEPT FOR ESSENTIAL NEEDS AND  
IDENTIFIED OUTDOOR ACTIVITIES IN COMPLIANCE WITH SPECIFIED  
REQUIREMENTS; CONTINUING TO EXEMPT HOMELESS INDIVIDUALS  
FROM THE ORDER BUT URGING GOVERNMENT AGENCIES TO  
PROVIDE THEM SHELTER; REQUIRING ALL BUSINESSES AND  
RECREATION FACILITIES THAT ARE ALLOWED TO OPERATE TO  
IMPLEMENT SOCIAL DISTANCING, FACE COVERING, AND CLEANING  
PROTOCOLS; AND DIRECTING ALL BUSINESSES, FACILITY  
OPERATORS, AND GOVERNMENTAL AGENCIES TO CONTINUE THE  
TEMPORARY CLOSURE OF ALL OTHER OPERATIONS NOT ALLOWED  
UNDER THIS ORDER**

**DATE OF ORDER: APRIL 29, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; Cal. Penal Code §§ 69, 148(a)(1); Santa Clara County Ordinance Code § A1-28.)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the March 31, 2020 Order of the Health Officer directing all individuals to shelter in place (“Prior Order”). This Order amends, clarifies, and extends certain terms of the Prior Order to ensure continued social distancing and limit person-to-person contact to reduce the rate of transmission of Novel Coronavirus Disease 2019 (“COVID-19”). This Order continues to restrict most activity, travel, and governmental and business functions. But in light of progress achieved in slowing the spread of COVID-19 in the County of Santa Clara (the “County”) and neighboring counties, the Order allows a limited number of additional Essential Businesses and certain lower risk Outdoor Businesses (both as defined in Section 16 below) to resume operating. This initial, measured resumption of those activities is designed to keep the overall volume of person-to-person contact very low to prevent a surge in COVID-19 cases in the County and neighboring counties. The activities allowed by this Order will be assessed on an ongoing basis and may need to be modified if the risk associated with COVID-

19 increases in the future. As of the effective date and time of this Order set forth in Section 19 below, all individuals, businesses, and government agencies in the County are required to follow the provisions of this Order.

2. The primary intent of this Order is to ensure that County residents continue to shelter in their places of residence to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services. This Order allows a limited number of additional essential and outdoor business activities to resume while the Health Officer continues to assess the transmissibility and clinical severity of COVID-19 and monitors indicators described in Section 11. All provisions of this Order must be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
3. All individuals currently living within the County are ordered to shelter at their place of residence. They may leave their residence only for Essential Activities as defined in Section 16.a and Outdoor Activities as defined in Section 16.m, Essential Governmental Functions as defined in Section 16.d, Essential Travel as defined in Section 16.i, to work for Essential Businesses as defined in Section 16.f, and Outdoor Businesses as defined in Section 16.l, or to perform Minimum Basic Operations for other businesses that must remain temporarily closed, as provided in Section 16.g. For clarity, individuals who do not currently reside in the County must comply with all applicable requirements of the Order when in the County. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 16.k, except as expressly provided in this Order, and are also strongly urged to wear face coverings as provided in the Health Officer's April 17, 2020 Critical Guidance on Facial Coverings (the "Face Covering Guidance").
5. All businesses with a facility in the County, except Essential Businesses and Outdoor Businesses, as defined in Section 16, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 16. For clarity, all businesses may continue operations consisting exclusively of owners, personnel, volunteers, or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. But all businesses are directed to maximize the number of personnel who work from home. Essential Businesses and Outdoor Businesses may only assign those personnel who cannot perform their job duties from home to work outside the home. Outdoor Businesses must conduct all business and transactions involving members of the public outdoors.
6. As a condition of operating under this Order, the operators of all businesses must prepare or update, post, implement, and distribute to their personnel a Social Distancing Protocol for each

of their facilities in the County frequented by personnel or members of the public, as specified in Section 16.h. Businesses that include an Essential Business or Outdoor Business component at their facilities alongside other components must, to the extent feasible, scale down their operations to the Essential Business and Outdoor Business components only; provided, however, mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products. All businesses allowed to operate under this Order must follow any industry-specific guidance issued by the Health Officer related to COVID-19.

7. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel, Essential Activities, or Outdoor Activities together.
8. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel, as defined below in Section 16.i, is prohibited. People may use public transit only for purposes of performing Essential Activities and Outdoor Activities, or to travel to and from work for Essential Businesses or Outdoor Businesses, to maintain Essential Governmental Functions, or to perform Minimum Basic Operations at non-essential businesses. Transit agencies and people riding on public transit must comply with Social Distancing Requirements, as defined in Section 16.k, to the greatest extent feasible, and personnel and passengers must wear Face Coverings as provided by the Face Covering Guidance. This Order allows travel into or out of the County only to perform Essential Activities and Outdoor Activities, to operate or perform work for Essential Businesses or Outdoor Businesses, to maintain Essential Governmental Functions, or to perform Minimum Basic Operations at non-essential businesses.
9. This Order is issued based on evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; continued uncertainty regarding the degree of undetected asymptomatic transmission; scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19; and further evidence that others, including younger and otherwise healthy people, are also at risk for serious outcomes. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Further, evidence shows that the virus can survive for hours to days on surfaces and be indirectly transmitted between individuals. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other direct or indirect interpersonal interactions can result in preventable transmission of the virus.

10. The collective efforts taken to date regarding this public health emergency have slowed the virus' trajectory, but the emergency and the attendant risk to public health remain significant. As of April 27, 2020, there are 2,105 confirmed cases of COVID-19 in the County (up from 123 on March 15, 2020, just before the first shelter-in-place order) as well as at least 7,273 confirmed cases (up from 258 confirmed cases on March 15, 2020) and at least 266 deaths (up from 3 deaths on March 15, 2020) in the seven Bay Area jurisdictions jointly issuing this Order. The cumulative number of confirmed cases continues to increase, though the rate of increase has slowed in the days leading up to this Order. Evidence suggests that the restrictions on mobility and social distancing requirements imposed by the Prior Order (and the March 16, 2020 shelter-in-place order) are slowing the rate of increase in community transmission and confirmed cases by limiting interactions among people, consistent with scientific evidence of the efficacy of similar measures in other parts of the country and world.
  
11. The local health officers who jointly issued the Prior Order are monitoring several key indicators ("COVID-19 Indicators"), which are among the many factors informing their decisions whether to modify existing shelter-in-place restrictions. Progress on some of these COVID-19 Indicators—specifically related to hospital utilization and capacity—makes it appropriate, at this time, to ease certain restrictions imposed by the Prior Order to allow individuals to engage in a limited set of additional activities and perform work for a limited set of additional businesses associated with the lower risk of COVID-19 transmission, as set forth in Section 16.m. But the continued prevalence of the virus that causes COVID-19 requires most activities and business functions to remain restricted, and those activities that are permitted to occur must do so subject to social distancing and other infection control practices identified by the Health Officer. Progress on the COVID-19 Indicators will be critical to determinations by the local health officers regarding whether the restrictions imposed by this Order may be further modified. The Health Officer will continually review whether modifications to the Order are justified based on (1) progress on the COVID-19 Indicators; (2) developments in epidemiological and diagnostic methods for tracing, diagnosing, treating, or testing for COVID-19; and (3) scientific understanding of the transmission dynamics and clinical impact of COVID-19. The COVID-19 Indicators include, but are not limited to, the following:
  - a. The trend of the number of new COVID-19 cases and hospitalizations per day.
  - b. The capacity of hospitals and the health system in the County and region, including acute care beds and Intensive Care Unit beds, to provide care for COVID-19 patients and other patients, including during a surge in COVID-19 cases.
  - c. The supply of personal protective equipment (PPE) available for hospital staff and other healthcare providers and personnel who need PPE to safely respond to and treat COVID-19 patients.
  - d. The ability and capacity to quickly and accurately test persons to determine whether they are COVID-19 positive, especially those in vulnerable populations or high-risk settings or occupations.

- e. The ability to conduct case investigation and contact tracing for the volume of cases and associated contacts that will continue to occur, isolating confirmed cases and quarantining persons who have had contact with confirmed cases.
12. The scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission to help (a) protect the most vulnerable; (b) prevent the health care system from being overwhelmed; (c) prevent long-term chronic health conditions, such as cardiovascular, kidney, and respiratory damage and loss of limbs from blood clotting; and (d) prevent deaths. Extension of the Prior Order is necessary to slow the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the County and advancing toward a point in the public health emergency where transmission can be controlled. At the same time, since the Prior Order was issued the County has made significant progress in expanding health system capacity and healthcare resources and in slowing community transmission of COVID-19. In light of progress on these indicators, and subject to continued monitoring and potential public health-based responses, it is appropriate at this time to allow additional Essential Businesses and Outdoor Businesses to operate in the County. Outdoor Businesses, by virtue of their operation outdoors, likely carry a lower risk of transmission than most indoor businesses. Because Outdoor Businesses, as defined in section 16.1, generally involve only brief and limited person-to-person interactions, they also likely carry lower risk of transmission than business activities prohibited under the Order, which tend to involve prolonged interactions between individuals in close proximity or in confined spaces where transmission is more likely. Existing Outdoor Businesses also constitute a relatively small proportion of business activity in the County, and therefore do not substantially increase the volume of interaction between persons in the County when reopened.
  13. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the February 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, and the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency.
  14. This Order comes after the release of substantial guidance from the Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including the widespread adoption of orders imposing similar social distancing requirements and mobility restrictions to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19, as changing circumstances dictate.

15. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer (the “State Shelter Order”), which set baseline statewide restrictions on non-residential business activities, effective until further notice, as well as the Governor’s March 19, 2020 Executive Order N-33-20 directing California residents to follow the State Shelter Order. The State Shelter Order was complementary to the Prior Order and is complementary to this Order. This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this County, which are necessary to control the public health emergency as it is evolving within the County and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the County will worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that all businesses with facilities that are allowed to operate under the Order comply with the Social Distancing Requirements. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County. In addition, to the extent any federal guidelines allow activities that are not allowed by this Order, this Order controls and those activities are not allowed.

16. Definitions and Exemptions.

- a. For the purposes of this Order, individuals may leave their residence only to perform the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are:
  - i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, or visiting a health care professional.
  - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, products needed to work from home, or products necessary to maintain the habitability, sanitation, and operation of residences.
  - iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:

1. Outdoor recreation activity at parks, beaches, and other open spaces must comply with any restrictions on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking, or closure to all public access;
  2. Use of outdoor recreational areas and facilities with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, gym equipment, climbing walls, picnic areas, dog parks, pools, spas, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers;
  3. Sports or activities that include the use of shared equipment or physical contact between participants may only be engaged in by members of the same household or living unit; and
  4. Use of shared outdoor facilities for recreational activities that may occur outside of residences consistent with the restrictions set forth in subsections 1, 2, and 3, above, including, but not limited to, golf courses, skate parks, and athletic fields, must, before they may begin, comply with social distancing and health/safety protocols posted at the site and any other restrictions, including prohibitions, on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19.
- iv. To perform work for or access an Essential Business, Outdoor Business, or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations, as defined in this Section.
  - v. To provide necessary care for a family member or pet in another household who has no other source of care.
  - vi. To attend a funeral with no more than 10 individuals present.
  - vii. To move residences. When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention.
- b. For the purposes of this Order, individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any

interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.

- c. For the purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, recycling, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate personnel, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new personnel or contractors to perform such functions. Each governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.
- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- f. For the purposes of this Order, “Essential Businesses” are:
  - i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.

- iii. Food cultivation, including farming, livestock, and fishing;
- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- v. Construction, but only as permitted under the State Shelter Order and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into this Order by this reference. Public works projects shall also be subject to Appendix B, except if other protocols are specified by the Health Officer;
- vi. Newspapers, television, radio, and other media services;
- vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services. This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business;
- viii. Bicycle repair and supply shops;
- ix. Banks and related financial institutions;
- x. Service providers that enable real estate transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other real estate viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when an occupant is present in a residence);
- xi. Hardware stores;
- xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, or operation of residences and Essential Businesses;
- xiii. Businesses providing mailing and shipping services, including post office boxes;
- xiv. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, or as allowed under subparagraph xxvi, provided that social distancing of six feet per person is maintained to the greatest extent possible;
- xv. Laundromats, drycleaners, and laundry service providers;
- xvi. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
- xvii. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains;

- xviii. Businesses that supply other Essential Businesses with the support or supplies necessary to operate, but only to the extent that they support or supply these Essential Businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts;
  - xix. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;
  - xx. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
  - xxi. Home-based care for seniors, adults, children, and pets;
  - xxii. Residential facilities and shelters for seniors, adults, and children;
  - xxiii. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities or in relation to death or incapacity;
  - xxiv. Services to assist individuals in finding employment with Essential Businesses;
  - xxv. Moving services that facilitate residential or commercial moves that are allowed under this Order; and
  - xxvi. Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages that enable owners, employees, volunteers, and contractors for Essential Businesses, Essential Governmental Functions, Outdoor Businesses, or Minimum Basic Operations to work as allowed under this Order. To the extent possible, these operations must comply with the following conditions:
    - 1. They must be carried out in stable groups of 12 or fewer children (“stable” means that the same 12 or fewer children are in the same group each day).
    - 2. Children shall not change from one group to another.
    - 3. If more than one group of children is at one facility, each group shall be in a separate room. Groups shall not mix with each other.
    - 4. Providers or educators shall remain solely with one group of children.The Health Officer will carefully monitor the changing public health situation as well as any changes to the State Shelter Order. In the event that the State relaxes restrictions on childcare and related institutions and programs, the Health Officer will consider whether to similarly relax the restrictions imposed by this Order.
- g. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, personnel, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation;

process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions. For clarity, this section does not permit businesses to provide curbside pickup to customers.

- ii. The minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
- h. For the purposes of this Order, all businesses that are operating at facilities in the County visited or used by the public or personnel must, as a condition of such operation, prepare and post a “Social Distancing Protocol” for each of these facilities; provided, however, that construction activities shall instead comply with the Construction Project Safety Protocols set forth in Appendix B and not the Social Distancing Protocol. The Social Distancing Protocol must be substantially in the form attached to this Order as Appendix A, and it must be updated from prior versions to address new requirements listed in this Order or in related guidance or directives from the Health Officer. The Social Distancing Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and personnel. A copy of the Social Distancing Protocol must also be provided to each person performing work at the facility. All businesses subject to this paragraph shall implement the Social Distancing Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing Protocol must explain how the business is achieving the following, as applicable:
- i. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete Essential Business activity;
  - ii. Requiring face coverings to be worn by all persons entering the facility, other than those exempted from face covering requirements (e.g., young children);
  - iii. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
  - iv. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and personnel, and in locations where there is high-frequency employee interaction with members of the public (e.g., cashiers);
  - v. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
  - vi. Regularly disinfecting other high-touch surfaces;
  - vii. Posting a sign at the entrance of the facility informing all personnel and customers that they should: avoid entering the facility if they have any COVID-19 symptoms; maintain a minimum six-foot distance from one another; sneeze and cough into their own elbow; and not shake hands or engage in any unnecessary physical contact; and

- viii. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention’s guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).
- i. For the purposes of this Order, “Essential Travel” means travel for any of the following purposes:
  - i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, Minimum Basic Operations, Outdoor Activities, and Outdoor Businesses.
  - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the County.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
  - vii. Travel to manage after-death arrangements and burial.
  - viii. Travel to arrange for shelter or avoid homelessness.
  - ix. Travel to avoid domestic violence or child abuse.
  - x. Travel for parental custody arrangements.
  - xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
- j. For purposes of this Order, “residences” include hotels, motels, shared rental units, and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.
- k. For purposes of this Order, “Social Distancing Requirements” means:
  - i. Maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit;
  - ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective against COVID-19;
  - iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands);
  - iv. Wearing a face covering when out in public, consistent with the orders or guidance of the Health Officer; and
  - v. Avoiding all social interaction outside the household when sick with a fever, cough, or other COVID-19 symptoms.

All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order. Outdoor Activities and Outdoor Businesses must strictly adhere to these Social Distancing Requirements.

1. For purposes of this Order, “Outdoor Businesses” means:
  - i. The following businesses that normally operated primarily outdoors prior to March 16, 2020 and where there is the ability to fully maintain social distancing of at least six feet between all persons:
    1. Businesses primarily operated outdoors, such as wholesale and retail plant nurseries, agricultural operations, and garden centers.
    2. Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services.

For clarity, “Outdoor Businesses” do not include outdoor restaurants, cafes, or bars.

- m. For purposes of this Order, “Outdoor Activities” means:
  - i. To obtain goods, services, or supplies from, or perform work for, an Outdoor Business.
  - ii. To engage in outdoor recreation as permitted in Section 16.a.

17. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).

18. Pursuant to Government Code sections 26602 and 41601, Health and Safety Code section 101029, and Santa Clara County Ordinance Code section A1-34 *et seq.*, the Health Officer requests that the Sheriff, all chiefs of police in the County, and all enforcement officers ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.

19. This Order shall become effective at 11:59 p.m. on May 3, 2020 and will continue to be in effect until 11:59 p.m. on May 31, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
20. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website ([www.sccphd.org](http://www.sccphd.org)); and (3) provided to any member of the public requesting a copy of this Order.
21. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**



Sara H. Cody, M.D.  
Health Officer of the County of Santa Clara

Dated: 4/29/2020

Approved as to form and legality:



James R. Williams  
County Counsel

Dated: 4/29/2020

Attachments: Appendix A – Social Distancing Protocol  
Appendix B1 – Small Construction Project Safety Protocol  
Appendix B2 – Large Construction Project Safety Protocol

**Appendix A: Social Distancing Protocol (Updated April 29, 2020)**

Business name:

Facility Address:

Approximate gross square footage of space open to the public:

**Businesses must implement all applicable measures listed below, and be prepared to explain why any measure that is not implemented is inapplicable to the business.**

---

**Signage:**

Signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have COVID-19 symptoms; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, into one's elbow; wear face coverings, as appropriate; and not shake hands or engage in any unnecessary physical contact.

Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.

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**Measures To Protect Employee Health (check all that apply to the facility):**

Everyone who can carry out their work duties from home has been directed to do so.

All employees have been told not to come to work if sick.

Symptom checks are being conducted before employees may enter the work space.

Employees are required to wear face coverings, as appropriate.

All desks or individual work stations are separated by at least six feet.

Break rooms, bathrooms, and other common areas are being disinfected frequently, on the following schedule:

Break rooms:

Bathrooms:

Other ( ):

Disinfectant and related supplies are available to all employees at the following location(s):

Hand sanitizer effective against COVID-19 is available to all employees at the following location(s):

Soap and water are available to all employees at the following location(s):

Copies of this Protocol have been distributed to all employees.

Optional—Describe other measures:

---

**Measures To Prevent Crowds From Gathering (check all that apply to the facility):**

Limit the number of customers in the store at any one time to \_\_\_\_\_, which allows for customers and employees to easily maintain at least six-foot distance from one another at all practicable times.

Post an employee at the door to ensure that the maximum number of customers in the facility set forth above is not exceeded.

**Appendix A: Social Distancing Protocol (Updated April 29, 2020)**

- Placing per-person limits on goods that are selling out quickly to reduce crowds and lines. Explain:
- Optional—Describe other measures:

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**Measures To Keep People At Least Six Feet Apart (check all that apply to the facility)**

- Placing signs outside the store reminding people to be at least six feet apart, including when in line.
- Placing tape or other markings at least six feet apart in customer line areas inside the store and on sidewalks at public entrances with signs directing customers to use the markings to maintain distance.
- Separate order areas from delivery areas to prevent customers from gathering.
- All employees have been instructed to maintain at least six feet distance from customers and from each other, except employees may momentarily come closer when necessary to accept payment, deliver goods or services, or as otherwise necessary.
- Optional—Describe other measures:

---

**Measures To Prevent Unnecessary Contact (check all that apply to the facility):**

- Preventing people from self-serving any items that are food-related.
- Lids for cups and food-bar type items are provided by staff; not to customers to grab.
- Bulk-item food bins are not available for customer self-service use.
- Not permitting customers to bring their own bags, mugs, or other reusable items from home.
- Providing for contactless payment systems or, if not feasible, sanitizing payment systems regularly.  
Describe:
- Optional—Describe other measures (e.g. providing senior-only hours):

---

**Measures To Increase Sanitization (check all that apply to the facility):**

- Disinfecting wipes that are effective against COVID-19 are available near shopping carts and shopping baskets.
- Employee(s) assigned to disinfect carts and baskets regularly.
- Hand sanitizer, soap and water, or effective disinfectant is available to the public at or near the entrance of the facility, at checkout counters, and anywhere else where people have direct interactions.
- Disinfecting all payment portals, pens, and styluses after each use.
- Disinfecting all high-contact surfaces frequently.
- Optional—Describe other measures:

\* Any additional measures not included here should be listed on separate pages and attached to this document.

**You may contact the following person with any questions or comments about this protocol:**

**Name:**

**Phone number:**

## Appendix B-1

### Small Construction Project Safety Protocol

1. Any construction project meeting any of the following specifications is subject to this Small Construction Project Safety Protocol (“SCP Protocol”), including public works projects unless otherwise specified by the Health Officer:
  - a. For residential projects, any single-family, multi-family, senior, student, or other residential construction, renovation, or remodel project consisting of 10 units or less. This SCP Protocol does not apply to construction projects where a person is performing construction on their current residence either alone or solely with members of their own household.
  - b. For commercial projects, any construction, renovation, or tenant improvement project consisting of 20,000 square feet of floor area or less.
  - c. For mixed-use projects, any project that meets both of the specifications in subsection 1.a and 1.b.
  - d. All other construction projects not subject to the Large Construction Project Safety Protocol set forth in Appendix B-2.
2. The following restrictions and requirements must be in place at all construction job sites subject to this SCP Protocol:
  - a. Comply with all applicable and current laws and regulations including but not limited to OSHA and Cal-OSHA. If there is any conflict, difference, or discrepancy between or among applicable laws and regulations and/or this SCP Protocol, the stricter standard shall apply.
  - b. Designate a site-specific COVID-19 supervisor or supervisors to enforce this guidance. A designated COVID-19 supervisor must be present on the construction site at all times during construction activities. A COVID-19 supervisor may be an on-site worker who is designated to serve in this role.
  - c. The COVID-19 supervisor must review this SCP Protocol with all workers and visitors to the construction site.
  - d. Establish a daily screening protocol for arriving staff to ensure that potentially infected staff do not enter the construction site. If workers leave the jobsite and return the same day, establish a cleaning and decontamination protocol prior to entry and exit of the jobsite. Post the daily screening protocol at all entrances and exits to the jobsite. More information on screening can be found online at: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>.
  - e. Practice social distancing by maintaining a minimum six-foot distance between workers at all times, except as strictly necessary to carry out a task associated with the construction project.

**Appendix B-1**

- f. Where construction work occurs within an occupied residential unit, separate work areas must be sealed off from the remainder of the unit with physical barriers such as plastic sheeting or closed doors sealed with tape to the extent feasible. If possible, workers must access the work area from an alternative entry/exit door to the entry/exit door used by residents. Available windows and exhaust fans must be used to ventilate the work area. If residents have access to the work area between workdays, the work area must be cleaned and sanitized at the beginning and at the end of workdays. Every effort must be taken to minimize contact between workers and residents, including maintaining a minimum of six feet of social distancing at all times.
- g. Where construction work occurs within common areas of an occupied residential or commercial building or a mixed-use building in use by on-site employees or residents, separate work areas must be sealed off from the rest of the common areas with physical barriers such as plastic sheeting or closed doors sealed with tape to the extent feasible. If possible, workers must access the work area from an alternative building entry/exit door to the building entry/exit door used by residents or other users of the building. Every effort must be taken to minimize contact between worker and building residents and users, including maintaining a minimum of six feet of social distancing at all times.
- h. Prohibit gatherings of any size on the jobsite, including gatherings for breaks or eating, except for meetings regarding compliance with this protocol or as strictly necessary to carry out a task associated with the construction project.
- i. Cal-OSHA requires employers to provide water, which should be provided in single-serve containers. Sharing of any of any food or beverage is strictly prohibited and if sharing is observed, the worker must be sent home for the day. Use of microwaves, water coolers, and other similar shared equipment is prohibited.
- j. Provide personal protective equipment (PPE) specifically for use in construction, including gloves, goggles, face shields, and face coverings as appropriate for the activity being performed. At no time may a contractor secure or use medical-grade PPE unless required due to the medical nature of a jobsite. Face coverings must be worn in compliance with the April 17, 2020 Guidance from the County of Santa Clara Public Health Department, available at: <https://www.sccgov.org/sites/covid19/Pages/learn-what-to-do.aspx#howto>.
- k. Strictly control “choke points” and “high-risk areas” where workers are unable to maintain six-foot social distancing and prohibit or limit use to ensure that six-foot distance can easily be maintained between individuals.
- l. Minimize interactions and maintain social distancing with all site visitors, including delivery workers, design professional and other project consultants, government agency representatives, including building and fire inspectors, and residents at residential construction sites.
- m. Stagger trades as necessary to reduce density and allow for easy maintenance of minimum six-foot separation.

**Appendix B-1**

- n. Discourage workers from using others' desks, work tools, and equipment. If more than one worker uses these items, the items must be cleaned and disinfected with disinfectants that are effective against COVID-19 in between use by each new worker. Prohibit sharing of PPE.
- o. If hand washing facilities are not available at the jobsite, place portable wash stations or hand sanitizers that are effective against COVID-19 at entrances to the jobsite and in multiple locations dispersed throughout the jobsite as warranted.
- p. Clean and sanitize any hand washing facilities, portable wash stations, jobsite restroom areas, or other enclosed spaces daily with disinfectants that are effective against COVID-19. Frequently clean and disinfect all high touch areas, including entry and exit areas, high traffic areas, rest rooms, hand washing areas, high touch surfaces, tools, and equipment
- q. Maintain a daily attendance log of all workers and visitors that includes contact information, including name, phone number, address, and email.
- r. Post a notice in an area visible to all workers and visitors instructing workers and visitors to do the following:
  - i. Do not touch your face with unwashed hands or with gloves.
  - ii. Frequently wash your hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60% alcohol.
  - iii. Clean and disinfect frequently touched objects and surfaces such as work stations, keyboards, telephones, handrails, machines, shared tools, elevator control buttons, and doorknobs.
  - iv. Cover your mouth and nose when coughing or sneezing, or cough or sneeze into the crook of your arm at your elbow/sleeve.
  - v. Do not enter the jobsite if you have a fever, cough, or other COVID-19 symptoms. If you feel sick, or have been exposed to anyone who is sick, stay at home.
  - vi. Constantly observe your work distances in relation to other staff. Maintain the recommended minimum six feet at all times when not wearing the necessary PPE for working in close proximity to another person.
  - vii. Do not carpool to and from the jobsite with anyone except members of your own household unit, or as necessary for workers who have no alternative means of transportation.
  - viii. Do not share phones or PPE.
- s. In the event of a confirmed case of COVID-19 at any jobsite, the following must take place:
  - i. Immediately remove the infected individual from the jobsite with directions to seek medical care.
  - ii. Each location the infected worker was at must be decontaminated and sanitized by an outside vendor certified in hazmat clean ups, and work in these locations must cease until decontamination and sanitization is complete.
  - iii. The County Public Health Department must be notified immediately and any additional requirements per the County health officials must be completed, including full compliance with any tracing efforts by the County.

## Appendix B-2

### Large Construction Project Safety Protocol

1. Any construction project meeting any of the following specifications is subject to this Large Construction Project Safety Protocol (“LCP Protocol”), including public works projects unless otherwise specified by the Health Officer:
  - a. For residential construction projects, any single-family, multi-family, senior, student, or other residential construction, renovation, or remodel project consisting of more than 10 units.
  - b. For commercial construction projects, any construction, renovation, or tenant improvement project consisting of more than 20,000 square feet of floor area.
  - c. For construction of Essential Infrastructure, as defined in section 16.c of the Order, any project that requires five or more workers at the jobsite at any one time.
2. The following restrictions and requirements must be in place at all construction job sites subject to this LCP Protocol:
  - a. Comply with all applicable and current laws and regulations including but not limited to OSHA and Cal-OSHA. If there is any conflict, difference or discrepancy between or among applicable laws and regulations and/or this LCP Protocol, the stricter standard will apply.
  - b. Prepare a new or updated Site-Specific Health and Safety Plan to address COVID-19-related issues, post the Plan on-site at all entrances and exits, and produce a copy of the Plan to County governmental authorities upon request. The Plan must be translated as necessary to ensure that all non-English speaking workers are able to understand the Plan.
  - c. Provide personal protective equipment (PPE) specifically for use in construction, including gloves, goggles, face shields, and face coverings as appropriate for the activity being performed. At no time may a contractor secure or use medical-grade PPE, unless required due to the medical nature of a job site. Face coverings must be worn in compliance with the April 17, 2020 Guidance from the County of Santa Clara Public Health Department, available at: <https://www.sccgov.org/sites/covid19/Pages/learn-what-to-do.aspx#howto>.
  - d. Ensure that employees are trained in the use of PPE. Maintain and make available a log of all PPE training provided to employees and monitor all employees to ensure proper use of the PPE.
  - e. Prohibit sharing of PPE.

**Appendix B-2**

- f. Implement social distancing requirements including, at minimum:
  - i. Stagger stop- and start-times for shift schedules to reduce the quantity of workers at the jobsite at any one time to the extent feasible.
  - ii. Stagger trade-specific work to minimize the quantity of workers at the jobsite at any one time.
  - iii. Require social distancing by maintaining a minimum six-foot distance between workers at all times, except as strictly necessary to carry out a task associated with the project.
  - iv. Prohibit gatherings of any size on the jobsite, except for safety meetings or as strictly necessary to carry out a task associated with the project.
  - v. Strictly control “choke points” and “high-risk areas” where workers are unable to maintain minimum six-foot social distancing and prohibit or limit use to ensure that minimum six-foot distancing can easily be maintained between workers.
  - vi. Minimize interactions and maintain social distancing with all site visitors, including delivery workers, design professional and other project consultants, government agency representatives, including building and fire inspectors, and residents at residential construction sites.
  - vii. Prohibit workers from using others’ phones or desks. Any work tools or equipment that must be used by more than one worker must be cleaned with disinfectants that are effective against COVID-19 before use by a new worker.
  - viii. Place wash stations or hand sanitizers that are effective against COVID-19 at entrances to the jobsite and in multiple locations dispersed throughout the jobsite as warranted.
  - ix. Maintain a daily attendance log of all workers and visitors that includes contact information, including name, address, phone number, and email.
  - x. Post a notice in an area visible to all workers and visitors instructing workers and visitors to do the following:
    - 1. Do not touch your face with unwashed hands or with gloves.
    - 2. Frequently wash your hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60% alcohol.
    - 3. Clean and disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, machines, shared tools, elevator control buttons, and doorknobs.
    - 4. Cover your mouth and nose when coughing or sneezing or cough or sneeze into the crook of your arm at your elbow/sleeve.
    - 5. Do not enter the jobsite if you have a fever, cough, or other COVID-19 symptoms. If you feel sick, or have been exposed to anyone who is sick, stay at home.
    - 6. Constantly observe your work distances in relation to other staff. Maintain the recommended minimum six-foot distancing at all times when not wearing the necessary PPE for working in close proximity to another person.
    - 7. Do not share phones or PPE.

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- xi. The notice in section 2.f.x must be translated as necessary to ensure that all non-English speaking workers are able to understand the notice.
- g. Implement cleaning and sanitization practices in accordance with the following:
  - i. Frequently clean and sanitize, in accordance with CDC guidelines, all high-traffic and high-touch areas including, at a minimum: meeting areas, jobsite lunch and break areas, entrances and exits to the jobsite, jobsite trailers, hand-washing areas, tools, equipment, jobsite restroom areas, stairs, elevators, and lifts.
  - ii. Establish a cleaning and decontamination protocol prior to entry and exit of the jobsite and post the protocol at entrances and exits of jobsite.
  - iii. Supply all personnel performing cleaning and sanitization with proper PPE to prevent them from contracting COVID-19. Employees must not share PPE.
  - iv. Establish adequate time in the workday to allow for proper cleaning and decontamination including prior to starting at or leaving the jobsite for the day.
- h. Implement a COVID-19 community spread reduction plan as part of the Site-Specific Health and Safety Plan that includes, at minimum, the following restrictions and requirements:
  - i. Prohibit all carpooling to and from the jobsite except by workers living within the same household unit, or as necessary for workers who have no alternative means of transportation.
  - ii. Cal-OSHA requires employers to provide water, which should be provided in single-serve containers. Prohibit any sharing of any food or beverage and if sharing is observed, the worker must be sent home for the day.
  - iii. Prohibit use of microwaves, water coolers, and other similar shared equipment.
- i. Assign a COVID-19 Safety Compliance Officer (SCO) to the jobsite and ensure the SCO's name is posted on the Site-Specific Health and Safety Plan. The SCO must:
  - i. Ensure implementation of all recommended safety and sanitation requirements regarding the COVID-19 virus at the jobsite.
  - ii. Compile daily written verification that each jobsite is compliant with the components of this LCP Protocol. Each written verification form must be copied, stored, and made immediately available upon request by any County official.
  - iii. Establish a daily screening protocol for arriving staff, to ensure that potentially infected staff do not enter the construction site. If workers leave the jobsite and return the same day, establish a cleaning and decontamination protocol prior to entry and exit of the jobsite. Post the daily screening protocol at all entrances and exit to the jobsite. More information on screening can be found online at: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>.
  - iv. Conduct daily briefings in person or by teleconference that must cover the following topics:
    - 1. New jobsite rules and pre-job site travel restrictions for the prevention of COVID-19 community spread.
    - 2. Review of sanitation and hygiene procedures.
    - 3. Solicitation of worker feedback on improving safety and sanitation.
    - 4. Coordination of construction site daily cleaning/sanitation requirements.
    - 5. Conveying updated information regarding COVID-19.

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6. Emergency protocols in the event of an exposure or suspected exposure to COVID-19.
  - v. Develop and ensure implementation of a remediation plan to address any non-compliance with this LCP Protocol and post remediation plan at entrance and exit of jobsite during remediation period. The remediation plan must be translated as necessary to ensure that all non-English speaking workers are able to understand the document.
  - vi. The SCO must not permit any construction activity to continue without bringing such activity into compliance with these requirements.
  - vii. Report repeated non-compliance with this LCP Protocol to the appropriate jobsite supervisors and a designated County official.
- j. Assign a COVID-19 Third-Party Jobsite Safety Accountability Supervisor (JSAS) for the jobsite, who at a minimum holds an OSHA-30 certificate and first-aid training within the past two years, who must be trained in the protocols herein and verify compliance, including by visual inspection and random interviews with workers, with this LCP Protocol.
- i. Within seven calendar days of each jobsite visit, the JSAS must complete a written assessment identifying any failure to comply with this LCP Protocol. The written assessment must be copied, stored, and, upon request by the County, sent to a designated County official.
  - ii. If the JSAS discovers that a jobsite is not in compliance with this LCP Protocol, the JSAS must work with the SCO to develop and implement a remediation plan.
  - iii. The JSAS must coordinate with the SCO to prohibit continuation of any work activity not in compliance with rules stated herein until addressed and the continuing work is compliant.
  - iv. The remediation plan must be sent to a designated County official within five calendar days of the JSAS's discovery of the failure to comply.
- k. In the event of a confirmed case of COVID-19 at any jobsite, the following must take place:
- i. Immediately remove the infected individual from the jobsite with directions to seek medical care.
  - ii. Each location the infected worker was at must be decontaminated and sanitized by an outside vendor certified in hazmat clean ups, and work in these locations must cease until decontamination and sanitization is complete.
  - iii. The County Public Health Department must be notified immediately and any additional requirements per the County health officials must be completed, including full compliance with any tracing efforts by the County.
- l. Where construction work occurs within an occupied residential unit, any separate work area must be sealed off from the remainder of the unit with physical barriers such as plastic sheeting or closed doors sealed with tape to the extent feasible. If possible, workers must access the work area from an alternative entry/exit door to the entry/exit door used by residents. Available windows and exhaust fans must be used to ventilate the work area. If residents have access to the work area between workdays, the work area must be cleaned and

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sanitized at the beginning and at the end of workdays. Every effort must be taken to minimize contact between workers and residents, including maintaining a minimum of six feet of social distancing at all times.

- m. Where construction work occurs within common areas of an occupied residential or commercial building or a mixed-use building in use by on-site employees or residents, any separate work area must be sealed off from the rest of the common areas with physical barriers such as plastic sheeting or closed doors sealed with tape to the extent feasible. If possible, workers must access the work area from an alternative building entry/exit door to the building entry/exit door used by residents or other users of the building. Every effort must be taken to minimize contact between worker and building residents and users, including maintaining a minimum of six feet of social distancing at all times.

# EXHIBIT “9”

## Executive Summary

### June 5, 2020 Shelter-in-Place Order Updates

Because of the continued substantial progress our community has achieved in slowing the spread of COVID-19, this updated Shelter-in-Place Order allows certain additional businesses and activities to resume, subject to restrictions to reduce transmission risk.

This updated Order will go into effect at 12:01 am on Friday, June 5, 2020, and will remain in effect until the Health Officer amends or rescinds it. This updated Order modifies the current order, which went into effect on May 22, 2020. This summary refers to the May 22 order as the "Current Order" and this updated Order as the "June 5 Order" or "Order."

#### What changes does this updated Order make?

The June 5 Order allows several new categories of businesses and activities to reopen, subject to specific conditions and limitations. It also keeps key restrictions in place, requiring people to stay in their homes except when engaging in certain essential or allowed activities. The new activities and businesses allowed to reopen under the updated Order are referred to as "Additional Activities" and "Additional Businesses" and are explained in Appendices C-1 and C-2 to the Order. These and other significant changes are highlighted below.

#### **Additional Businesses:**

- Outdoor dining at restaurants and other facilities that prepare and serve food, subject to limitations/social distancing
- Retail and shopping centers for in-store shopping, subject to limitations/social distancing
- Childcare, summer camps, summer school, and all other educational or recreational programs for *all* children, in stable groups of up to 12 children
- All manufacturing, warehousing, and logistics, subject to limitations/social distancing
- House cleaning and other no-contact in-home services
- Low contact/no contact service businesses such as shoe repair, watch repair, and other similar services, subject to limitations/social distancing
- All pet grooming

#### **Additional Activities:**

- Outdoor small ceremonies and religious services, in groups no larger than 25
- All outdoor recreational activities that do not involve physical contact, with social distancing, including swimming pools, hiking, tennis, golf, etc.
- Camping, subject to limitations/social distancing
- Drive-in Theaters and other car-based gatherings

#### **Social Distancing Protocol:**

There has been no change to the Social Distancing Protocol businesses are required to implement under the Order. As a reminder:

- To operate, all businesses must complete a Social Distancing Protocol (Appendix A to the Order) using the template in Appendix A.

- To show that they are implementing the Social Distancing Protocol to keep their staff and customers safe from COVID-19, all businesses must print and post in a prominent place near the entrance to the businesses (1) a COVID-19 PREPARED Sign and (2) a Social Distancing Protocol Visitor Information Sheet. Both the Sign and Visitor Information Sheet can be found in Appendix A to the Order.
- All businesses must post signage required in the Social Distancing Protocol to educate customers about health and safety requirements. Sign templates are available on the County's [website](#).

***Construction Project Safety Protocols:***

The Construction Project Safety Protocol in Appendix B-1 and B-2 have changed as follows:

- The threshold for an essential infrastructure project subject to the Large Construction Project Safety Protocol has changed from five workers to 20 workers. All essential infrastructure projects with less than 20 workers present at the jobsite at any one time are now subject to the Small Construction Project Safety Protocol in Appendix B-1.
- Appendix B-1 now specifies that specified steps must be taken if a worker at a construction site tests positive for COVID-19, and both appendices now state that COVID-19 cases associated with construction must be immediately reported to the County Public Health Department by both telephone and by email.

# EXHIBIT “10”



# What's Open?

Subject to social distancing protocols and COVID-19 related safety requirements to protect workers, customers and the community.

## Business and Government Agencies

### Already Open

- All healthcare services
- All essential governmental activities
- All essential infrastructure, including internet/communications
- Grocery stores, pharmacies, and similar essential businesses
- Agencies providing food/shelter/social services
- Newspapers, television, and radio
- Gas stations, auto-supply, and auto-repair
- Bicycle repair and supply shops
- Banks and related financial institutions
- Hardware stores
- Plumbers, electricians, exterminators, and other home repair services
- Mailing and shipping services
- Minimum Basic Operations for all businesses, including offices
- Landscaping and gardening services
- Most manufacturing
- Medically necessary pet grooming
- All retail stores, but for curbside pickup only
- Real estate agents, escrow agents, notaries, and title companies
- Plant nurseries and garden centers
- Laundromats, dry cleaners, and laundry services
- Restaurants, but only for delivery or carry out
- Airlines, taxis, rental cars, and rideshare services
- Home-based care for seniors/children/pets
- Residential facilities and homeless shelters
- All businesses that deliver goods to homes

### Open June 5, 2020

- Outdoor dining at restaurants
- In-store shopping at retail and shopping centers
- All manufacturing, warehousing, and logistics
- House cleaning and other no-contact in-home services
- Low contact/no contact service businesses including shoe repair, watch repair, and other similar services
- Pet grooming and dog walking

## Education, Childcare, and Children's Activities

### Already Open

- Educational institutions including public and private K-12 schools, colleges, and universities, but only for facilitating distance learning or performing essential functions
- Childcare establishments for children of workers of allowable businesses in stable groups of 12
- Summer camps and other educational or recreational programs for children of workers of allowable businesses in stable groups of 12
- Change of groups allowed every four weeks

### Open June 5, 2020

- All childcare, summer camps, summer school, and all other educational or recreational programs for all children in stable groups up to 12 children
- Change of group allowed every three weeks

## Outdoor Ceremonies, Outdoor Religious Gatherings, and Outdoor Recreation

### Already Open

- Outdoor recreational activities with members of one's own household
- Parks and outdoor recreation areas
- Outdoor museums, outdoor historical sites, and publicly accessible gardens
- Car parades

### Open June 5, 2020

- Small outdoor ceremonies and outdoor religious gatherings in groups no larger than 25
- All outdoor recreational activities that do not involve physical contact, with social distancing and with up to one other household, including hiking, tennis, Frisbee and golf
- Outdoor swimming pools
- Camping
- Drive-in theaters and other automobile-based gatherings

**EXHIBIT “11”**

## **Appendix C-1: Additional Businesses Allowed to Operate**

**Effective June 5, 2020**

### **General Requirements**

The “Additional Businesses” listed below may begin operating, subject to the requirements set forth in the Order and to any additional requirements set forth below or in separate industry-specific guidance by the Health Officer. These businesses were selected to implement a measured expansion of commercial activity based on health-related considerations including the risks of COVID-19 transmission associated with types and modes of business operations, the ability to substantially mitigate transmission risks associated with the operations, and related factors, such as the following:

- **Increase in mobility and volume of activity**—the overall impact the reopening will have on the number of people leaving their homes and traveling to work at or access the business;
- **Contact intensity**—the type (close or distant) and duration (brief or prolonged) of the contact involved in the business;
- **Number of contacts**—the approximate number of people that will be in the setting at the same time;
- **Modification potential**—the degree to which mitigation measures can decrease the risk of transmission.

To mitigate the risk of transmission to the greatest extent possible, each Additional Business must, before resuming operations:

- 1) Prepare and complete a Social Distancing Protocol (SDP) for each of its facilities in the County used by Personnel or the public, using the template provided in Appendix A to the Order.
- 2) The COVID-19 PREPARED Sign and SDP Visitor Information Sheet, which are included with Appendix A, must be printed and posted at or near the entrance of the facility, such as a window, and shall be easily viewable by the public and Personnel from outside the facility.
- 3) The SDP must be distributed to all Personnel working at the facility. Implement all measures in the Social Distancing Protocol prior to opening.
- 4) Print and post all signage required in the SDP. Several sign templates are available on the Public Health Department’s website at:  
<https://www.sccgov.org/sites/covid19/Pages/learn-what-to-do-flyers.aspx>.

As used in this Appendix C-1, “Personnel” means the following people who provide goods or services or perform operations associated with the Additional Business in the County: employees; contractors and sub-contractors (such as those who sell goods or perform services onsite or who deliver goods for the business); independent contractors (such as “gig workers” who perform work via the Additional Business’s application or other online interface); vendors who are permitted to sell goods onsite; volunteers; and other individuals who regularly provide services onsite at the request of the Additional Business.

In addition, each Additional Business must comply with Social Distancing Requirements and all relevant state guidance and local directives. Where differences exist between the state guidance and local public health directives related to the COVID-19 pandemic, the most restrictive provision controls.

### **List of Additional Businesses**

For purposes of the Order, Additional Businesses include the following:

#### **(1) Retail**

- a. Basis for Addition. Retail typically involves a moderate level of contact for a short duration of time and can proceed with limitations to ensure adequate social distancing and decrease the risk of transmission.
- b. Description and Conditions to Operate. All retail businesses, including wholesale businesses, may operate subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Unless operating as an Essential Business or Outdoor Business or to carry out an Essential Governmental Function, the total number of Personnel present at a facility that qualifies under this category must at any one time be no more than one Personnel per 300 gross square feet of the facility, and no more than one customer per 200 square feet of space open to the public.

#### **(2) Manufacturing**

- a. Basis for Addition. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions to Operate. All manufacturing businesses may operate subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Unless operating as an Essential Business or to carry out an Essential Governmental Function, the total number of persons (including Personnel, customers, delivery persons, or other persons) present at a facility that qualifies under this category must at any one time be no more than one person per 300 gross square feet of the facility.

#### **(3) Logistics, Warehousing, Delivery, and Distribution**

- a. Basis for Addition. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions to Operate. All logistics, warehousing, delivery, and distribution businesses may operate subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Unless operating as an Essential Business or to carry out an Essential Governmental Function, the total number of persons (including Personnel,

customers, delivery persons, or other persons) present at a facility that qualifies under this category must at any one time be no more than one person per 300 gross square feet of the facility.

- ii. All delivery and distribution activities must take place with the minimum number of persons in a vehicle necessary to safely operate the vehicle and carry out relevant job functions.
- iii. In addition to the requirements set forth in the Order regarding face coverings, Personnel must wear face coverings at all times when inside a vehicle to carry out operations that qualify under this category, except Personnel who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.

**(4) Outdoor Museums, Outdoor Historical Sites, and Publicly Accessible Gardens**

- a. Basis for Addition. Visiting outdoor museums, outdoor historical sites, and publicly accessible gardens involves low contact intensity and a low number of contacts so long as proper social distancing is maintained at all times. Interactions and activities that occur outdoors carry a lower risk of transmission than most indoor interactions and activities. Because outdoor recreation is already allowed under the Order, resumption of this activity should result in only a relatively modest increase in mobility and may decrease congestion in other outdoor locations like public parks and beaches.
- b. Description and Conditions. Outdoor museums, outdoor historical sites, and publicly accessible gardens may open subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Members of the public are not allowed to access any indoor facilities associated with outdoor museums, outdoor historical sites, or publicly accessible gardens, except to use restrooms, which must be frequently cleaned. All business and transactions involving members of the public must occur outdoors.
  - ii. Businesses operating under this category must implement measures to ensure that social distancing of at least six feet is maintained at all times other than between members of the same household.

**(5) Childcare, Camps, and other Educational or Recreational Institutions for All Children**

- a. Basis for Addition. These businesses are critical to children's physical, mental, and social development, and also play a vital role in families' social and economic wellbeing. However, these programs involve a relatively high quantity, intensity, and duration of contacts, and children are often unable to consistently follow social distancing and sanitation requirements that apply to other types of businesses. Risk associated with this category of businesses can be mitigated to some degree with limitations on the size of the groups and on intermixing between groups. In addition, because many of these businesses are already allowed to operate for some children, this addition creates a relatively modest expansion of activity.

- b. Description and Conditions to Operate. All childcare establishments, camps, and other educational or recreational institutions or programs may provide their services to all children subject to the following limitations in addition to those required elsewhere in the Order:
- i. Programs must be carried out in stable groups of 12 or fewer children (“stable” means that the same 12 or fewer children are in the same group each day).
  - ii. Children within a program shall not change from one group to another within that program.
  - iii. If more than one group of children is at one facility, each group shall be in a separate room. Groups shall not mix with each other.
  - iv. Providers or educators shall remain solely with one group of children.
  - v. Children may not move from one program to another more frequently than once every three weeks, or take part in more than one program simultaneously.

**(6) Limited Services That Do Not Require Customer Contact**

- a. Basis for Addition. The limited services allowed to open involve minimal, low-intensity, short-duration interaction between Personnel and customers. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions to Operate. Limited services that do not require customer contact including but not limited to, pet grooming (including mobile pet grooming), pet daycare, dog walking, repair services (including shoe, watch, jewelry, and other repair services), home cooking services, tailoring, car detailing, residential and janitorial cleaning services, and home maintenance, may operate subject to the following limitations in addition to those required elsewhere in the Order:
- i. If the service is operated out of a business facility that is not an Essential Business or Outdoor Business or used to carry out an Essential Governmental Function, the total number of persons (including Personnel, customers, delivery persons, or other persons) present at the facility must any one time be no more than one person per 300 gross square feet of the facility, and no more than one customer per 200 square feet of space open to the public.
  - ii. To the extent feasible, all interactions and transactions between Personnel and customers must occur outdoors.
  - iii. To the extent feasible, businesses must provide an option to customers that allows them to order and pay for products online or by phone prior to arriving at the facility.
  - iv. To the extent feasible, items serviced must be disinfected prior to being returned to customers.

**(7) Outdoor Dining**

- a. Basis for Addition. Outdoor dining provides access to freshly prepared meals at a relatively low risk of transmission. Because food service will be limited to outdoor areas, the overall volume of increased activity will be modest. In addition, interactions and activities that occur outdoors carry a lower risk of transmission than most indoor interactions and activities. Risks associated with these operations can be substantially mitigated with conditions to ensure adequate social distancing and limit intermixing between households.
- b. Description and conditions to operate: Restaurants and other food facilities that provide sit-down food service may provide outdoor, sit-down meals, subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Outdoor seating arrangements shall limit the number of patrons at a single table to no more than six (6) individuals, all of whom must be from the same household or living unit. Members of separate households or living units are not allowed to dine at the same table.
  - ii. All tables must be separated to ensure that six-foot minimum social distance can easily be maintained between all members of separate households or living units at all times. For clarity, patrons who are members of the same household or living unit and seated together at a table do not need to be six feet apart.
  - iii. Alcohol may be sold to patrons in conjunction with a meal, but it may not be sold independently.
  - iv. Bar areas must remain closed to customers.
  - v. Entertainment events are not allowed at this time.
  - vi. Outdoor dining, placement of outdoor seating arrangements, and food service must be in compliance with local laws, regulations, and permitting requirements.
  - vii. Facilities that open for outdoor dining must offer curbside pickup, takeaway, and/or delivery service alternatives.

**(8) Outdoor Swimming Pools**

- a. Basis for Addition. Outdoor swimming pools have few high-touch surfaces and do not require shared equipment. Risks associated with outdoor swimming pools can be substantially mitigated with limitations to ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions to Operate. Outdoor swimming pools may operate subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Lap swimming must be limited to one swimmer per lane, except that members of the same household or living unit may occupy a single lane.
  - ii. Use of shared swimming areas must be limited to no more than one swimmer per 300 square feet of shared pool space.
  - iii. Except for members of the same household, swimmers shall remain at least six feet apart at all times.
  - iv. At least one person, separate from a lifeguard, shall be on duty at all times to ensure that the social distancing protocol applicable to the facility and all limitations herein are followed.

- v. Locker rooms shall be closed to the public, except for use as a restroom.
- vi. All gathering shall be prohibited outside the pool, such as on pool decks, except that members of a household may observe a child or other person swimming to ensure safety and supervision.

**(9) Campgrounds**

- a. Basis for Addition. Camping is an outdoor activity and can occur with members of one's own household without generating substantial risk of contact with other households. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions. Campgrounds may operate subject to the following limitations additional to those required elsewhere in the Order:
  - i. Only designated camping spots shall be used.
  - ii. Each camping spot shall be occupied by no more than one household or living unit.
  - iii. If camping spots are immediately adjacent to one another, there shall at least one closed camping spot between each open camping spot to maintain adequate distance between households or living units.
  - iv. Yurts, dorms, cabins, "glamping" facilities, and other permanent facilities may not be used, except for restrooms, food lockers, dishwashing stations, and drinking water stations, which must be frequently sanitized.
  - v. To the extent feasible, reservations shall be made by phone or online prior to arrival.

# EXHIBIT “12”

## Appendix C-2: Allowed Additional Activities

Effective June 5, 2020

### General Requirements

The “Additional Activities” listed below may resume, subject to the requirements set forth in the Order and to any additional requirements set forth below or in separate guidance by the Health Officer. These activities were selected to implement a measured expansion of activity based on health-related considerations including the risks of COVID-19 transmission associated with types and modes of activity, the ability to substantially mitigate transmission risks associated with the operations, and related factors, such as the following:

- **Increase in mobility and volume of activity**—the overall impact resumption of the activity will have on the number of people leaving their homes and interacting with others in the community;
- **Contact intensity**—the type (close or distant) and duration (brief or prolonged) of the contact involved in the activity;
- **Number of contacts**—the approximate number of people that will be in the setting at the same time;
- **Modification potential**—the degree to which mitigation measures can decrease the risk of transmission.

### List of Additional Activities

For purposes of the Order, Additional Activities include the following:

#### (1) Automobile Parades

- a. Basis for Addition. Automobile parades have zero- or low-contact intensity because people of the same household must remain in their automobiles together throughout the event. Automobile parades also carry a relatively low risk that they will result in prohibited gatherings of people outside the vehicles because the parades are mobile, and congregating at a fixed location is not allowed. The activity is also expected to result in only a marginal increase in mobility, and little-to-no physical interaction with others in the community. This activity provides a low-risk option for people seeking to celebrate special occasions outside their homes.
- b. Description and Conditions. Automobile parades are allowed, subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Parades must comply with all laws and applicable permitting requirements.
  - ii. Only members of the same household may occupy a single automobile.
  - iii. People may not leave their automobiles at any time during the parade.
  - iv. Participating automobiles may not congregate at a fixed location.
  - v. No bicycles or motorcycles may participate.

(2) **Automobile-based Gatherings and Drive-thru Events**

- a. **Basis for Addition.** Automobile-based gatherings and drive-thru events have low-contact intensity because people of the same household must remain in their automobiles, except for narrow exceptions. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. **Description and Conditions.** Automobile-based gatherings and drive-thru events for any purpose, including but not limited to drive-in theaters, drive-through ceremonies, and automobile-based ceremonies, are allowed, subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Gatherings and events must comply with all laws and applicable permitting requirements.
  - ii. No more than 100 automobiles may be present at any one time.
  - iii. A person or business, as that term is defined in the Order, must serve as the designated host for gathering or event, and must ensure compliance with all requirements in the Order and in this Appendix C-2.
  - iv. For gatherings of more than 10 vehicles, the host must request security staffing by the local law enforcement agency with primary jurisdiction for the location of the event and pay any costs established by that law enforcement agency. If the law enforcement agency declines to provide such security, the host is responsible for acquiring private security sufficient to ensure compliance with the Order and this Appendix C-2. The amount of security necessary shall be determined by the entity providing security but should be no more than that deemed necessary to maintain safety and ensure compliance with the Order and this Appendix C-2. For clarity, if the host already employs security officers, it may use its existing security officers.
  - v. Food, beverages, and other concessions may not be provided or sold for consumption at the gathering or event.
  - vi. No equipment or items may be shared amongst persons, except amongst members of the same household or living unit.
  - vii. Gatherings and events shall last no more than three hours.
  - viii. Occupants of a vehicle must be members of the same household or living unit and may not change vehicles during the event.
  - ix. No person may leave their automobiles at any time during the event except to use the restroom, occupy a stage as allowed in Paragraph 2(b)(xi), or for an emergency. This requirement does not apply to event personnel or security, who must maintain at least six-foot social distance at all times feasible.
  - x. Face coverings must be worn at all times when outside a vehicle, or when the windows or convertible top of a vehicle are open, except by people who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.

- xii. Only five persons may occupy a stage at any one time, and shall remain at least six feet apart at all times.
- xiii. Automobiles shall remain at least six feet apart at all times.
- xiv. No bicycles or motorcycles may participate.
- xv. If a restroom is made available to participants in the gathering or event, it must be frequently sanitized, and measures must be put in place to ensure that at least six-foot social distance is maintained by people when inside the facility or waiting in line.

**(3) Outdoor Recreational and Athletic Activities**

- a. Basis for Addition. Non-contact recreational and athletic activities have low-to-moderate levels of transmission risk. Risks associated with these activities can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions. Non-contact recreational and athletic activities with members of other households may occur subject to the following limitations in addition to those required elsewhere in the Order:
  - i. No more than two households or living units may engage in these recreational and athletic activities together at any one time.
  - ii. No equipment (except balls, frisbees, or other projectiles) may be shared between households or living units.
  - iii. All recreational and athletic activities with members of another household or living unit must occur entirely outdoors.
  - iv. Members of separate households or living units must remain at least six feet apart at all times.
  - v. Face coverings must be worn when recreating with members of another household or living unit, except when actively exercising or by people who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.

**(4) Use of Dog Parks**

- a. Basis for Addition. Dog parks are outdoor locations that typically provide ample space for people to distance from one another. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions. Dog parks may open to the public subject to the following limitations in addition to those required elsewhere in the Order:
  - i. No person shall enter a dog park if it is not possible to easily maintain at least six feet of separation from all other persons.

- ii. Face coverings must be worn at all times, except by people who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.

**(5) Small Outdoor Ceremonies and Religious Gatherings**

- a. Basis for Addition. Although ceremonies and religious gatherings carry a substantial risk of transmission, they are vital to people's social and spiritual well being. The risk associated with these activities is mitigated when the activities occur outdoors, and when the total number of participants is limited. Risks associated with these activities can be further mitigated through measures that decrease exposure, ensure adequate social distancing, and limit intermixing between households.
- b. Description and Conditions. Outdoor ceremonies and religious gatherings, including but not limited to funerals and weddings, may occur subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Ceremonies and gatherings must occur entirely outdoors, except that participants may use restrooms, provided that the restrooms are frequently sanitized.
  - ii. No more than 25 persons may be present at any one time.
  - iii. A person or business, as that term is defined in the Order, must serve as the designated host for the ceremony or gathering, and must ensure compliance with all requirements in the Order and in this Appendix C-2.
  - iv. The host must maintain a list with the names and contact information of all participants. If a participant tests positive for COVID-19, the host shall assist the County Public Health Department in any case investigation and contact tracing associated with the gathering.
  - v. Food, beverages, and other concessions may not be provided or sold for consumption at the ceremony or gathering, except as necessary for ceremonial purposes with maximization of all safety precautions and avoidance of sharing.
  - vi. No equipment or items may be shared amongst persons, except amongst members of the same household or living unit.
  - vii. No singing or shouting is allowed due to significantly increased risk of COVID-19 transmission.
  - viii. All participants must wear face coverings at all times, except people who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.
  - ix. Except for members of the same household or living unit, all participants must remain at least six feet from one another at all times.

**EXHIBIT “13”**

**\* Can I leave home to go to a service at my church, synagogue, or mosque?**

No. For your safety as well as the safety of fellow worshippers, religious gatherings, ceremonies, and events held inside places of worship are not allowed at this time. People may go inside places of worship as necessary to offer remote access to services (such as by email, video streaming, or teleconference) or to maintain other minimum basic operations, like security. While remote gatherings are encouraged as the safest alternative, worshippers may now participate in small outdoor religious gatherings and automobile-based gatherings in compliance with the provisions described in [Appendix C-2](#) and below.

**\*\* Can I attend a religious service or other ceremony outdoors?**

The June 5 Order allows you to gather with others for small outdoor religious services and other ceremonies (like weddings and funerals), so long as you follow these rules:

1. No more than 25 people may be present at any time.
2. The entire event must occur outdoors.  
People may only go inside during the event to use the restroom, so long as restrooms are frequently cleaned.
3. Everyone must remain at least six feet apart at all times, except for members of the same household.
4. There must be a host (a person or business) for the gathering, who makes sure that everyone follows the rules.

5. That host must keep a list of the names and contact information for participants. If a participant tests positive for COVID-19, the host must help the County Public Health Department identify other participants who may have been exposed to help prevent further spread of COVID-19.
6. Food, beverages, and other concessions may not be provided or sold, except as necessary for ceremonial purposes (without sharing and with safety precautions).
7. No sharing of equipment or other items, except between members of the same household.
8. No singing or shouting (these increase risk of COVID-19 spread).
9. All participants must wear face coverings at all times (except for children 6 years old and younger or if medically inadvisable).

**EXHIBIT “14”**



County of Santa Clara Public Health Department



June 1 at 4:55 PM · 🌐

We recognize that peaceful protest in response to the pain, anger and mourning due to deeply rooted inequities and systemic racism is a fundamental right that is critical to the health of our democracy. As residents of the County exercise this right, we respectfully remind everyone that our community is still facing a health crisis and fighting COVID-19. 📄



We urge those engaging in peaceful protest to keep their own health and the health of others in mind by following important practices, such as using face coverings and, to the extent possible, maintaining social distancing. We also encourage those who have been in close contact with others at large gatherings to take the opportunity to get tested for COVID-19 within three to five days of gathering, and to watch for any symptoms of COVID-19. There are many locations across the County that offer free testing, which can be found at [sccfreetest.org](http://sccfreetest.org).

**Please be safe as we  
move through these  
difficult times  
together.**

Santa Clara County  
**PUBLIC  
HEALTH**



**PUBLIC HEALTH** County of Santa Clara Public Health Department  
June 6 at 11:30 AM · 📎

We are with you, and we hear you. Here are some tips for staying as COVID-safe as possible while fighting for racial justice: 📎

- 📎 ✓ Wear a face covering 📎
- 📎 ✓ Wear eye protection 📎
- 📎 ✓ Yelling can project virus particles, use signs or noisemakers instead 📎
- 📎 ✓ Bring plenty of water to stay hydrated 📎
- 📎 ✓ Use hand sanitizer 📎
- 📎 ✓ Do not attend if you are feeling ill 📎
- 📎 ✓ Get tested within three to five days and watch for symptoms:  
[SCCFreeTest.org](https://www.sccgov.org/coronavirus) 📎

Please be safe and kind to one another as we move through these difficult times together. 📎📎

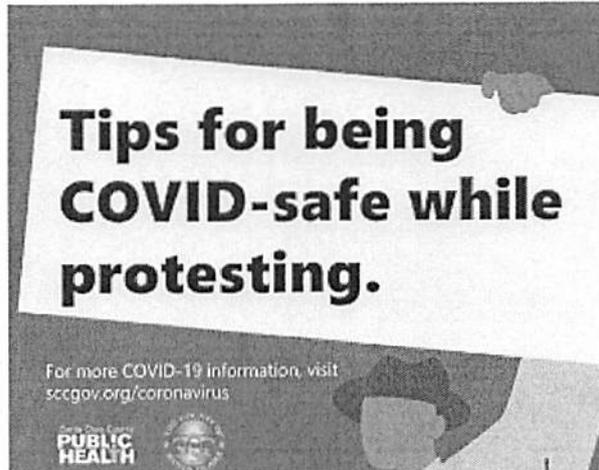
📎  
📎  
#ApartTogetherSCC

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**Tips for being  
COVID-safe while  
protesting.**

For more COVID-19 information, visit  
[sccgov.org/coronavirus](https://www.sccgov.org/coronavirus)

San Jose County  
**PUBLIC HEALTH**  
2020



# EXHIBIT “B”

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15 Attorneys for Plaintiffs

16  
 17 **UNITED STATES DISTRICT COURT**  
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 19 **SAN JOSE DIVISION**

20 **CALVARY CHAPEL SAN JOSE**, a  
 21 California Non-Profit Corporation; **PASTOR**  
 22 **MIKE MCCLURE**, an individual;  
 23 **SOUTHRIDGE BAPTIST CHURCH OF**  
 24 **SAN JOSE CALIFORNIA dba**  
 25 **SOUTHRIDGE CHURCH**, a California Non-  
 Profit Corporation; **PASTOR MICAIAH**  
**IRMLER**, an individual;

26 Plaintiffs,

27 vs.  
28

Case No.: 20-cv-03794-BLF

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

1 **GAVIN NEWSOM**, in his official capacity as  
2 the Governor of California, **ERICA PAN**  
3 **M.D.**, in her official capacity as the Acting  
4 California Public Health Officer; **SANTA**  
5 **CLARA COUNTY**; **SARA H. CODY, M.D.**,  
6 in her official capacity as Santa Clara County  
7 Public Health Officer; **MIKE WASSERMAN**,  
8 in his official capacity as a Santa Clara County  
9 Supervisor; **CINDY CHAVEZ**, in her official  
10 capacity as a Santa Clara County Supervisor;  
11 **DAVE CORTESE**, in  
12 his official capacity as a Santa Clara County  
13 Supervisor; **SUSAN ELLENBERG**, in her  
14 official capacity as a Santa Clara County  
15 Supervisor; and **JOE SIMITIAN**, in his  
16 official capacity as a Santa Clara County  
17 Supervisor;

18 Defendants.

## 19 INTRODUCTION

20 1. This Action primarily presents facial and as-applied challenges to the most recent  
21 orders issued by the California Department of Public Health (CDPH) and Santa Clara County  
22 (collectively, “Orders”). Plaintiffs also challenge the ordinance adopted by the Santa Clara  
23 County Board of Supervisors and its enforcement thereof, which amounts to cruel and unusual  
24 punishment.

25 2. Although Plaintiffs appreciate the State and County’s efforts to protect the health  
26 and safety of its residents, the Plaintiffs’ constitutional rights – namely religious rights – are not  
27 suspended during a supposed pandemic.

28 3. Now more than ever, religion and religious worship are central to thousands of  
Santa Clara County residents, and corporate worship provides a critical opportunity for members  
of the community to seek comfort and solace. The State and Country are experiencing staggering  
levels of depression and anxiety. People do not seek help from the government in times of  
distress; they go to the church. The Defendants are cutting off a vital source of mental and  
spiritual aid by severely restricting indoor services.

1 4. Further, and perhaps more egregiously, the State and Santa Clara County treat  
2 houses of worship differently than other similarly situated entities and give protestors and  
3 demonstrators a free pass, undermining their contention the Orders are necessary to curb the  
4 spread of COVID-19. Even Governor Newsom does not abide by his own public health orders.<sup>1</sup>

5 5. The State and Santa Clara County have no compelling justification for their  
6 discriminatory treatment of places of worship, nor have they attempted in any way to tailor their  
7 regulations to the least restrictive means.

8 6. Finally, the excessive fines levied against the Plaintiffs as authorized by the Santa  
9 Clara County Board of Supervisors and enforced by the County are an abomination of justice.  
10 Punishment must be commensurate to the severity of the harm. Plaintiffs have not contributed  
11 to any known COVID-19 case. Justice is not served by trying to bankrupt churches that are not  
12 a threat to public health and safety.

13 **PARTIES – PLAINTIFFS**

14 7. Plaintiff CALVARY CHAPEL SAN JOSE (“CCSJ”), a California non-profit  
15 corporation, is a Christian church organized exclusively for religious purposes. CCSJ is located  
16 in the city of San Jose, California.

17 8. Plaintiff MIKE MCCLURE is a resident of Santa Clara County and the lead pastor  
18 of CCSJ.

19 9. Plaintiff SOUTHRIDGE CHURCH (“Southridge”) is a domestic non-profit  
20 corporation Christian church organized exclusively for religious purposes within the meaning  
21 of Section 501(c)(3) of the Internal Revenue Code. Southridge Church is located in the City of  
22 San Jose, California.

23 10. Plaintiff MICAH IRMLER is a resident of Santa Clara County and the lead  
24 pastor of Southridge.

25 11. CCSJ and Southridge are hereinafter collectively referred to as “the Church.”  
26

27 <sup>1</sup> Available as of the date of filing: <https://californiaglobe.com/section-2/gov-newsom-breaks-state-covid-19-guidelines-for-a-birthday-party-in-napa-county/>  
28

1 **PARTIES – DEFENDANTS**

2 12. Defendants Gavin Newsom is sued in his official capacity as the Governor of  
3 California. The California Constitution vests the “supreme executive power of the State” in the  
4 Governor, who “shall see that the law is faithfully executed.” (Cal. Const., art. V, § 1. Governor  
5 Newsom issued Executive Order N-33-20.

6 13. Defendant Erica Pan, M.D. is sued in her official capacity as the Acting California  
7 Officer of the California Department of Public Health (“CDPH”) who succeeded Sonia Angell,  
8 California’s former Public Health Officer. Under the authority of Governor Newsom’s executive  
9 order, Angell promulgated California’s public health orders.

10 14. Defendant Gavin Newsom and Erica Pan are hereinafter referred to as “State  
11 Defendants.”

12 15. Defendant Santa Clara County is and at all times relevant herein a political  
13 subdivision of the State of California.

14 16. Defendant SARA H. CODY, M.D. is the Public Health Officer for Santa Clara  
15 County, California. She is sued in her official capacity only. She authorized the county health  
16 orders and guidelines.

17 17. Santa Clara County and Sara H. Cody are hereinafter referred to as “County  
18 Defendants.”

19 18. Defendants MIKE WASSERMAN, CINDY CHAVEZ, DAVE CORTESE,  
20 SUSAN ELLENBERG, and JOE SIMITIAN are each sued in their official capacities as  
21 members of the Santa Clara County Board of Supervisors. The County Board of Supervisors are  
22 responsible for adopting the challenged ordinance, authorizing Santa Clara County to issue  
23 unconstitutional fines against the Plaintiffs.

24 **JURISDICTION AND VENUE**

25 19. This civil rights action raises federal questions under the United States  
26 Constitution, specifically the First, Eighth, and Fourteenth Amendments, and under federal law,  
27 particularly 42 U.S.C. § 1983.  
28



1 locations where people gather. Governor Newsom announced that houses of worship would not  
2 be allowed to gather until Stage 3 of the Re-Opening Plan, which was “months” away.

3 28. On May 19, 2020, the United States Department of Justice wrote Governor  
4 Newsom a letter explaining that Governor Newsom’s Re-Opening Plan was likely  
5 unconstitutional based on “unequal treatment of faith communities.” A true and correct copy of  
6 this Letter is attached as **Exhibit 2**.

7 29. Then, consistent with the Executive Order, the CDPH issued a “Stay-at-Home”  
8 Order in California’s Pandemic Resilience Roadmap.

9 30. On May 22, 2020, President Donald Trump announced that new Center for  
10 Disease Control (CDC) guidance will classify houses of worship as “essential,” and he called  
11 on all governors to allow houses of worship to immediately reopen.<sup>3</sup>

12 31. On May 22, 2020, the CDC issued “Interim Guidance for Communities of Faith”  
13 that outlines precautions for houses of worship to take when reopening to keep their staff and  
14 congregations safe. A true and correct copy of this guidance is attached as **Exhibit 3**.

15 32. On May 25, 2020, Governor Gavin Newsom announced the re-opening of places  
16 of worship in California. This was accomplished by the CDPH issuing guidance for houses of  
17 worship to support a safe, clean environment for staff and congregants. A true and correct copy  
18 of these guidelines is attached as **Exhibit 4**.

19 33. On August 28, 2020, the State Public Health Officer issued a Superseding Order<sup>4</sup>  
20 that established a procedure for assigning counties to one of four tiers based on the severity of  
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25 <sup>3</sup>Available as of the date of filing: [https://www.foxnews.com/politics/trump-announces-that-houses-of-  
26 worship-are-essential-calls-on-governors-to-open-them-up](https://www.foxnews.com/politics/trump-announces-that-houses-of-worship-are-essential-calls-on-governors-to-open-them-up).

27 <sup>4</sup> All COVID-19 health orders issued by the State of California are hereinafter referred to as “State  
28 Orders.”

1 COVID-19.<sup>5</sup> Pursuant to the Order, all local health jurisdictions may reopen specified sectors  
2 according to their respective county’s Tier.

3 34. The four-tier system treats houses of worship different than other similarly situated  
4 industries. For instance, in Tier 3, places of worship can only open at 50% capacity or 200  
5 people, whichever is fewer. However, shopping centers are open with slight modifications such  
6 as closed common areas and reduced food courts. Museums, zoos, and aquariums are only  
7 limited to 50% capacity. Cardrooms can meet at 25% capacity.

8 35. In Tier 2, places of worship can open at 25% capacity or 100, whichever is fewer,  
9 but museums, zoos, and aquariums can open at 25% capacity. Shopping and retail centers can  
10 open at 50% capacity.

11 36. In Tier 1, indoor religious services are banned, but retail and shopping centers can  
12 remain open at 25% capacity.

13 **B. Santa Clara County Orders**

14 37. Santa Clara County issued an order on May 18, 2020 prohibiting “all public and  
15 private gatherings...except for the limited purposes expressly permitted in this Order.” A true  
16 and correct copy of the Santa Clara Order is attached as **Exhibit 5**.

17 38. The County had three previous similar orders: the first dated March 16, 2020, the  
18 second dated March 31, 2020, and the third dated April 29, 2020. True and correct copies of  
19 these orders are attached as **Exhibits 6, 7, and 8**, respectively.

20 39. By these orders, the County continued to ban drive-in styled worship services even  
21 after the State declared such services permissible. On April 13, 2020, after a civil rights lawsuit  
22 was filed against the State, California Attorney General Xavier Becerra explained in opposition  
23 papers to a Temporary Restraining Order that drive-in worship services were permitted under  
24 Governor Newsom’s Executive Stay-At-Home Order with no limit placed on the number of cars  
25

26  
27  
28 <sup>5</sup> Available as of the date of filing: <https://www.fiddymmentfarm.org/index/news/cdph-blueprint-activity-and-business-tiers-framework-august-28-2020-r841/>

1 permitted (*Gish v. Newsom*, 5:20-cv-00755-JGB-KK, Document 13 (E.D. Cal. April 13, 2020)  
2 (“Indeed, drive-in worship services are permitted under the existing Executive Order.”).

3 40. The County updated its May 18, 2020 Order on June 5, 2020. The County  
4 published an Executive Summary of the June 5, 2020 updates, attached hereto as **Exhibit 9**; a  
5 chart listing places to be open under the new updates, attached hereto as **Exhibit 10**; Appendix  
6 C-1 Additional Businesses Allowed to Operate Effective June 5, 2020, attached hereto as  
7 **Exhibit 11**; and Appendix C-2: Allowed Additional Activities Effective June 5, 2020, attached  
8 hereto as **Exhibit 12**.

9 41. As of June 5, 2020, Santa Clara County allowed individuals the unlimited ability  
10 to leave their residence for in-store shopping at retail and shopping centers, television, radio,  
11 and other media services, real estate offices, farmers’ markets, bicycle supply shops, airports,  
12 outdoor dining, grocery stores, recreational institutions, summer camps, and summer school. *See*  
13 Exhibits 9-11.

14 42. “Outdoor museums, historical sites, and gardens” opened without a limitation on  
15 the number of people. *Id.*

16 43. Restaurants opened for outdoor dining and were not subject to the  
17 restriction of 25 or fewer persons the County applied to outdoor religious services. Restaurants  
18 were permitted to have unlimited outdoor seating, as long a social distancing protocols are  
19 followed. *Id.*

20 44. Summer camps, summer schools, and childcare opened and were not subject to  
21 the maximum restriction of 25 or fewer persons the County applies to outdoor religious services  
22 nor are they required to meet outdoors only. The only numerical requirement was that children  
23 were to meet in stable groups of less than 12 people. *Id.*

24 45. In-store retail opened and were not subject to the maximum restriction of 25 or  
25 fewer persons the County applied to outdoor religious services. *Id.* The only numerical  
26 requirement was that retail was limited to one customer for each 200 square feet of floor space.  
27 *Id.* A ten thousand square foot store, for example, could have as many as 50 customers at a time.  
28

1           46. In addition, the County Order required the hosts of “Small Outdoor Ceremonies  
2 and Religious Gatherings” to “maintain a list with the names and contact information of all  
3 participants” and “assist the County Public Health Department in any case investigation and  
4 contact tracing associated with the gathering.” *See* Exhibit 12.

5           47. The County continued to ban indoor religious services, even after the State  
6 permitted houses of worship to start meeting on May 25, 2020. The County’s Frequently Asked  
7 Questions Page<sup>6</sup> asks the following: “Can I leave home to go to my church, synagogue, or  
8 mosque?” The answer states the following: “No. For your safety as well as the safety of your  
9 fellow worshippers, we need to help each other fight the spread of COVID-19 by staying at  
10 home. Places of worship may offer remote access to services, such as by email, video streaming,  
11 or teleconference.” A true and correct copy of the question and answer is attached as **Exhibit**  
12 **13**.

13           48. The County has publicly acknowledged that the right to attend protests regarding  
14 racial injustice is a “fundamental right that is critical to the health of our democracy,” yet it has  
15 not acknowledged the fundamental right to attend worship services. A true and correct copy of  
16 two Facebook posts by the Santa Clara Department of Public Health is attached hereto as  
17 **Exhibit 14**.

18           49. On July 2, 2020, the County issued a Revised Risk Reduction Order, allowing  
19 some activities to resume, and requiring businesses and individuals in the County to comply  
20 with the State Public Health Orders.<sup>7</sup>

21  
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25 \_\_\_\_\_  
26 <sup>6</sup> Available as of the date of filing: [https://www.sccgov.org/sites/covid19/Pages/public-health-](https://www.sccgov.org/sites/covid19/Pages/public-health-orders.aspx)  
27 [orders.aspx](https://www.sccgov.org/sites/covid19/Pages/public-health-orders.aspx).

28 <sup>7</sup> Available as of the date of filing: [https://sanfrancisco.cbslocal.com/2020/07/02/santa-clara-county-to-](https://sanfrancisco.cbslocal.com/2020/07/02/santa-clara-county-to-issue-new-health-order-as-covid-19-cases-surge/)  
[issue-new-health-order-as-covid-19-cases-surge/](https://sanfrancisco.cbslocal.com/2020/07/02/santa-clara-county-to-issue-new-health-order-as-covid-19-cases-surge/)

1           50. On August 28, 2020, the State Public Health Officer issued a Superseding Order  
2 that established a procedure for assigning counties to one of four tiers based on the severity of  
3 COVID-19.<sup>8</sup>

4           51. Initially, the County was in the most restrictive Tier (Purple) but quickly moved  
5 to Tier 2 (Red) on September 8. On October 13, the County moved to Tier 3 (Orange).

6           52. On October 5, 2020, the County issued a Revised Risk Reduction Order,<sup>9</sup>  
7 requiring all residents to heed any directives of the Health Officer.

8           53. Dr. Cody's October 13 Revised Gatherings Directive was more restrictive than the  
9 August 28 State Order and only allowed religious gatherings of up to 25% the facility's capacity  
10 or 100 people, whichever was fewer.<sup>10</sup> Singing and chanting was strictly prohibited indoors.

11           54. On November 16, 2020, the State of California announced that it was moving  
12 the County of Santa Clara back into Tier 1 (Purple).

13           55. Around the same time, the County issued a Mandatory Directive on Capacity  
14 Limitations.<sup>11</sup> The Directive allows shopping centers, retail stores, grocery stores, public  
15 transit, and construction sites, to remain open at limited capacity. However, indoor worship  
16 services are completely banned.

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22 \_\_\_\_\_  
23 <sup>8</sup> Available as of the date of filing: <https://covid19.ca.gov/safer-economy/>

24 <sup>9</sup> Available as of the date of filing: <https://www.sccgov.org/sites/covid19/Pages/order-health-officer-10-05-20.aspx>

25 <sup>10</sup> Available as of the date of filing: <https://www.sccgov.org/sites/covid19/Pages/mandatory-directives-gatherings.aspx>

26 <sup>11</sup> Available as of the date of filing: <https://www.sccgov.org/sites/covid19/Pages/mandatory-directives-capacity-limitations.aspx>  
27  
28

1 56. Religious services are allowed outside but subject to limitations, as set forth in the  
2 Revised Gatherings Directive posted on November 16, 2020.<sup>12 13</sup>

3 57. The Gatherings Directive does not apply to childcare settings, train stations,  
4 airports, businesses, and restaurants.

5 58. Neither the County Orders nor State Orders provide for guidance relating to the  
6 protests and demonstrations that swept the state over the summer.

7 59. Further, neither the State nor the County have issued an order relating to the  
8 current election celebrations over the presidential election.

9 60. Hundreds of people gathered on the streets in Santa Clara County – many of whom  
10 were not socially distanced or wearing masks.

11 61. Approximately two million people live in Santa Clara County.<sup>14</sup> There have been  
12 467 COVID-19 deaths to date.<sup>15</sup>

13 62. There are currently 602 beds available in Santa Clara County, and the seven-day  
14 average of available bed capacity is 29%.<sup>16</sup>

15 **C. Santa Clara County Ordinance**

16 63. On August 11, 2020, the Santa County Board of Supervisors unanimously adopted  
17 an ordinance (the “Ordinance”) authorizing civil administrative fines for violations of public  
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21 <sup>12</sup> Available as of the date of filing: [https://www.sccgov.org/sites/covid19/Pages/mandatory-directives-](https://www.sccgov.org/sites/covid19/Pages/mandatory-directives-gatherings.aspx)  
22 [gatherings.aspx](https://www.sccgov.org/sites/covid19/Pages/mandatory-directives-gatherings.aspx)

23 <sup>13</sup> All COVID-19 health orders issued by the Ventura County Health Officer are hereinafter referred to  
24 as “County Orders.”

25 <sup>14</sup> Available as of the date of filing: <https://www.census.gov/quickfacts/santaclaracountycalifornia>.

26 <sup>15</sup> Available as of the date of filing: <https://www.sccgov.org/sites/covid19/Pages/dashboard-cases.aspx>

27 <sup>16</sup> Available as of the date of filing: [https://www.sccgov.org/sites/covid19/Pages/dashboard-](https://www.sccgov.org/sites/covid19/Pages/dashboard-hospitals.aspx)  
28 [hospitals.aspx](https://www.sccgov.org/sites/covid19/Pages/dashboard-hospitals.aspx)

1 health orders.<sup>17</sup> The Ordinance also declares violations of the public health orders as public  
2 nuisance.

3 64. The civil penalty for each violation involving a commercial activity cannot exceed  
4 \$5000. Fines imposed for each day of a violation automatically double.

5 65. On or about August 23, 2020, the County began issuing daily fines against Pastor  
6 McClure and CCSJ for violations of social distancing protocols at \$250.

7 66. On or about August 24, 2020, daily fines doubled for violation of social distancing  
8 protocols and increased to \$500.

9 67. On or about August 25, 2020, daily fines again doubled for violation of social  
10 distancing protocols and increased to \$1000 and doubled every day thereafter on August 26,  
11 2020 and August 27, 2020.

12 68. On or about August 28, 2020, fines for a violation of social distancing protocols  
13 increased to \$5000 per day and have continued through November.

14 69. On or about August 23, 2020, the County began issuing fines for unlawful indoor  
15 gatherings against Pastor McClure and CCSJ in the amount of \$5000.

16 70. Total fines imposed on Pastor McClure and CCSJ as of November 11, 2020,  
17 exceeds \$600,000. The County will continue to fine them \$5,000 until they correct their  
18 violations.

19 71. On November 8, 2020, the County fined Micaiah \$5,250 because Southridge  
20 purportedly violated indoor gathering limits, social distancing guidelines, and mask  
21 requirements.

22 72. On November 15, 2020, the County issued another warning letter that Southridge  
23 was in violation of public health orders, even though no more than 100 people attended service.  
24 Accordingly, the County stated they would fine Southridge \$5,000 for each unlawful gathering  
25 without a grace period.

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28 <sup>17</sup> Available as of the date of filing: <https://www.sccgov.org/sites/covid19/Pages/ordinance-ns-9-291.aspx>

1 73. The County charges a 10% late fee based upon the amount of the delinquent fine.

2 74. The County does not examine the Plaintiffs financial ability to pay before issuing  
3 the fines.

4 75. Plaintiffs are acting in good faith to assert their First Amendment liberties and are  
5 informed by the decisions in other courts and from at least four of the current Supreme Court  
6 justices.

7 **D. The Religious Beliefs and Practices of Calvary Chapel San Jose**

8 76. CCSJ is a domestic nonprofit corporation organized under the laws of the State of  
9 California.

10 77. Presently, CCSJ holds services at 1175 Hillsdale Avenue, San Jose, California.

11 78. Prior to COVID-19, CCSJ held one service on Sunday mornings and one service  
12 on Wednesday evenings. The services typically last less than two hours.

13 79. CCSJ has an average of 800 people who attend its Sunday morning services.  
14 CCSJ's building is 18,000 square feet and the capacity is 1,800 people.

15 80. CCSJ has a sincerely and deeply held religious belief that it is essential for them  
16 as Christians to assemble and regularly gather in person for the teaching of God's Word, prayer,  
17 worship, baptism, communion, and fellowship. This is based on scriptures from the Bible,  
18 including Hebrews 2:12 and 10:25, Ephesians 5:19, Acts 2:40-47, and Acts 5:40-42. These  
19 activities are primarily fulfilled in the gathering of the Church body for worship services at the  
20 same location on Sunday mornings.

21 81. Based on the Bible, CCSJ believes that we are eternal beings in this temporary  
22 world, and that God's Word (the Bible) is even more essential than food based on the following  
23 scripture in Matthew 4:4: "[Jesus] answered, 'It is written, "Man shall not live by bread alone,  
24 but by every word that comes from the mouth of God.'" Indeed, the joyful duty to assemble  
25 together, in person, for worship services is a central tenet of the Christian faith, both believed  
26 and practiced by the Church according to the Bible, a tenet that is especially important to  
27 maintain during times of turmoil and trouble in the world: "And let us consider how to stir up  
28 one another to love and good works, not neglecting to meet together, as is the habit of some, but

1 encouraging one another, and all the more as you see the Day drawing near.” (Hebrews 10:24–  
2 25.)

3 82. CCSJ also believes that the Bible requires the church to keep one another’s  
4 confidence and trust, to be discreet, and to refrain from sharing private information about others.  
5 (Proverbs 16:28; Proverbs 20:19; Proverbs 25:9; 1 Timothy 5:13; and 2 Timothy 2:16.)

6 83. CCSJ’s congregation is multi-racial and represents a cross-section of society, from  
7 rich to poor and of all ages. Its congregation also includes members and visitors running the  
8 gamut of essential workers. These essential workers and service providers receive spiritual  
9 support, comfort, guidance, and shelter from the ministry of the CCSJ’s personnel and other  
10 members. This also includes members that do not have the technological ability or equipment  
11 necessary to watch church services online.

12 84. Many in CCSJ’s congregation are transplants from other states and countries who  
13 came to San Jose for economic opportunities, leaving behind family and friends.

14 85. The restrictions on indoor gatherings have significant and detrimental secondary  
15 effects on the citizens of San Jose. It is preventing the numerous ministries and social services  
16 provided by churches to the poor, unemployed, and distressed. The humanitarian and spiritual  
17 support provided by CCSJ’s ministries are innumerable.

18 86. These include in-person student and youth ministries where youth are provided  
19 with emotional and spiritual support, and a safe place to receive mentorship and counseling.

20 87. CCSJ has an extensive in-person pastoral counseling ministry for its adult  
21 congregants as well, including grief counseling, crisis counseling, prayer, and other mental  
22 health support for those struggling with anxiety, depression, stress, marital issues, and  
23 loneliness.

24 88. CCSJ also has approximately 20 community groups that meet together on  
25 Wednesdays for Bible studies, counseling, prayer, and emotional support to one another.

26 89. CCSJ has a ministry specific to the Spanish speaking community whereby it  
27 provides innumerable material, emotional, and spiritual support.  
28

1 90. Every 2-3 months, CCSJ hosts homeless outreach events where they provide  
2 bikes, haircuts, dentistry, food, and other material items as well as spiritual, mental, and  
3 emotional support.

4 91. Since the County's initial March 16, 2020 Order, CCSJ has not been able to engage  
5 with the community and its congregants to provide necessary social services and humanitarian  
6 and spiritual support. Although it continues to try to do so to the extent possible, it is extremely  
7 limited by the State and County Orders.

8 92. Since March 2020, CCSJ congregation has experienced an over fifty percent  
9 increase in mental and emotional distress.

10 93. CCSJ congregants have experienced thoughts of suicide, with some attempting  
11 suicide, and some even succeeding.

12 **E. The Religious Beliefs of Southridge**

13 94. Southridge was incorporated as a domestic nonprofit corporation organized under  
14 the laws of the State of California in October of 2013.

15 95. Southridge held service at Oak Grove High School until the middle of July. When  
16 Southridge held indoor and outdoor services though, law enforcement would shut them down.

17 96. Presently, Southridge holds a Sunday service at Calvary Chapel.

18 97. Over the last six weeks, Southridge has averaged around 100 people.

19 98. Southridge has provided masks to congregants at the door.

20 99. Southridge also holds life groups via zoom.

21 100. Southridge's mission is to reach the San Jose community and, through  
22 demonstration of their devotion to God, witness to the local community pursuant to their  
23 religious tenets. (Matthew 28:18-20.) Additionally, Southridge aims to practice exemplification  
24 and evangelism as commanded by Christ through the gospel. (Mark 15:15; 1 Corinthians 12:12,  
25 15:58; Ephesians 1:22-23.)

26 101. Southridge has a sincerely and deeply held religious belief that it is essential for  
27 them as Christians to assemble and regularly gather in-person for the teaching of God's Word,  
28 prayer, worship, baptism, communion and fellowship. This is based on scriptures from the Bible,

1 including Hebrews 2:12 and 10:25, Ephesians 5:19, Acts 2:40-47, and Acts 5:40-42. These  
2 activities are primarily fulfilled in the gathering of the Church body for worship services.

3 102. Based on the Bible, Southridge believes that we are eternal beings in this  
4 temporary world, and that God’s Word (the Bible) is even more essential than food based on the  
5 following scripture in Matthew 4:4: “[Jesus] answered, ‘It is written, “Man shall not live by  
6 bread alone, but by every word that comes from the mouth of God.””” Indeed, the joyful duty  
7 to assemble together, in person, for worship services is a central tenet of the Christian faith, both  
8 believed and practiced by the Church according to the Bible, a tenet that is especially important  
9 to maintain during times of turmoil and trouble in the world: “And let us consider how to stir up  
10 one another to love and good works, not neglecting to meet together, as is the habit of some, but  
11 encouraging one another, and all the more as you see the Day drawing near.” Hebrews 10:24–  
12 25.

13 103. Southridge also believes that the Bible requires the church to keep one another’s  
14 confidence and trust, to be discreet, and to refrain from sharing private information about others.  
15 (Proverbs 16:28; Proverbs 20:19; Proverbs 25:9; 1 Timothy 5:13; and 2 Timothy 2:16.)

16 104. Southridge’s congregation is multi-racial and represents a cross-section of society,  
17 from rich to poor and of all ages. The Church’s congregation also includes members and visitors  
18 running the gamut of essential workers. These essential workers and service providers receive  
19 spiritual support, comfort, guidance, and shelter from the ministry of the Church’s personnel  
20 and its members.

21 105. Many in Southridge’s congregation are transplants from other states and countries  
22 who came to San Jose for economic opportunities, leaving behind family and friends.

23 106. The restrictions on in-person gatherings are having a significant and detrimental  
24 secondary effect on the citizens of San Jose. It is preventing the numerous ministries and social  
25 services provided by churches to the poor, unemployed and distressed.

26 107. Every Sunday up until the middle of July, the Southridge congregation hosts a  
27 homeless outreach and supplies homeless with blankets, socks, toiletries, food, in addition to  
28 prayer, counseling, and spiritual support.

1 108. Southridge offers in-person counseling ministry for its adult congregants as well,  
2 including grief counseling, crisis counseling, prayer, and other mental health support for those  
3 struggling with anxiety, depression, stress, marital issues, and loneliness.

4 109. Southridge also provides financial support to its congregants in need by allocating  
5 a percentage of donations it receives to give back to its congregants.

6 110. Micaiah and Southridge staff have witnessed a significant spike in anxiety and  
7 depression within the congregation. Two people in the Southridge congregation have already  
8 attempted suicide. Southridge staff have also received calls from victims of domestic abuse.

9 **F. COVID-19 Shutdowns Have Contributed to a Mental Health Crisis**

10 111. According to the Census Bureau, the COVID-19 pandemic has resulted in one  
11 third of Americans showing signs of clinical anxiety or depression.<sup>18</sup>

12 112. The Census Bureau has confirmed what Plaintiffs have experienced with their  
13 congregants: their church members are experiencing a significant increase of anxiety, loneliness,  
14 depression, grief, and marital issues since the quarantine started.

15 113. The United States is facing the highest unemployment rate since the Great  
16 Depression. When combined with social isolation and other stressors, this increases deaths of  
17 despair (a term for an alarming rise in early deaths among young and mid-life Americans, from  
18 suicide, drug overdoses, and alcoholism).<sup>19</sup>

19 114. A recent modeling study from the Well Being Trust, relying, in part, upon  
20 unemployment data from the Great Recession of 2008-2009, warns of the likelihood that 75,000  
21 Americans will die from suicide due to the economic conditions. The Well Being Trust further  
22  
23

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24 <sup>18</sup> Available as of the date of filing: <https://www.cdc.gov/nchs/covid19/pulse/mental-health.htm>;  
25 [https://www.usnews.com/news/healthiest-communities/articles/2020-05-27/one-third-of-us-adults-  
26 have-signs-of-depression-anxiety-during-pandemic](https://www.usnews.com/news/healthiest-communities/articles/2020-05-27/one-third-of-us-adults-have-signs-of-depression-anxiety-during-pandemic).

27 <sup>19</sup> Available as of the date of filing: [https://www.inquirer.com/health/coronavirus/coronavirus-covid-  
28 19-deaths-of-despair-anxiety-depression-unemployment-20200601.html](https://www.inquirer.com/health/coronavirus/coronavirus-covid-19-deaths-of-despair-anxiety-depression-unemployment-20200601.html).

1 warns that a higher estimate may be more accurate considering the negative impact of isolation  
2 and uncertainty during the shutdown.<sup>20</sup>

3 115. Children are likewise negatively affected by the Covid-19 crisis. According to  
4 another study, post-traumatic stress scores were four times higher in children who had been  
5 quarantined than children who were not.<sup>21</sup>

6 116. The Kaiser Family Foundation conducted a study from March 25-30, 2020 and  
7 found that 45 percent of adults say the pandemic has affected their mental health, and 19 percent  
8 say it has had a major impact.<sup>22</sup>

9 117. According to CNN, the Disaster Distress Helpline, a federal crisis hotline, saw an  
10 increase of 891% in calls for help in March 2020 compared to March 2019.<sup>23</sup>

11 118. Reports of persons relapsing and/or overdosing on opioids and other drugs due to  
12 the stress of the shutdown are widespread.<sup>24</sup>

13 119. Further exacerbating the issue, as of June 1, 2020, the County has experienced  
14 numerous acts of violence against first responders and peaceful protesters and millions of dollars  
15 in damage to both public and private property amid ongoing protests over the police killing of  
16

17 <sup>20</sup> Available as of the date of filing: <https://wellbeingtrust.org/areas-of-focus/policy-and-advocacy/reports/projected-deaths-of-despair-during-covid-19/>.

19 <sup>21</sup> Available as of the date of filing: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30460-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30460-8/fulltext).

21 <sup>22</sup> Available as of the date of filing: [https://www.washingtonpost.com/health/coronavirus-is-harming-the-mental-health-of-tens-of-millions-of-people-in-us-new-poll-finds/2020/04/02/565e6744-74ee-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/health/coronavirus-is-harming-the-mental-health-of-tens-of-millions-of-people-in-us-new-poll-finds/2020/04/02/565e6744-74ee-11ea-85cb-8670579b863d_story.html).

24 <sup>23</sup> Available as of the date of filing: <https://www.cnn.com/2020/04/10/us/disaster-hotline-call-increase-wellness-trnd/index.html>.

26 <sup>24</sup> Available as of the date of filing: <https://www.cnn.com/2020/05/07/health/opioid-epidemic-covid19-pandemic-trnd/index.html>.

28 <https://www.addictioncenter.com/news/2020/04/covid-19-is-causing-people-to-relapse/>.

1 George Floyd in Minneapolis.<sup>25</sup> This violence, vandalism, and looting is unprecedented,  
2 especially in the city of San Jose, where Plaintiffs are located.

3 120. Worship services are essential to the health and welfare of the people of Santa  
4 Clara County, especially during this time of devastation and despair.

5 121. A study published on May 6, 2020, in JAMA Psychiatry found “that religious  
6 service attendance is associated with a lower risk of death from despair among registered nurses  
7 and health care professionals. These results may be important in understanding trends in deaths  
8 from despair in the general population.”<sup>26</sup>

9 122. According to a poll conducted by Southridge of 4,000 people who have attended  
10 Southridge Church, 79% of people polled stated that attending a religious service would help  
11 their mental health and the mental health issues they are struggling with.

12 **FIRST CAUSE OF ACTION**

13 **THE ORDERS VIOLATE PLAINTIFFS’ RIGHT TO FREE EXERCISE OF**  
14 **RELIGION UNDER THE FIRST AMENDMENT TO THE UNITED STATES**  
15 **CONSTITUTION**

16 **(By all Plaintiffs against all State and County Defendants)**

17 123. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as  
18 if fully set forth herein.

19 124. The Free Exercise Clause of the First Amendment to the United States  
20 Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendants from  
21 abridging Plaintiffs’ right to free exercise of religion.

22 125. Southridge and CCSJ have sincerely held religious beliefs that the Bible is the  
23 infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

24 \_\_\_\_\_  
25 <sup>25</sup>Available as of the date of filing: [https://www.sfchronicle.com/bayarea/article/San-Jose-imposes-  
27 curfew-in-bid-to-reduce-violence-15307218.php](https://www.sfchronicle.com/bayarea/article/San-Jose-imposes-<br/>26 curfew-in-bid-to-reduce-violence-15307218.php).

28 <sup>26</sup>Available as of the date of filing:  
<https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2765488>.

1           126. Southridge and CCSJ have sincerely held religious beliefs, rooted in the Bible,  
2 that followers of Jesus Christ are not to forsake the assembling of themselves together.

3           127. The State and County Orders, on their face and as applied, severely restrict  
4 Plaintiffs' ability to worship.

5           128. The State and County Orders, on their face and as applied, target Plaintiffs'  
6 sincerely held religious beliefs and practices.

7           129. The State and County Orders, on their face and as applied, impermissibly burden  
8 Plaintiffs' sincerely held religious beliefs, compel Plaintiffs to either change those beliefs or to  
9 act in contradiction to them, and force Plaintiffs to choose between the teachings and  
10 requirements of its sincerely held religious beliefs or the mandates in Defendants' County  
11 Orders.

12           130. The State and County Orders, on their face and as applied, place Plaintiffs in an  
13 irresolvable conflict between compliance with the orders and adherence to their sincerely held  
14 religious beliefs.

15           131. The State and County Orders, on their face and as applied, put substantial pressure  
16 on Plaintiffs to violate their sincerely held religious beliefs by ignoring the fundamental  
17 teachings and tenets of their religious texts including those tenets requiring assembly and  
18 worship.

19           132. The State and County Orders, on their face and as applied, are neither neutral nor  
20 generally applicable, but rather specifically and discriminatorily target the religious beliefs,  
21 speech, assembly, and viewpoint of Plaintiffs.

22           133. The State and County Orders, on their face and as applied, constitute a substantial  
23 burden on Plaintiffs' sincerely held religious beliefs as they are prevented from practicing the  
24 teachings of their religious texts.

25           134. Defendants lack a compelling, legitimate, or rational interest in the application of  
26 differential standards for churches and faith-based gatherings than those applicable to similar  
27 gatherings and secular businesses.

28

1 135. Even if the State and County Orders’ restrictions on faith-based gatherings were  
2 supported by a compelling interest, which they are not, they do not employ the least restrictive  
3 means to accomplish the government’s purported interest and are not narrowly tailored to said  
4 interest.

5 136. The State and County Orders fail to accommodate Plaintiffs’ sincerely held  
6 religious beliefs. Instead, the Orders intentionally aim to frustrate Plaintiffs’ practices.

7 137. The State and County Orders, on their face and as applied, constitute a religious  
8 gerrymander. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534, (1993).

9 138. The State and County Orders, on their face and as applied, have caused, are  
10 causing, and will continue to cause Plaintiffs’ immediate and irreparable harm, and actual and  
11 undue hardship.

12 139. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of  
13 their constitutional rights.

14 140. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as  
15 hereinafter set forth in the prayer for relief.

16 **SECOND CAUSE OF ACTION**

17 **THE ORDERS VIOLATE PLAINTIFFS’ RIGHT TO FREE EXERCISE AND**  
18 **ENJOYMENT OF RELIGION UNDER ARTICLE I, SECTION 4 OF THE**  
19 **CALIFORNIA CONSTITUTION**

20 **(By all Plaintiffs against State and County Defendants)**

21 141. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as  
22 if fully set forth herein.

23 142. Article I, Section 4 of the Constitution of the State of California states, “Free  
24 exercise and enjoyment of religion without discrimination or preference are guaranteed.”

25 143. “[T]he religion clauses of the California Constitution are read more broadly than  
26 their counterparts in the federal Constitution.” *Carpenter v. City and County of San Francisco*,  
27 93 F.3d 627, 629 (1996).

28

1           144. Southridge and CCSJ have sincerely held religious beliefs that the Bible is the  
2 infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its teachings.

3           145. Southridge and CCSJ have sincerely held religious beliefs, rooted in the Bible,  
4 that followers of Jesus Christ are not to forsake the assembling of themselves together.

5           146. The State and County Orders, on their face and as applied, severely restrict  
6 Plaintiffs' ability to practice their faith.

7           147. The State and County Orders, on their face and as applied, target Plaintiffs'  
8 sincerely held religious beliefs and practices.

9           148. The State and County Orders, on their face and as applied, impermissibly burden  
10 Plaintiffs' sincerely held religious beliefs, compel Plaintiffs to either change those beliefs or to  
11 act in contradiction to them, and force Plaintiffs to choose between the teachings and  
12 requirements of its sincerely held religious beliefs or the mandates in Defendants' Orders.

13           149. The State and County Orders, on their face and as applied, place Plaintiffs in an  
14 irresolvable conflict between compliance with the orders and adherence to their sincerely held  
15 religious beliefs.

16           150. The State and County Orders, on their face and as applied, put substantial pressure  
17 on Plaintiffs to violate their sincerely held religious beliefs by ignoring the fundamental  
18 teachings and tenets of their religious text including those tenets concerning assembly and  
19 worship.

20           151. The State and County Orders, on their face and as applied, are neither neutral nor  
21 generally applicable, but rather specifically and discriminatorily target the religious beliefs,  
22 speech, assembly, and viewpoint of Plaintiffs.

23           152. The State and County Orders, on their face and as applied, constitute a substantial  
24 burden on Plaintiffs' sincerely held religious beliefs as they are prevented from practicing the  
25 teachings of their religious texts.

26           153. Defendants lack a compelling, legitimate, or rational interest in the application of  
27 differential standards for churches and faith-based gatherings than those applicable to similar  
28 gatherings and secular businesses.

1 154. Even if the restrictions on faith-based gatherings were supported by a compelling  
2 interest, which they are not, they do not employ the least restrictive means to accomplish the  
3 government's purported interest and are not narrowly tailored to said interest.

4 155. The State and County Orders fail to accommodate Plaintiffs' sincerely held  
5 religious beliefs. Instead, the State and County Orders intentionally aim to frustrate Plaintiffs'  
6 practices.

7 156. The State and County Orders, on their face and as applied, constitute a religious  
8 gerrymander. *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534, (1993).

9 157. The State and County Orders, on their face and as applied, have caused, are  
10 causing, and will continue to cause Plaintiffs' immediate and irreparable harm, and actual and  
11 undue hardship.

12 158. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of  
13 their constitutional rights.

14 159. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as  
15 hereinafter set forth in the prayer for relief.

16 **THIRD CAUSE OF ACTION**

17 **THE ORDERS VIOLATE PLAINTIFFS' RIGHT TO FREEDOM OF ASSEMBLY**  
18 **UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION**

19 **(By Plaintiffs against State and County Defendants)**

20 160. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as  
21 if fully set forth herein.

22 159. The First Amendment to the United States Constitution, as applied to the states by  
23 the Fourteenth Amendment, prohibits Cross-Defendants from abridging the right of the people  
24 to peaceable assembly. The State Orders and County Orders, on their face and as applied,  
25 severely restrict Plaintiffs religious rights.

26 160. The State and County Orders, on their face and as applied, were, are, and continue  
27 to be an unconstitutional prior restraint on Plaintiffs' right to assemble.

28

1           161. The State and County Order, on their face and as applied, unconstitutionally  
2 discriminate on the basis of viewpoint.

3           162. The State and County Order, on their face and as applied, unconstitutionally  
4 discriminate on the basis of content.

5           163. Plaintiffs lack a compelling, legitimate, or rational interest in the State and County  
6 Orders' application of differential standards for church and faith-based assemblies than those  
7 applicable to assembly at secular "essential" businesses or services and other commercial  
8 establishments where people assemble and congregate.

9           164. The State and County Orders, on their face and as applied, are not the least  
10 restrictive means to accomplish any permissible government purpose.

11           165. The State and County Orders, on their face and as applied, are not narrowly  
12 tailored to serve the government's purported interest.

13           166. The State and County Orders, on their face and as applied, do not leave open ample  
14 alternative channels for assembly or communication for Plaintiffs.

15           167. The State and County Orders, on their face and as applied, are irrational and  
16 unreasonable and impose unjustifiable and unreasonable restrictions on Plaintiffs'  
17 constitutionally protected right to assembly.

18           168. The State and County Orders, on their face and as applied, impermissibly vest  
19 unbridled discretion in the hands of government officials, including Defendants.

20           169. The State and County Orders, on their face and as applied, are under-inclusive by  
21 limiting their prohibitions to only certain businesses, entities, organizations, including Plaintiffs,  
22 where assembly is deemed non-essential.

23           170. The State and County Orders, on their face and as applied, are unconstitutionally  
24 vague and overbroad as they chill and abridge the free assembly rights of Plaintiffs.

25           171. The State and County Orders, on their face and as applied, are a violation of  
26 Plaintiffs' right to free assembly and have caused, are causing, and will continue to cause  
27 Plaintiffs to suffer immediate and irreparable injury and undue and actual hardship.  
28

1 172. Plaintiffs have no other adequate remedy at law to correct the past, present, and  
2 continuing deprivation of its constitutional rights.

3 173. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as  
4 hereinafter set forth in the prayer for relief.

5 **FOURTH CAUSE OF ACTION**

6 **THE ORDERS VIOLATE THE ESTABLISHMENT CLAUSE OF THE FIRST**  
7 **AMENDMENT OF THE UNITED STATES CONSTITUTION**

8 **(By all Plaintiffs against State and County Defendants)**

9 174. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as  
10 if fully set forth herein.

11 175. The Orders and Defendants' enforcement thereof violate the First Amendment,  
12 both facially and as-applied to Plaintiffs. The Establishment Clause of the "First Amendment  
13 mandates governmental neutrality between religion and religion, and between religion and  
14 nonreligion." *McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005)  
15 (*citing Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)). The Establishment Clause applies to  
16 the states through the Due Process Clause of the Fourteenth Amendment. *Everson v. Board of*  
17 *Ed. of Ewing*, 330 U.S. 1 (1947).

18 176. The Orders, as stated, advance no secular purpose. Defendants have treated  
19 similarly situated industries differently.

20 177. The Orders and Defendants' *ad hoc* enforcement of them have the primary effect  
21 of inhibiting religious activity.

22 178. Defendants have failed to avoid excessive government entanglement  
23 with religion. Defendants permit only some forms of religious observance, such as  
24 livestreamed, at-home religious activities.

25 179. There is no historical precedent in the United States for inhibiting religious  
26 practices on terms more restrictive than those imposed on identical secular activities, as  
27 Defendants do now.

28

1 180. The State and County Orders, on their face and as applied, have caused, are  
2 causing, and will continue to cause Plaintiffs' immediate and irreparable harm, and actual and  
3 undue hardship.

4 181. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of  
5 their constitutional rights.

6 182. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as  
7 hereinafter set forth in the prayer for relief.

8 **FIFTH CAUSE OF ACTION**

9 **THE COUNTY ORDER VIOLATES PLAINTIFF' IMPLIED RIGHT TO PRIVACY**  
10 **UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

11 **(By Plaintiffs against County Defendants)**

12 183. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as  
13 if fully set forth herein.

14 184. Under the First Amendment to the U.S. Constitution, there is an implied right to  
15 privacy, or privilege, for citizens when they are exercising their First Amendment rights. In other  
16 words, the government usually cannot force citizens to publicly disclose how—and where—  
17 they exercise their First Amendment rights. For example, courts have ruled that citizens cannot  
18 be forced by the government to disclose their political affiliations and private memberships  
19 outside of very limited circumstances (heightened scrutiny). If the government were simply  
20 allowed to do so, there would be an enormous chilling effect on speech.

21 185. Here, through its Order, the County is requiring places of worship to collect the  
22 name and contact information of individuals engaged in the protected activity of exercising their  
23 religion by attending church services. Requiring the disclosure of such information is identical  
24 to, and perhaps worse than, the type of request deemed inappropriate by federal courts in the  
25 past. For example, what if this request forced a Muslim-born exchange student from Iran or  
26 Saudi Arabia, who was attending a college in this County, to publicly disclose that he or she is  
27 going to a Christian church (a serious crime in his home country).

28

1 186. The government, moreover, does not need to enforce this order to slow the spread  
2 of COVID-19. This is shown by the fact that other places, such as malls or shopping centers, are  
3 not required to write down and track all its patrons' names and contact information. Copious  
4 amounts of people travel to and from shopping centers, touching items they may want to  
5 purchase and perhaps even standing for prolonged periods of time, next to people not from their  
6 household, in particular shops. If tracking people's personal contact information were paramount  
7 to stopping the spread of COVID-19, shopping centers, of all places, would be required to do  
8 so. But they are not. Churches, therefore, who usually receive way less visitors than shopping  
9 centers per day, should not be required to do so either. In other words, if the government believes  
10 it is effectively handling the COVID-19 pandemic by not requiring malls to track personal  
11 information, then churches should be left alone as well.

12 187. Therefore, because of privacy concerns and the government's lack of necessity,  
13 the Order requiring Plaintiffs to track and record the personal contact information of its  
14 congregation is unconstitutional.

15 188. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as  
16 hereinafter set forth in the prayer for relief.

17 **SIXTH CAUSE OF ACTION**

18 **THE ORDINANCE AND THE COUNTY'S ENFORCEMENT THEREOF**  
19 **VIOLATES THE EIGHTH AMENDMENT OF THE UNITED STATES**  
20 **CONSTITUTION**

21 **(By all Plaintiffs against the Santa Clara County Board of Supervisors and the County**  
22 **Defendants)**

23 189. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as  
24 if fully set forth herein.

25 190. The Eight Amendment to the United States Constitution states: "Excessive bail  
26 shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."  
27  
28

1 191. A punishment is considered cruel and unusual if, *inter alia*, it is so  
2 disproportionate to the crime for which it is inflicted or is grossly out of proportion to the severity  
3 of the crime.

4 192. The possible fine in California for aggravated battery is a fine up to no more than  
5 \$10,000.

6 193. McClure and CCSJ were fined in excess of \$600,000 for merely providing an  
7 essential service to their community during a global pandemic. CCSJ has not reported one  
8 known COVID-19 case.

9 194. Micaiah and Southridge were fined over \$5,000 even though their gatherings do  
10 not exceed 100 people and have been safe.

11 195. It is grossly out of portion for the County to fine the Plaintiffs with no evidence of  
12 actual harm, while another person could severely physically harm someone and be fined only  
13 10 thousand dollars.

14 196. WHEREFORE, Plaintiffs respectfully pray for the relief against Defendants as  
15 hereinafter set forth in the prayer for relief.

16 **SEVENTH CAUSE OF ACTION**

17 **THE ORDINANCE AND THE COUNTY'S ENFORCEMENT THEREOF**  
18 **VIOLATES ARTICLE 1, SECTION 7 OF THE CALIFORNIA CONSTITUTION**  
19 **(By all Plaintiffs against the Santa Clara County Board of Supervisors and the County**  
20 **Defendants)**

21 197. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as  
22 if fully set forth herein.

23 198. Article 1, Section 7 of the California Constitution protects against cruel and  
24 unusual punishment and excessive fines.

25 199. A punishment is considered cruel and unusual if, *inter alia*, it is so  
26 disproportionate to the crime for which it is inflicted or is grossly out of proportion to the severity  
27 of the crime.

28



1 8565 through 8574 of the Government Code. The Emergency Services gives the Governor  
2 unbridled discretion over fundamental liberties for an indefinite period.

3 209. On March 19, 2020, in reliance on sections 8567 and 8267 of the Government  
4 Code, Governor Newsom promulgated Executive Order N-33-20, which delegated wholesale  
5 authority to non-elected decisionmakers in the CDPH to fashion the state’s protocols for creating  
6 and enforcing restrictions related to COVID-19. Likewise, Governor's Executive Order N-60-  
7 20 delegated wholesale authority to the county health officers to establish and implement health  
8 measures within each jurisdiction.

9 210. In doing so, the Executive Order grants CDPH and Santa Clara County with  
10 complete discretion to decide fundamental issues of policy that surround the controversial topic  
11 of restricting how people may worship. These issues include questions related to how churches  
12 and their flock can and should worship, whether the public has a right to worship inside of their  
13 churches, whether people can sing while they worship, as well as the appropriate level of  
14 restrictions relating to how, when, and where people worship.

15 211. Non-elected decisionmakers are therefore making judgments about what is  
16 important to a certain religion and what is not. (See Cal. Const., art. I, § 4.)

17 212. Additionally, Governor Newsom’s and the CDPH’s orders’ failure to address  
18 these fundamental policy issues has resulted in a complete lack of ascertainable standards to  
19 contain and guide CDPH and County Health Officer’s’ exercise of delegated power to fashion  
20 restrictions on worship.

21 213. The consequence of Governor Newsom declaring a State of Emergency in  
22 response to COVID-19 under the California Emergency Services Act, sections 8565 through  
23 8574 of the Government Code, has resulted in deprivation of civil liberties.

24 214. Sections 8565 through 8574 of the Government Code are not narrowly tailored to  
25 meet a compelling state interest because these sections lack legal text limiting the Governor’s  
26 and executive branch’s restriction of civil liberties to the “the least restrictive alternative.”  
27  
28







1           iii. Defendants will permit Plaintiffs the opportunity to comport their behavior to any  
2 further limitations or restrictions that Defendants may impose in any future modification,  
3 revision, or amendment of the Orders or similar directive, instruction, ordinance, or other legally  
4 operative mechanisms; and

5           iv. The County will not enforce the Ordinance against Plaintiffs which violates their  
6 right against cruel and unusual punishment.

7           C. That this Court render a Declaratory Judgment declaring that the Orders and/or  
8 Ordinance both on their face and as applied by Defendants are unconstitutional under the United  
9 States Constitution and California Constitution, and declaring that:

10           i. The State and County Defendants have violated Plaintiffs' right to free exercise of  
11 religion by impermissibly prohibiting faith-based gatherings, substantially burdening their  
12 sincerely held religious beliefs and applying criteria that are neither neutral nor generally  
13 applicable to religious and non-religious gatherings;

14           ii. State and County Defendants have violated the Establishment Clause by  
15 impermissibly demonstrating hostility towards faith-based gatherings and by impermissibly  
16 showing favoritism to certain non-religious gatherings;

17           iii. The County Board of Supervisors and County have violated Plaintiffs' right  
18 against cruel and unusual punishment under the United States Constitution and California  
19 Constitution; and

20           iv. The State and County Defendants have violated the Separations of Powers  
21 Doctrine under the California Constitution.

22           D. That this Court award Plaintiffs nominal damages and/or compensatory damages  
23 for the violation of Plaintiffs' constitutional rights.

24           E. That this Court adjudge, decree, and declare the rights and other legal relations  
25 within the subject matter here in controversy so that such declaration shall have the full force  
26 and effect of final judgment.

27           F. That this Court retain jurisdiction over the matter for the purposes of enforcing  
28 this Court's order.

1 G. That this Court declare Plaintiffs are a prevailing party and award Plaintiffs the  
2 reasonable costs and expenses of this action, including reasonably attorney's fees in accordance  
3 with 42 U.S.C. §§1983 and 1988 and California Civil Code § 52.1(i).

4 H. That this Court grant civil penalties for each Plaintiff in the statutory amount of  
5 \$25,000 for each Civ. Code § 52.1(b) violation.

6 I. That this Court award Plaintiffs punitive damages; and

7 J. That this Court grant such other and further relief as this Court deems equitable  
8 and just under the circumstances.

9 Respectfully submitted,

10 TYLER & BURSCH, LLP

11  
12 Dated: November 25, 2020

/s/ Robert H. Tyler, Esq.  
Robert H. Tyler  
Attorney for Plaintiffs

13  
14  
15 NATIONAL CENTER FOR LAW &  
16 POLICY

17 Dated: November 25, 2020

/s/ Dean R. Broyles, Esq.  
Dean R. Broyles  
Attorneys for Plaintiffs

**EXHIBIT “1”**

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

**ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020**

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

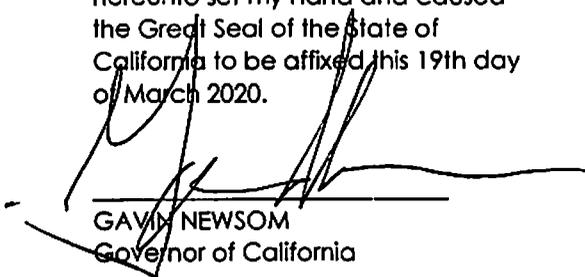
The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of March 2020.

  
\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# EXHIBIT “2”



**U.S. Department of Justice**

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 19, 2020

The Honorable Gavin Newsom  
Governor of California  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

Dear Governor Newsom:

We are writing to you to raise several civil rights concerns with the treatment of places of worship in Executive Orders N-33-20 and N-60-20 and documents relating to the California Reopening Plan.

Of course, we recognize the duty that you have to protect the health and safety of Californians in the face of a pandemic that is unprecedented in our lifetimes. You and other leaders around the country are called on to balance multiple competing interests and evaluate the constantly changing information available to you about COVID-19, and make your best judgment on courses of action.

Attorney General William P. Barr recently issued a statement on *Religious Practice and Social Distancing*, in conjunction with a Mississippi case in which the Department of Justice participated regarding restrictions on worship. In the statement, the Attorney General emphasized the need to practice social distancing to control the spread of COVID-19. He also noted that temporary restrictions that would be unacceptable in normal circumstances may be justified. But, “even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity.” Simply put, there is no pandemic exception to the U.S. Constitution and its Bill of Rights.

Laws that do not treat religious activities equally with comparable nonreligious activities are subject to heightened scrutiny under the Free Exercise Clause of the First Amendment. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993). Laws that are not both neutral toward religion and generally applicable are invalid unless the government can prove that they further a compelling interest and are pursued through the least restrictive means possible. Religious gatherings may not be singled out for unequal treatment compared to other nonreligious gatherings that have the same effect on the government’s public health interest, absent the most compelling reasons.

Executive Order N-33-20 (March 19, 2020) ordered Californians to remain at home except to engage in authorized necessary activities as laid out by the Public Health Officer at the time and as modified going forward. The Public Health Officer's April 28 "essential workforce" list does not appear to treat religious activities and comparable nonreligious activities the same.

The list includes "faith-based services" but only if "provided through streaming or other technologies." In-person religious services are thus apparently prohibited even if they adhere to social distancing standards.

The list of nonreligious workers who are not so restricted by the Executive Order and essential workforce list when telework "is not practical" is expansive. For example, the list includes "Workers supporting the entertainment industries, studios, and other related establishments, provided they follow covid-19 public health guidance around social distancing." Likewise, "workers supporting ecommerce" are included as essential, regardless of whether the product they are selling and shipping are life-preserving products or not. This facially discriminates against religious exercise. California has not shown why interactions in offices and studios of the entertainment industry, and in-person operations to facilitate nonessential ecommerce, are included on the list as being allowed with social distancing where telework is not practical, while gatherings with social distancing for purposes of religious worship are forbidden, regardless of whether remote worship is practical or not.

Even more pronounced unequal treatment of faith communities is evident in California's Reopening Plan, as set forth in Executive Order N-60-20 (May 4, 2020), and in the documents the California Department of Public Health produced pursuant to it, including the "Resilience Roadmap" (<https://covid19.ca.gov/roadmap/>) and "County Variance Attestations" (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Local-Variance-Attestations.aspx>). Places of worship are not permitted to hold religious worship services until Stage 3. However, in Stage 2, schools, restaurants, factories, offices, shopping malls, swap meets, and others are permitted to operate with social distancing. And as noted, ecommerce and entertainment industry activities are already permitted with social distancing. This constitutes precisely the kind of differential treatment the Supreme Court identified in the *Lukumi* decision in which the government is not willing to impose on certain activities the same restrictions it is willing to impose on constitutionally protected religious worship. While it is true that social distancing requirements applied to places of worship may inevitably result in much smaller congregations than some faith groups would like, in our experience with other controversies around the country, many places of worship are quite content to operate at 15-25% of capacity in a way that allows for social distancing between family groups.

The Department of Justice does not seek to dictate how States such as California determine what degree of activity and personal interaction should be allowed to protect the safety of their citizens. However, we are charged with upholding the Constitution and federal statutory protections for civil rights. Whichever level of restrictions you adopt, these civil rights protections mandate equal treatment of persons and activities of a secular and religious nature.

We recognize that three U.S. District Courts have denied Temporary Restraining Orders (TRO's) sought by plaintiffs against Executive Order N-33-20, *Abiding Place Ministries v. Wooten*, No. 3:20-cv-00683 (S.D. Cal. April 10, 2020) (no written opinion); *Gish v. Newsom*, No. 5:20-CV-755 (C.D. Cal. Apr. 23, 2020); *Cross Culture Christian Ctr. v. Newsom*, No. 2:20-CV-00832 (E.D. Cal. May 5, 2020), and one denied a TRO against the Reopening Plan, which is

now on appeal to the Ninth Circuit. *South Bay United Pentecostal Church v. Newsom*, No. 3:20-cv-865 (S.D. Cal. May 15, 2020) (oral transcript ruling). These TRO decisions do not justify California's actions. The *Abiding Place*, *Gish*, and *Cross Culture* TRO decisions do not address the Stage 2 reopening, and *South Bay United Pentecostal* does not describe why worship services can be distinguished from schools, restaurants, factories or other places Stage 2 permits people to come together. Other decisions around the country have followed *Lukumi* to make clear that reopening plans cannot unfairly burden religious services as California has done. *See, e.g., Robert v. Neace*, No. 20-5465 (6th Cir. May 11, 2020).

Religion and religious worship continue to be central to the lives of millions of Americans. This is true now more than ever. Religious communities have rallied to protect their communities from the spread of this disease by making services available online, in parking lots, or outdoors, by indoor services with a majority of pews empty, and in numerous other creative ways that otherwise comply with social distancing and sanitation guidelines. We believe, for the reasons outlined above, that the Constitution calls for California to do more to accommodate religious worship, including in Stage 2 of the Reopening Plan.

Thank you for your prompt attention to this matter. Should you wish to discuss further, please contact United States Attorney for the Eastern District of California McGregor Scott at (916) 554-2730 or [mgregor.scott@usdoj.gov](mailto:mgregor.scott@usdoj.gov).

Sincerely,

*Eric S. Dreiband*

05/19/2020

Eric S. Dreiband  
Assistant Attorney General  
Civil Rights Division

McGregor W. Scott  
United States Attorney  
Eastern District of California

Nicola T. Hanna  
United States Attorney  
Central District of California

David L. Anderson  
United States Attorney  
Northern District of California

Robert S. Brewer  
United States Attorney  
Southern District of California

cc: The Honorable Xavier Becerra  
Attorney General of California

# EXHIBIT “3”



Centers for Disease Control and Prevention  
CDC 24/7: Saving Lives, Protecting People™

## Coronavirus Disease 2019 (COVID-19)

### Interim Guidance for Communities of Faith

CDC offers the following general considerations to help communities of faith discern how best to practice their beliefs while keeping their staff and congregations safe. Millions of Americans embrace worship as an essential part of life. For many faith traditions, gathering together for worship is at the heart of what it means to be a community of faith. But as Americans are now aware, gatherings present a risk for increasing spread of COVID-19 during this Public Health Emergency. CDC offers these suggestions for faith communities to consider and accept, reject, or modify, consistent with their own faith traditions, in the course of preparing to reconvene for in-person gatherings while still working to prevent the spread of COVID-19.

This guidance is not intended to infringe on rights protected by the First Amendment to the U.S. Constitution or any other federal law, including the Religious Freedom Restoration Act of 1993 (RFRA). The federal government may not prescribe standards for interactions of faith communities in houses of worship, and in accordance with the First Amendment, no faith community should be asked to adopt any mitigation strategies that are more stringent than the mitigation strategies asked of similarly situated entities or activities.

In addition, we note that while many types of gatherings are important for civic and economic well-being, religious worship has particularly profound significance to communities and individuals, including as a right protected by the First Amendment. State and local authorities are reminded to take this vital right into account when establishing their own re-opening plans.

### Scaling Up Operations

- Establish and maintain communication with local and State authorities to determine current mitigation levels in your community.
- Provide protections for staff and congregants at [higher risk for severe illness](#) from COVID-19. Offer options for staff at [higher risk for severe illness](#) (including older adults and people of all ages with certain underlying medical conditions) that limit their exposure risk. Offer options for congregants at [higher risk of severe illness](#) that limit their exposure risk (e.g., remote participation in services).
- Consistent with applicable federal and State laws and regulations, put in place policies that protect the privacy and confidentiality of people at [higher risk for severe illness](#) regarding underlying medical conditions.
- Encourage any organizations that share or use the facilities to also follow these considerations as applicable.
- If your community provides social services in the facility as part of its mission, consult CDC's information for [schools](#) and [businesses and workplaces](#), as relevant, for helpful information.

### Safety Actions

#### Promote [healthy hygiene practices](#)

- Encourage staff and congregants to maintain good hand hygiene, [washing hands](#) with soap and water for at least 20 seconds.
- Have adequate supplies to support healthy hygiene behaviors, including soap, hand sanitizer with at least 60 percent alcohol (for those who can safely use hand sanitizer), tissues, and no-touch trash cans.
- Encourage staff and congregants to cover coughs and sneezes with a tissue or use the inside of their elbow. Used tissues should be thrown in the trash and hands washed.
- Whenever soap and water are not readily available, hand sanitizer with at least 60% alcohol can be used.
- Consider posting signs on how to [stop the spread](#)  of COVID-19 and how to [promote everyday protective measures](#) , such as [washing hands](#), covering coughs and sneezes, and [properly wearing a face covering](#) .

## Cloth face coverings

- Encourage use of [cloth face coverings](#) among staff and congregants. Face coverings are most essential when [social distancing](#) is difficult. Note: [Cloth face coverings](#) should not be placed on children younger than 2 years old, anyone who has trouble breathing or is unconscious, and anyone who is incapacitated or otherwise unable to remove the cloth face covering without assistance. [Cloth face coverings](#) are meant to protect other people in case the wearer is unknowingly infected but does not have symptoms.

## Intensify cleaning, disinfection, and ventilation

- [Clean and disinfect](#) frequently touched surfaces at least daily and shared objects in between uses.
- Develop a schedule of increased, routine cleaning and disinfection.
- Avoid use of items that are not easily cleaned, sanitized, or disinfected.
- Ensure [safe and correct application](#) of disinfectants and keep them away from children.
- Cleaning products should not be used near children, and staff should ensure that there is adequate ventilation when using these products to prevent children or themselves from inhaling toxic fumes.
- Ensure that ventilation systems operate properly and increase circulation of outdoor air as much as possible by opening windows and doors, using fans, etc. Do not open windows and doors if they pose a safety risk to children using the facility.
- If your faith community offers multiple services, consider scheduling services far enough apart to allow time for cleaning and disinfecting high-touch surfaces between services. [Take steps](#) to ensure that all water systems and features (for example, drinking fountains, decorative fountains) are safe to use after a prolonged facility shutdown to minimize the risk of [Legionnaires' disease](#) and other diseases associated with water.

## Promote social distancing

- Take steps to limit the size of gatherings in accordance with the guidance and directives of state and local authorities and subject to the protections of the First Amendment and any other applicable federal law.
- Promote [social distancing](#) at services and other gatherings, ensuring that clergy, staff, choir, volunteers and attendees at the services follow social distancing, as circumstances and faith traditions allow, to lessen their risk.
- Consider holding services and gatherings in a large, well-ventilated area or outdoors, as circumstances and faith traditions allow.
- Consider appropriate mitigation measures, including taking steps to limit the size of gatherings maintaining [social distancing](#), at other gatherings such as funerals, weddings, religious education classes, youth events, support groups and any other programming, where consistent with the faith tradition.
- Provide physical guides, such as tape on floors or walkways and signs on walls, to ensure that staff and children remain at least 6 feet apart in lines and at other times (e.g. guides for creating "one-way routes" in hallways).

## Take steps to minimize community sharing of worship materials and other items

- Consistent with the community's faith tradition, consider temporarily limiting the sharing of frequently touched objects, such as worship aids, prayer rugs, prayer books, hymnals, religious texts and other bulletins, books, or other items passed or shared among congregants, and encouraging congregants to bring their own such items, if possible, or photocopying or projecting prayers, songs, and texts using electronic means.
- Modify the methods used to receive financial contributions. Consider a stationary collection box, the main, or electronic methods of collection regular financial contributions instead of shared collection trays or baskets.
- Consider whether physical contact (e.g., shaking hands, hugging, or kissing) can be limited among members of the faith community.
- If food is offered at any event, consider pre-packaged options, and avoid buffet or family-style meals if possible.

## Nursery/Childcare

- If a nursery or childcare will be provided during services and events, refer to CDC's information on [preventing the spread of COVID-19 in childcare settings](#) and adapt as needed for your setting.
- If holding summer day camps, refer to CDC's information on [youth and summer camps](#) and adapt as needed.

## Staffing and Training

- Train all clergy and staff in the above safety actions. Consider conducting the training virtually, or, if in-person, ensure that [social distancing](#) is maintained.

## Monitoring and Preparing

### Check for [signs and symptoms](#)

- Encourage staff or congregants who are sick or who have had close contact with a person with COVID-19 to stay home. Share CDC's criteria for staying home with staff and congregants so that they know how to care for themselves and others. Consider posting signs at entrances with this information.

### Plan for when a staff member or congregant becomes sick

- Identify an area to separate anyone who exhibits [symptoms](#) of COVID-19 during hours of operation, and ensure that children are not left without adult supervision.
- Establish procedures for safely transporting anyone who becomes [sick](#) at the facility to their home or a healthcare facility.
- Notify local health officials if a person diagnosed with COVID-19 has been in the facility and communicate with staff and congregants about potential exposure while maintaining confidentiality as required by the [Americans with Disabilities Act \(ADA\)](#) [↗](#) or other applicable laws and in accordance with religious practices.
- Advise those with [exposure](#) to a person diagnosed with COVID-19 to [stay home and self-monitor](#) for symptoms, and follow [CDC guidance](#) if symptoms develop.
- Close off areas used by the [sick](#) person and do not use the area until after cleaning and disinfection. Ensure [safe and correct application](#) of disinfectants and keep disinfectant products away from children.

- Advise staff and congregants with [symptoms](#) of COVID-19 or who have tested positive for COVID-19 not to return to the facility until they have met CDC's [criteria to discontinue home isolation](#).

## Maintain healthy operations

- Implement flexible sick leave and related flexible policies and practices for staff (e.g., allow work from home, if feasible), and provide requested reasonable accommodation absent undue hardship to individuals with disabilities under the [Americans with Disabilities Act \(ADA\)](#) [↗](#) or other applicable laws and in accordance with religious practices.
- Monitor absenteeism and create a roster of trained back-up staff.
- Designate a staff person to be responsible for responding to COVID-19 concerns. Staff, clergy, volunteers, and congregants should know who this person is and how to contact them if they become sick or are around others diagnosed with COVID-19. This person should also be aware of state or local regulatory agency policies related to group gatherings.
- As volunteers often perform important duties (e.g., greeters, ushers, childcare), consider similar monitoring, planning, and training for them. Consider that volunteer and staffing may need to increase to implement cleaning and safety protocols and to accommodate additional services with reduced attendance.
- Communicate clearly with staff and congregants about actions being taken to protect their health.

## Signs and Messages

- Post [signs](#) in highly visible locations (e.g., entrances, restrooms, gathering halls/community rooms/gyms) that [promote everyday protective measures](#) [↗](#) and describe how to [stop the spread](#) [↗](#) of germs (such as by [properly washing hands](#) and [properly wearing a cloth face covering](#) [↗](#) ).
- Include messages (for example, [videos](#)) about behaviors that prevent the spread of COVID-19 when communicating with staff and congregants (such as in emails and on community websites and [social media accounts](#)).
- Find freely available CDC print and digital resources on CDC's [communications resources](#) main page.

## Closing

- Check [state](#) and [local](#) [↗](#) health department notices daily about transmission in the community and adjust operations.
- In the event a person diagnosed with COVID-19 is determined to have been in the building and poses a risk to the community, it is strongly suggested to dismiss attendees, then properly clean and disinfect the area and the building where the individual was present before resuming activities.

Page last reviewed: May 23, 2020

Content source: [National Center for Immunization and Respiratory Diseases \(NCIRD\), Division of Viral Diseases](#)

# EXHIBIT “4”



# COVID-19 INDUSTRY GUIDANCE:

## Places of Worship and Providers of Religious Services and Cultural Ceremonies

May 25, 2020

[covid19.ca.gov](https://covid19.ca.gov)



## OVERVIEW

On March 19, 2020, the State Public Health Officer and Director of the California Department of Public Health issued an order requiring most Californians to stay at home to disrupt the spread of COVID-19 among the population.

The impact of COVID-19 on the health of Californians is not yet fully known. Reported illness ranges from very mild (some people have no symptoms) to severe illness that may result in death. Certain groups, including people aged 65 or older and those with serious underlying medical conditions, such as heart or lung disease or diabetes, are at higher risk of hospitalization and serious complications. Transmission is most likely when people are in close contact with an infected person, even if that person does not have any symptoms or has not yet developed symptoms.

Precise information about the number and rates of COVID-19 by industry or occupational groups, including among critical infrastructure workers, is not available at this time. There have been multiple outbreaks in a range of workplaces, indicating that workers are at risk of acquiring or transmitting COVID-19 infection. Examples of these workplaces include places of worship, long-term care facilities, prisons, food production, warehouses, meat processing plants, and grocery stores.

As stay-at-home orders are modified, it is essential that all possible steps be taken to ensure the safety of workers and the public.

Key prevention practices include:

- ✓ physical distancing to the maximum extent possible,
- ✓ use of face coverings by employees and volunteers (where respiratory protection is not required) and congregants/visitors,
- ✓ frequent handwashing and regular cleaning and disinfection,
- ✓ training employees and volunteers on these and other elements of the COVID-19 prevention plan.

In addition, it will be critical to have in place appropriate processes to identify new cases of illness in workplaces and, when they are identified, to intervene quickly and work with public health authorities to halt the spread of the virus.

## PURPOSE

This document provides guidance for places of worship and providers of religious services and cultural ceremonies (referred to collectively as “places of worship”) to support a safe, clean environment for employees, interns and trainees, volunteers, scholars, and all other types of workers (referred to collectively as “staff”) as well as congregants, worshippers, visitors, etc. (referred to collectively as “visitors” or “congregants”).

This guidance does not obligate places of worship to resume in-person activity. Further, it is strongly recommended that places of worship continue to facilitate remote services and other related activities for those who are vulnerable to COVID19 including older adults and those with co-morbidities.

Even with adherence to physical distancing, convening in a congregational setting of multiple different households to practice a personal faith carries a relatively higher risk for widespread transmission of the COVID-19 virus, and may result in increased rates of infection, hospitalization, and death, especially among more vulnerable populations. In particular, activities such as singing and group recitation negate the risk-reduction achieved through six feet of physical distancing.

\*Places of worship must therefore limit attendance to 25% of building capacity or a maximum of 100 attendees, whichever is lower. This limitation will be in effect for the first 21-days of a county public health department's approval of religious services and cultural ceremonies activities at places of worship within their jurisdictions.

Upon 21-days, the California Department of Public Health, in consultation with county Departments of Public Health, will review and assess the impact of these imposed limits on public health and provide further direction as part of a phased-in restoration of activities in places of worship.

NOTE: This guidance is not intended for food preparation and service, delivery of items to those in need, childcare and daycare services, school and educational activities, in-home caregiving, counseling, office work, and other activities that places and organizations of worship may provide. Organizations that perform these activities must follow applicable guidance on the [COVID-19 Resilience Roadmap website](#).

The guidance is not intended to revoke or repeal any employee rights, either statutory, regulatory or collectively bargained, and is not exhaustive, as it does not include county health orders, nor is it a substitute for any existing safety and health-related regulatory requirements such as those of Cal/OSHA.<sup>1</sup> Stay current on changes to public health guidance and state/local orders, as the COVID-19 situation continues. Cal/OSHA has more safety and health guidance on their Cal/OSHA Guidance on Requirements to Protect Workers from Coronavirus [webpage](#). The CDC has additional guidance [for community- and faith-based organizations](#).



## Workplace Specific Plan

- Establish a written, workplace-specific COVID-19 prevention plan at every location, perform a comprehensive risk assessment of all work areas, and designate a person at each workplace to implement the plan.
- Identify contact information for the local health department where the workplace is located for communicating information about COVID-19 outbreaks among staff and congregants/visitors.
- Train and communicate with staff and employee representatives on the plan.
- Regularly evaluate workplaces for compliance with the plan and document and correct deficiencies identified.
- Investigate any COVID-19 illness and determine if any work-related factors could have contributed to risk of infection. Update the plan as needed to prevent further cases.
- Identify close contacts (within six feet for 15 minutes or more) of an infected staff member and take steps to isolate COVID-19 positive staff and close contacts.
- Adhere to the guidelines below. Failure to do so could result in workplace illnesses that may cause operations to be temporarily closed or limited.



## Topics for Employee and Volunteer Training

- Information on [COVID-19](#), how to prevent it from spreading, and which underlying health conditions may make individuals more susceptible to contracting the virus.
- Self-screening at home, including temperature and/or symptom checks using [CDC guidelines](#).
- The importance of not coming to work or participating in activities if staff have symptoms of COVID-19 as [described by the CDC](#), such as a frequent cough, fever, difficulty breathing, chills, muscle pain, sore throat, recent loss of taste or smell, or if they or someone they live with have been diagnosed with COVID-19.

- To seek medical attention if their symptoms become severe, including persistent pain or pressure in the chest, confusion, or bluish lips or face. Updates and further details are available on [CDC's webpage](#).
- The importance of frequent handwashing with soap and water, including scrubbing with soap for 20 seconds (or using hand sanitizer with at least 60% ethanol or 70% isopropanol when staff cannot get to a sink or handwashing station, per [CDC guidelines](#)).
- The importance of physical distancing, both at work and off work time (see Physical Distancing section below).
- Proper use of face coverings, including:
  - Face coverings do not protect the wearer and are not personal protective equipment (PPE).
  - Face coverings can help protect people near the wearer, but do not replace the need for physical distancing and frequent handwashing.
  - Face coverings must cover the nose and mouth.
  - Employees should wash or sanitize hands before and after using or adjusting face coverings.
  - Avoid touching the eyes, nose, and mouth.
  - Face coverings should be washed after each shift.
- Ensure all types of staff including temporary, contract, and volunteer workers are also properly trained in COVID-19 prevention policies and have necessary PPE. Discuss these responsibilities ahead of time with organizations supplying temporary, contract, and/or volunteer staff.
- Information on employer or government-sponsored leave benefits the employee may be entitled to receive that would make it financially easier to stay at home. See additional information on [government programs supporting sick leave and worker's compensation for COVID-19](#), including employee's sick leave rights under the [Families First Coronavirus Response Act](#) and employee's rights to workers' compensation benefits and presumption of the work-relatedness of COVID-19 pursuant to the Governor's [Executive Order N-62-20](#).



## Individual Control Measures and Screening

- Provide temperature and/or symptom screenings for all staff at the beginning of their shift. Make sure the temperature/symptom screener avoids close contact with staff to the extent possible. Both screeners and staff should wear face coverings for the screening.
- If requiring self-screening at home, which is an appropriate alternative to providing it at the establishment, ensure that screening was performed prior to the worker and/or volunteer leaving the home for their shift and follows [CDC guidelines](#), as described in the Topics for Employee Training section above.
- Encourage staff and congregants/visitors who are sick or exhibiting symptoms of COVID-19, or who have family members who are ill, to stay home.
- Employers should provide and ensure workers and volunteers use all required protective equipment, including eye protection and gloves, where necessary.
- Places of worship should consider where disposable gloves use may be helpful to supplement frequent handwashing or use of hand sanitizer; examples are for staff who are screening others for symptoms or handling commonly touched items. All workers and volunteers should wear gloves when handling items contaminated by body fluids.
- Face coverings are strongly recommended when staff are in the vicinity of others. Workers and volunteers should have face coverings available and wear them when at all facilities, in offices, when making home visits as part of providing services, or in a vehicle during work-related travel with others. Face coverings must not be shared. Places of worship are generally encouraged to provide face coverings but must provide them when required by employer rules or these guidelines.
- Staff, volunteers, etc. should not enter the home or visit someone who as tested positive for, exhibited symptoms of, or has been in contact with someone infected with COVID-19 for an appropriate waiting period as [described by CDC guidelines](#).
- Places of worship must take reasonable measures, including posting signage in strategic and highly-visible locations, to remind congregants/visitors that they should use face coverings and practice physical distancing whenever possible. Babies and children under age two should not wear face coverings, in accordance with [CDC guidelines](#).

- Use social media, website, texts, email, newsletters, etc., to communicate the steps being taken to protect congregants/visitors and staff so that they are familiar with the policies (including to stay home if experiencing symptoms or are at increased risk of becoming sick, face coverings, physical distancing, handwashing and/or sanitizing, and cough etiquette), before arriving at the facility. Staff and volunteers are strongly encouraged to remind congregants/visitors of these practices with announcements during services or on welcoming guests.
- Congregants/visitors should be screened for temperature and/or symptoms upon arrival to places of worship and asked to use hand sanitizer and to wear face coverings.



## Cleaning and Disinfecting Protocols

- Perform thorough cleaning of high traffic areas such as lobbies, halls, chapels, meeting rooms, offices, libraries, and study areas and areas of ingress and egress including stairways, stairwells, handrails, and elevator controls. Frequently disinfect commonly used surfaces including doorknobs, toilets, handwashing facilities, pulpits and podiums, donation boxes or plates, altars, and pews and seating areas.
- Establish frequent cleaning and disinfection of personal work areas such as desks and cubicles and supply the necessary cleaning products. Provide time for workers to implement cleaning practices during their shift. Cleaning assignments should be assigned during working hours as **part of the staff's job duties**.
- Discourage sharing items used in worship and services (such as prayer books, cushions, prayer rugs, etc.) whenever possible and provide single-use or digital copies or ask congregants/visitors to bring personal items instead. Avoid sharing work equipment and supplies, such as phones, office equipment, computers, etc., wherever possible. Never share PPE.
- Where such items must be shared, disinfect between shifts or uses, whichever is more frequent, including the following: shared office equipment (copiers, fax machines, printers, telephones, keyboards, staplers, etc.) and items in shared worship items, etc., with a cleaner appropriate for the surface.
- Ensure that sanitary facilities stay operational and stocked at all times and provide additional soap, paper towels, and hand sanitizer when needed. Consider more frequently cleaning and disinfecting handwashing facilities that are used more often. Use signage to reinforce handwashing.

- Disinfect microphones and stands, music stands, instruments and other items on pulpits and podiums between each use. Consult equipment manufacturers to determine appropriate disinfection steps, particularly for soft, porous surfaces such as foam mufflers.
- Consider using disposable seat covers for congregants/visitors, particularly on porous surfaces or where a facility has multiple daily services. Discard and replace seat covers between each use. Provide disposable or washable covers on pillows used as seating on floors and change/wash them after each use.
- Install hand sanitizer dispensers, touchless whenever possible, at entrances and contact areas such as meeting rooms, lobbies, and elevator landings.
- When choosing cleaning chemicals, establishments should use products approved for use against COVID-19 on the [Environmental Protection Agency \(EPA\)-approved](#) list and follow product instructions. Use disinfectants labeled to be effective against emerging viral pathogens, diluted household bleach solutions (5 tablespoons per gallon of water), or alcohol solutions with at least 70% alcohol that are appropriate for the surface. Provide staff training on manufacturer's directions and Cal/OSHA requirements for safe use. Workers and volunteers using cleaners or disinfectants should wear gloves or other protective equipment as required by the product instructions.
- Wash religious garments and linens after each service or event, at the highest water setting possible. Ask congregants/visitors to bring their own storage bags for personal garments and shoes. Staff, congregants, and visitors should wear gloves when handling others' dirty linens, shoes, etc.
- Discontinue passing offering plates and similar items that move between people. Use alternative giving options such as secure drop boxes that do not require opening/closing and can be cleaned and disinfected. Consider implementing digital systems that allow congregants/visitors to make touch-free offerings.
- Mark walking paths between spaces designated for congregants/visitors to sit/kneel so that people do not walk where someone may touch their head to the floor.
- During meetings and services, introduce fresh outside air, for example by opening doors/windows (weather permitting) and operating ventilation systems.
- Consider installing portable high-efficiency air cleaners, upgrading the building's air filters to the highest efficiency possible, and making other

modifications to increase the quantity of outside air and ventilation in worship areas, offices, and other spaces.



## Physical Distancing Guidelines

- Places of worship should continue to provide services through alternative methods (such as via internet live and/or recorded streaming, telephone, drive-in, etc.) whenever possible.
- Consider holding in-person meetings and providing in-person services outside whenever possible.
- Implement measures to ensure physical distancing of at least six feet between workers, staff, congregants/visitors, etc. This can include use of physical partitions or visual cues (e.g., floor or pew markings or signs to indicate where people should sit and stand). Reconfigure seating and standing areas to maintain physical distancing of six feet or more between congregants/visitors from different households. Consider limiting seating to alternate rows. Members of the same household may be seated together but should maintain at least six feet of distance from other households.
- Consider dedicating staff to help people maintain distances during activities.
- Shorten services to limit the length of time congregants/visitors spend at facilities whenever possible. This could include limiting speeches, asking congregants/visitors to put on garments at home before arrival, etc.
- Close places of worship for visitation outside of scheduled services, meetings, etc., whenever possible.
- Consider implementing a reservation system to limit the number of congregants/visitors attending facilities at a time. This can include the use of digital platforms or other types of tools.
- Encourage congregants/visitors to meet with the same group, particularly when services meet frequently and/or require a certain number of people to be present. This can reduce the spread of transmission by minimizing the number of different individuals who come into close contact with each other.
- Consider offering additional meeting times (per day or per week) so that fewer guests attend meetings and services at one time. Clean meeting areas between each use as described in this guidance.

- Discontinue large gatherings that encourage congregants/visitors to travel and break physical distances during activities, such as concerts, large holiday and life event celebrations and remembrances.
- Children should remain in the care of those in their household unit and not interact with children of other parties at any time while visiting facilities. Close play areas and discontinue activities and services for children where physical distancing of at least six feet cannot be maintained.
- Encourage congregants/visitors to physically distance themselves from others outside their household, avoid touching surfaces, and to leave the facility if they do not feel well.
- Consider limiting touching for religious and/or cultural purposes, such as holding hands, to members of the same household.
- Dedicate staff to direct guests to meeting rooms upon entry to places of worship rather than congregating in lobbies or common areas. Consider using ushers to help people find places to sit and stand that are at least six feet apart from other guests/household groups. Ask congregants/visitors to arrive and leave in a single group to minimize crossflow of people. Welcome and dismiss congregants/visitors from altars, podiums, meeting rooms, etc. in an orderly way to maintain physical distancing and minimize crossflow of traffic, to the extent possible.
- Prop or hold doors open during peak periods when congregants/visitors are entering and exiting facilities, if possible and in accordance with security and safety protocols.
- Close or restrict common areas, such as break rooms, kitchenettes, foyers, etc. where people are likely to congregate and interact. Consider installing barriers or increase physical distance between tables/seating when there is continued use of these areas.
- Turn off public drinking water fountains and place signs informing congregants/visitors they are inoperable.
- Remove from service or find low-community touch alternatives for communal/religious water containers such as fonts, sinks, and vessels. Empty and change water between uses. Where there is a possibility of contaminant splash, staff, congregants, visitors, etc., are strongly encouraged to use equipment to protect the eyes, nose, and mouth using a combination of face coverings, protective glasses, and/or face shields. Reusable protective equipment such as shields and glasses should be properly disinfected between uses.
- When washing is a required activity, modify practices whenever possible to limit splashing and the need to clean and disinfect washing facilities.

Encourage necessary washing to be performed at home prior to entering a facility, if possible.

- Reconfigure podiums and speaker areas, office spaces, meeting rooms, conference rooms, etc., to allow for at least six feet between people. Face coverings are strongly recommended at all times for congregants/visitors and staff, especially when physical distance of at least six feet is not possible.
- Establish directional hallways and passageways for foot traffic, if possible, and designate separate routes for entry and exit into meeting rooms, offices, etc., to help maintain physical distancing and lessen the instances of people closely passing each other.
- Limit the number of individuals riding in an elevator and ensure the use of face coverings. Post signage regarding these policies.
- Utilize practices, when feasible and necessary, to limit the number of staff and congregants/visitors in office, meeting spaces, etc., at one time. This may include scheduling (e.g. staggering start/end times), establishing alternating days for onsite reporting, returning to places of worship in phases, or continued use of telework when feasible.
- Consider offering workers and volunteers who request modified duties options that minimize their contact with congregants/visitors and other staff (e.g., office duties rather than working as an usher or managing administrative needs through telework).
- Stagger staff breaks, in compliance with wage and hour regulations, to maintain physical distancing protocols.
- Discontinue nonessential travel and encourage distance meetings via phone and internet.
- Close self-service item selection such as pamphlet displays and bookshelves and provide these items to congregants/visitors individually as necessary. Consider delivering items and information electronically.
- Consider limiting the number of people that use the restroom at one time to allow for physical distancing.
- Discourage staff, congregants, visitors, etc., from engaging in handshakes, hugs, and similar greetings that break physical distance. Take reasonable measures to remind people to wave or use other greetings.
- Reconfigure parking lots to limit congregation points and ensure proper separation (e.g., closing every other space). If performing drive-in

services, ensure vehicle windows and doors are closed if six feet of distance is not possible between vehicles.

- Continue to support non-in person attendance of services and other related activities by those who are vulnerable to COVID19 including older adults and those with co-morbidities.



## Considerations for Places of Worship

- Discontinue offering self-service food and beverages. Do not hold potlucks or similar family-style eating and drinking events that increase the risk of cross contamination. If food and beverages must be served, provide items in single-serve, disposable containers whenever possible. Employees or volunteers serving food should wash hands frequently and wear disposable gloves and face coverings.
- Strongly consider discontinuing singing, group recitation, and other practices and performances where there is increased likelihood for transmission from contaminated exhaled droplets. Modify practices such as limiting the number people reciting or singing, ensuring physical distancing greater than six feet between people, or opt to celebrate these practices outside with physical distancing, etc., if these practices cannot be discontinued.
- Consider modifying practices that are specific to particular faith traditions that might encourage the spread of COVID-19. Examples are discontinuing kissing of ritual objects, allowing rites to be performed by fewer people, avoiding the use of a common cup, offering communion in the hand instead of on the tongue, providing pre-packed communion items on chairs prior to service, etc., in accordance with [CDC guidelines](#).



## Considerations for Funerals

- Consider reduced visitor capacity and stagger visitation times at funerals, wakes, etc., if possible. Follow all cleaning and disinfection measures as described in this guidance. Whenever possible, remind visitors to maintain physical distance from each other, from staff and volunteers, and from the deceased.
- Consider modifying religious or cultural practices when washing or shrouding bodies of those who have died from COVID-19, in accordance with guidance from [CDPH](#) and the [CDC](#). If washing the body or shrouding are important religious or cultural practices, work with funeral home staff and families to reduce exposure as much as possible. All people

participating in these activities must wear disposable gloves and if there will be splashing of fluids, people must use additional protective equipment including protection for the eyes, nose, and mouth, such as face shields.

- Consult and comply with local guidance regarding limits on gathering sizes, travel, holding funerals for those who died from COVID-19, etc.
- Consider other recommendations and modifications of services related to places of worship outlined above, as applicable for funeral services.

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<sup>1</sup>Additional requirements must be considered for vulnerable populations. Places of worship must comply with all [Cal/OSHA](#) standards and be prepared to adhere to its guidance as well as guidance from the [Centers for Disease Control and Prevention \(CDC\)](#) and the [California Department of Public Health \(CDPH\)](#). Additionally, places of worship must be prepared to alter their operations as those guidelines change.



# EXHIBIT “5”

**County of Santa Clara  
Public Health Department**

Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> Floor  
San José, CA 95126  
408.792.3798



**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SANTA CLARA DIRECTING  
ALL INDIVIDUALS IN THE COUNTY TO CONTINUE SHELTERING AT  
THEIR PLACE OF RESIDENCE EXCEPT FOR IDENTIFIED NEEDS AND  
ACTIVITIES, IN COMPLIANCE WITH SPECIFIED REQUIREMENTS;  
CONTINUING TO EXEMPT HOMELESS INDIVIDUALS FROM THE ORDER  
BUT URGING GOVERNMENT AGENCIES TO PROVIDE THEM SHELTER;  
REQUIRING ALL BUSINESSES AND RECREATION FACILITIES THAT  
ARE ALLOWED TO OPERATE TO IMPLEMENT SOCIAL DISTANCING,  
FACE COVERING, AND CLEANING PROTOCOLS; AND DIRECTING ALL  
BUSINESSES, FACILITY OPERATORS, AND GOVERNMENTAL AGENCIES  
TO CONTINUE THE TEMPORARY CLOSURE OF ALL OTHER  
OPERATIONS NOT ALLOWED UNDER THIS ORDER**

**DATE OF ORDER: MAY 18, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; Cal. Penal Code §§ 69, 148(a)(1); Santa Clara County Ordinance Code § A1-28.)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the April 29, 2020 Order of the Health Officer directing all individuals to shelter in place (“Prior Order”). This Order amends, clarifies, and continues certain terms of the Prior Order to ensure continued social distancing and limit person-to-person contact to reduce the rate of transmission of Novel Coronavirus Disease 2019 (“COVID-19”). This Order continues to restrict most activity, travel, and governmental and business functions to essential needs and to the Outdoor Activities and Outdoor Businesses that the prior Order allowed to resume. But in light of progress achieved in slowing the spread of COVID-19 in the County of Santa Clara (“County”) and neighboring counties, the Order allows a limited number of Additional Businesses and Additional Activities (as defined in Section 15 below and described in Appendix C-1 and C-2) to resume operating, subject to specified conditions and safety precautions to reduce associated risk of COVID-19 transmission. This gradual and measured resumption of activity is designed to manage the overall volume, duration, and intensity of person-to-person contact to prevent a surge in COVID-19 cases in the County and

neighboring counties. As further provided in Section 11 below, the Health Officer will continue to monitor the risks of the activities and businesses allowed under this Order based on the COVID-19 Indicators (as defined in Section 11) and other data. The businesses and activities allowed under this Order may be modified as necessary based on the Health Officer's analysis of that data. As of the effective date and time of this Order set forth in Section 18 below, all individuals, businesses, and government agencies in the County are required to follow the provisions of this Order.

2. The primary intent of this Order is to ensure that County residents continue to shelter in their places of residence to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services. This Order allows a limited number of Additional Businesses and Additional Activities to resume while the Health Officer continues to assess the transmissibility and clinical severity of COVID-19 and monitors indicators described in Section 11. All provisions of this Order must be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
3. All individuals currently living within the County are ordered to shelter at their place of residence. They may leave their residence only for Essential Activities as defined in Section 15.a, Outdoor Activities as defined in Section 15.m, and Additional Activities as defined in Section 15.o; Essential Governmental Functions as defined in Section 15.d; Essential Travel as defined in Section 15.i; to work for Essential Businesses as defined in Section 15.f, Outdoor Businesses as defined in Section 15.l, and Additional Businesses as defined in Section 15.o; or to perform Minimum Basic Operations for other businesses with facilities that must remain temporarily closed, as provided in Section 15.g. For clarity, individuals who do not currently reside in the County must comply with all applicable requirements of the Order when in the County. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 15.k, except as expressly provided in this Order. All people (except for children under the age of six, and people who have trouble breathing or are unable to remove a face covering without assistance) must wear face coverings at all times when at a business facility or using public transportation, and are otherwise strongly urged to wear face coverings as provided in the Health Officer's April 17, 2020 Critical Guidance on Facial Coverings (the "Face Covering Guidance").
5. All businesses with a facility in the County, except Essential Businesses, Outdoor Businesses, and Additional Businesses, as defined in Section 15, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 15. For clarity, all businesses may continue operations consisting exclusively of owners, personnel, volunteers, or contractors performing activities at their own residences (i.e.,

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working from home). All Essential Businesses are strongly encouraged to remain open. But all businesses are directed to maximize the number of personnel who work from home. Essential Businesses, Outdoor Businesses, and Additional Businesses may only assign those personnel who cannot perform their job duties from home to work outside the home. Outdoor Businesses must conduct all business and transactions involving members of the public outdoors.

6. As a condition of operating under this Order, the operators of all businesses must prepare or update, implement, and distribute to their personnel a Social Distancing Protocol for each of their facilities in the County frequented by personnel or members of the public and post accompanying materials, as specified in Section 15.h. In addition to the Social Distancing Protocol, all businesses allowed to operate under this Order must follow any industry-specific guidance issued by the Health Officer related to COVID-19 and any conditions on operation specified in this Order, including those specified in Appendix C-1. Except as otherwise provided in Appendix C-1, businesses that include an Essential Business or Outdoor Business component at their facilities alongside other components must, to the extent feasible, scale down their operations to the Essential Business and Outdoor Business components only; provided, however, mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products.
7. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel, Essential Activities, Outdoor Activities, or Additional Activities together.
8. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel, as defined below in Section 15.i, is prohibited. People may use public transit only for purposes of performing Essential Activities, Outdoor Activities, or Additional Activities, or to travel to and from Essential Businesses, Outdoor Businesses, or Additional Businesses, to maintain Essential Governmental Functions, or to perform Minimum Basic Operations at businesses that are not allowed to resume operations at their facilities. Transit agencies and people riding on public transit must comply with Social Distancing Requirements, as defined in Section 15.k, to the greatest extent feasible, and personnel and passengers must wear face coverings. This Order allows travel into or out of the County only to perform Essential Activities, Outdoor Activities, or Additional Activities; to operate, perform work for, or access a business allowed to operate under this Order; to perform Minimum Basic Operations at other businesses; or to maintain Essential Governmental Functions.
9. This Order is issued based on evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; continued uncertainty regarding the degree of undetected asymptomatic transmission; scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health

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complications, including death, from COVID-19; and further evidence that others, including younger and otherwise healthy people, are also at risk for serious outcomes. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Further, evidence shows that the virus can survive for hours to days on surfaces and be indirectly transmitted between individuals. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other direct or indirect interpersonal interactions can result in preventable transmission of the virus.

10. The collective efforts taken to date regarding this public health emergency have slowed the virus' trajectory, but the emergency and the attendant risk to public health remain significant. As of May 16, 2020, there are 2,453 confirmed cases of COVID-19 in the County (up from 123 on March 15, 2020, just before the first shelter-in-place order). The cumulative number of confirmed cases continues to increase, though the rate of increase has slowed in the weeks leading up to this Order. Evidence suggests that the restrictions on mobility and social distancing requirements imposed by the Prior Order (and the orders that preceded it) are slowing the rate of increase in community transmission and confirmed cases by limiting interactions among people, consistent with scientific evidence of the efficacy of similar measures in other parts of the country and world.
11. The local health officers who jointly issued the Prior Order are monitoring several key indicators ("COVID-19 Indicators"), which are among the many factors informing their decisions whether to modify existing shelter-in-place restrictions. Progress on several of these COVID-19 Indicators makes it appropriate, at this time, to allow certain Additional Businesses to resume operations and Additional Activities to take place under specified conditions, as set forth in Section 15.I. But the continued prevalence of the virus that causes COVID-19 requires most activities and business functions to remain restricted, and those activities that are allowed to occur must do so subject to social distancing and other infection control practices identified by the Health Officer. Evaluation of the COVID-19 Indicators will be critical to determinations by the local health officers regarding whether the restrictions imposed by this Order will be further modified. The Health Officer will continually review whether modifications to the Order are warranted based on: (1) progress on the COVID-19 Indicators; (2) developments in epidemiological and diagnostic methods for tracing, diagnosing, treating, or testing for COVID-19; and (3) scientific understanding of the transmission dynamics and clinical impact of COVID-19. The COVID-19 Indicators include, but are not limited to, the following:
  - a. The trend of the number of new COVID-19 cases and hospitalizations per day.
  - b. The capacity of hospitals and the health system in the County and region, including acute care beds and Intensive Care Unit beds, to provide care for COVID-19 patients and other patients, including during a surge in COVID-19 cases.

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- c. The supply of personal protective equipment (PPE) available for hospital staff and other healthcare providers and personnel who need PPE to safely respond to and treat COVID-19 patients.
  - d. The ability and capacity to quickly and accurately test persons to determine whether they are COVID-19 positive, especially those in vulnerable populations or high-risk settings or occupations.
  - e. The ability to conduct case investigation and contact tracing for the volume of cases and associated contacts that will continue to occur, isolating confirmed cases and quarantining persons who have had contact with confirmed cases.
12. The scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission to help (a) protect the most vulnerable; (b) prevent the health care system from being overwhelmed; (c) prevent long-term chronic health conditions, such as cardiovascular, kidney, and respiratory damage and loss of limbs from blood clotting; and (d) prevent deaths. Continuation of the Prior Order is necessary to slow the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the County and advancing toward a point in the public health emergency where transmission can be controlled. At the same time, since the Prior Order was issued the County has continued to make progress in expanding health system capacity and healthcare resources and in slowing community transmission of COVID-19. In light of progress on these indicators, and subject to continued monitoring and potential public health-based responses, in addition to those already allowed to operate under the Prior Order as Essential Businesses and Outdoor Businesses, it is appropriate at this time to begin allowing operation of specified Additional Businesses. These businesses are identified based on health-related considerations and transmission risk factors including, but not limited to, the intensity and quantity of contacts and the ability to substantially mitigate transmission risks associated with their operations.
13. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the February 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, and the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency.
14. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer (the “State Shelter Order”), which set baseline statewide restrictions on non-residential business activities, effective until further notice, and the Governor’s March 19, 2020 Executive Order N-33-20 directing California residents to follow the State Shelter Order. The May 4, 2020 Executive Order issued by Governor Newsom and May 7, 2020 Order of the State Public

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Health Officer permit certain businesses to reopen if a local health officer believes the conditions in that jurisdiction warrant it, but expressly acknowledge the authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than those implemented by the State Public Health Officer. This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this County, which are necessary to control the public health emergency as it is evolving within the County and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the County will worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that all businesses with facilities that are allowed to operate under the Order comply with the Social Distancing Requirements. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County. In addition, to the extent any federal guidelines allow activities that are not allowed by this Order, this Order controls and those activities are not allowed.

15. Definitions and Exemptions.

- a. For the purposes of this Order, individuals may leave their residence only to perform the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are:
  - i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, or visiting a health care professional.
  - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, or products necessary to maintain the habitability, sanitation, and operation of residences.
  - iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:

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1. Outdoor recreation activity at parks, beaches, and other open spaces must comply with any restrictions on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking, or closing the area to all public access;
  2. Except as otherwise provided in Appendix C-2, use of outdoor recreational areas and facilities with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, gym equipment, climbing walls, picnic areas, dog parks, pools, spas, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers;
  3. Except as otherwise provided in Appendix C-2, sports or activities that include the use of shared equipment or physical contact between participants may only be engaged in by members of the same household or living unit; and
  4. Use of shared outdoor facilities for recreational activities that may occur outside of residences consistent with the restrictions set forth in subsections 1, 2, and 3, above, including, but not limited to, golf courses, skate parks, and athletic fields, must, before they may begin, comply with social distancing and health/safety protocols posted at the site and any other restrictions, including prohibitions, on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19.
- iv. To perform work for or access an Essential Business, Outdoor Business, or Additional Business; or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations, as defined in this Section.
  - v. To provide necessary care for a family member or pet in another household who has no other source of care.
  - vi. To attend a funeral with no more than 10 individuals present.
  - vii. To move residences. When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention.
  - viii. To engage in Additional Activities, as specified in Appendix C-2.
- b. For the purposes of this Order, individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations”

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also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.

- c. For the purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, recycling, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate personnel, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new personnel or contractors to perform such functions. Each governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.
- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- f. For the purposes of this Order, “Essential Businesses” are:
  - i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a

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significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.

- iii. Food cultivation, including farming, livestock, and fishing;
- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- v. Construction, but only as permitted under the State Shelter Order and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into this Order by this reference. Public works projects shall also be subject to Appendix B, except if other protocols are specified by the Health Officer;
- vi. Newspapers, television, radio, and other media services;
- vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services. This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business;
- viii. Bicycle repair and supply shops;
- ix. Banks and related financial institutions;
- x. Service providers that enable real estate transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other residential real estate viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when the occupant is present in the residence);
- xi. Hardware stores;
- xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, or operation of residences and Essential Businesses;
- xiii. Businesses providing mailing and shipping services, including post office boxes;
- xiv. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, or as allowed under subparagraph (xxvi), provided that social distancing of six feet per person is maintained to the greatest extent possible;
- xv. Laundromats, drycleaners, and laundry service providers;
- xvi. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;

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- xvii. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains;
- xviii. Businesses that supply other Essential Businesses with the support or supplies necessary to operate, but only to the extent that they support or supply these Essential Businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts;
- xix. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;
- xx. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
- xxi. Home-based care for seniors, adults, children, and pets;
- xxii. Residential facilities and shelters for seniors, adults, and children;
- xxiii. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities or in relation to death or incapacity;
- xxiv. Services to assist individuals in finding employment with Essential Businesses;
- xxv. Moving services that facilitate residential or commercial moves that are allowed under this Order; and
- xxvi. Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages that enable owners, employees, volunteers, and contractors for Essential Businesses, Essential Governmental Functions, Outdoor Businesses, Additional Businesses, or Minimum Basic Operations to work as allowed under this Order. To the extent possible, these operations must comply with the following conditions:
  - 1. They must be carried out in stable groups of 12 or fewer children (“stable” means that the same 12 or fewer children are in the same group each day).
  - 2. Children shall not change from one group to another.
  - 3. If more than one group of children is at one facility, each group shall be in a separate room. Groups shall not mix with each other.
  - 4. Providers or educators shall remain solely with one group of children.

The Health Officer will carefully monitor the changing public health situation as well as any changes to the State Shelter Order. In the event that the State relaxes restrictions on childcare and related institutions and programs, the Health Officer will consider whether to similarly relax the restrictions imposed by this Order.

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- g. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, personnel, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
  - i. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions. For clarity, this section does not permit businesses to provide curbside pickup to customers.
  - ii. The minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
  
- h. For the purposes of this Order, all businesses that are operating at facilities in the County visited or used by the public or personnel must, as a condition of such operation, prepare a “Social Distancing Protocol” for each of these facilities; provided, however, that construction activities shall instead comply with the Construction Project Safety Protocols set forth in Appendix B and not the Social Distancing Protocol. The Social Distancing Protocol must be substantially in the form attached to this Order as Appendix A, and it must be updated from prior versions to address new requirements listed in this Order or in related guidance or directives from the Health Officer. The COVID-19 PREPARED Sign and Social Distancing Protocol Visitor Information Sheet, which are included in Appendix A, must be printed and posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and personnel. A full copy of the Social Distancing Protocol must also be provided to each person performing work at the facility. All businesses subject to this paragraph shall implement the Social Distancing Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing Protocol must explain how the business is achieving the applicable requirements in the Appendix A template, including but not limited to the following:
  - i. Training personnel on COVID-19 information, self-screening for symptoms, testing guidelines, how to prevent COVID-19 from spreading, and measures in the Social Distancing Protocol;
  - ii. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete Essential Business activity;
  - iii. Requiring face coverings to be worn by all persons entering the facility, other than those exempted from face covering requirements (e.g., young children);
  - iv. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
  - v. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and

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- personnel, and in locations where there is high-frequency employee interaction with members of the public (e.g., cashiers);
- vi. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
  - vii. Regularly disinfecting other high-touch surfaces;
  - viii. Posting a sign at the entrance of the facility informing all personnel and customers that they should: not enter the facility if they have any COVID-19 symptoms; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, one's elbow; wear a face covering to enter; and not shake hands or engage in any unnecessary physical contact; and
  - ix. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention's guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).
- i. For the purposes of this Order, "Essential Travel" means travel for any of the following purposes:
- i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, Minimum Basic Operations, Outdoor Activities, Outdoor Businesses, Additional Activities, and Additional Businesses.
  - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the County.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
  - vii. Travel to manage after-death arrangements and burial.
  - viii. Travel to arrange for shelter or avoid homelessness.
  - ix. Travel to avoid domestic violence or child abuse.
  - x. Travel for parental custody arrangements.
  - xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
- j. For purposes of this Order, "residences" include hotels, motels, shared rental units, and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.
- k. For purposes of this Order, "Social Distancing Requirements" means:

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- i. Maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit;
- ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19;
- iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands);
- iv. Wearing a face covering when out in public, consistent with the Health Officer's Face Covering Guidance; and
- v. Avoiding all social interaction outside the household when sick with a fever, cough, or other COVID-19 symptoms.

All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order. Outdoor Activities, Outdoor Businesses, Additional Activities, and Additional Businesses must strictly adhere to these Social Distancing Requirements.

- l. For purposes of this Order, "Outdoor Businesses" means:
  - i. The following businesses that normally operated primarily outdoors prior to March 16, 2020, and where there is the ability to fully maintain social distancing of at least six feet between all persons:
    1. Businesses primarily operated outdoors, such as wholesale and retail plant nurseries, agricultural operations, and garden centers.
    2. Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services.

For clarity, "Outdoor Businesses" do not include outdoor restaurants, cafes, or bars. Except as otherwise provided in Appendix C, they also do not include businesses that promote large, coordinated, and prolonged gatherings, such as outdoor concert venues and amusement parks.

- m. For purposes of this Order, "Outdoor Activities" means:
  - i. To obtain goods, services, or supplies from, or perform work for, an Outdoor Business.
  - ii. To engage in outdoor recreation as permitted in Section 15.a.
- n. For purposes of this Order, "Additional Business" means any business, entity, or other organization identified as an Additional Business in Appendix C-1, which will be updated as warranted based on the Health Officer's ongoing evaluation of the COVID-19 Indicators and other data. In addition to the other requirements in this Order, operation of those Additional Businesses is subject to any conditions and health and

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safety requirements set forth in Appendix C-1 and in any industry-specific guidance issued by the Health Officer.

- o. For purposes of this Order, “Additional Activities” means:
  - i. To obtain goods, services, or supplies from, or perform work for, Additional Businesses identified in Appendix C-1, subject to requirements in this Order, and any conditions and health and safety requirements set forth in this Order or in any industry-specific guidance issued by the Health Officer.
  - ii. To engage in outdoor recreation activities or other activities set forth in Appendix C-2, subject to any conditions and health and safety requirements set forth therein.

- 16. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).
- 17. Pursuant to Government Code sections 26602 and 41601, Health and Safety Code section 101029, and Santa Clara County Ordinance Code section A1-34 *et seq.*, the Health Officer requests that the Sheriff, all chiefs of police in the County, and all enforcement officers ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
- 18. This Order shall become effective at 12:01 a.m. on May 22, 2020 and will continue to be in effect until it is rescinded, superseded, or amended in writing by the Health Officer.
- 19. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website ([www.sccphd.org](http://www.sccphd.org)); and (3) provided to any member of the public requesting a copy of this Order.

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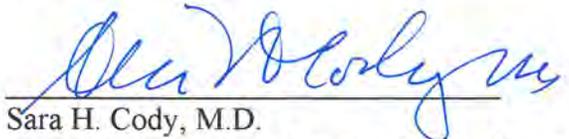
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Order of the County Health Officer  
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20. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**

  
\_\_\_\_\_  
Sara H. Cody, M.D.  
Health Officer of the County of Santa Clara

Dated: 5/18/2020

Approved as to form and legality:

  
\_\_\_\_\_  
James R. Williams  
County Counsel

Dated: 5/18/2020

Attachments: Appendix A – Social Distancing Protocol  
Appendix B-1 – Small Construction Project Safety Protocol  
Appendix B-2 – Large Construction Project Safety Protocol  
Appendix C-1 – Additional Businesses  
Appendix C-2 – Additional Activities

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# EXHIBIT “6”

**County of Santa Clara  
Public Health Department**



Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> Floor  
San José, CA 95126  
408.792.3798

**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SANTA CLARA DIRECTING  
ALL INDIVIDUALS LIVING IN THE COUNTY TO SHELTER AT THEIR  
PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO PROVIDE  
OR RECEIVE CERTAIN ESSENTIAL SERVICES OR ENGAGE IN CERTAIN  
ESSENTIAL ACTIVITIES AND WORK FOR ESSENTIAL BUSINESSES AND  
GOVERNMENTAL SERVICES; EXEMPTING INDIVIDUALS  
EXPERIENCING HOMELESSNESS FROM THE SHELTER IN PLACE  
ORDER BUT URGING THEM TO FIND SHELTER AND GOVERNMENT  
AGENCIES TO PROVIDE IT; DIRECTING ALL BUSINESSES AND  
GOVERNMENTAL AGENCIES TO CEASE NON-ESSENTIAL OPERATIONS  
AT PHYSICAL LOCATIONS IN THE COUNTY; PROHIBITING ALL NON-  
ESSENTIAL GATHERINGS OF ANY NUMBER OF INDIVIDUALS; AND  
ORDERING CESSATION OF ALL NON-ESSENTIAL TRAVEL**

**DATE OF ORDER: MARCH 16, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 10 below. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.
2. All individuals currently living within Santa Clara County (the “County”) are ordered to shelter at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from

any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 10. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to utilize Social Distancing Requirements in their operation).

3. All businesses with a facility in the County, except Essential Businesses as defined below in Section 10, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 10. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 10 below, including, but not limited to, when any customers are standing in line.
4. All public and private gatherings of any number of people occurring outside a household or living unit are prohibited, except for the limited purposes as expressly permitted in Section 10. Nothing in this Order prohibits the gathering of members of a household or living unit.
5. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel and Essential Activities as defined below in Section 10, is prohibited. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. People riding on public transit must comply with Social Distancing Requirements as defined in Section 10 below, to the greatest extent feasible. This Order allows travel into or out of the County to perform Essential Activities, operate Essential Businesses, or maintain Essential Governmental Functions.
6. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited

Order of the County Health Officer  
to Shelter in Place

healthcare capacity in the County.

7. This Order also is issued in light of the existence of 123 cases of COVID-19 in the County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing this Order, as of 5 p.m. on March 15, 2020, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
8. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the February 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, and the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency.
9. This Order comes after the release of substantial guidance from the County Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including a variety of prior orders to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19.
10. Definitions and Exemptions.
  - a. For purposes of this Order, individuals may leave their residence only to perform any of the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
    - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
    - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.

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- iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Section, such as, by way of example and without limitation, walking, hiking, or running.
  - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
  - v. To care for a family member or pet in another household.
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.
- c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.
- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions. Each governmental entity shall identify and designate appropriate employees or contractors to continue providing and carrying out any Essential Governmental Functions. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined in this Section, to the extent possible.
- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.

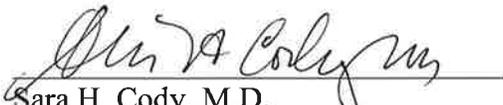
- f. For the purposes of this Order, “Essential Businesses” means:
- i. Healthcare Operations and Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
  - iii. Food cultivation, including farming, livestock, and fishing;
  - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
  - v. Newspapers, television, radio, and other media services;
  - vi. Gas stations and auto-supply, auto-repair, and related facilities;
  - vii. Banks and related financial institutions;
  - viii. Hardware stores;
  - ix. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
  - x. Businesses providing mailing and shipping services, including post office boxes;
  - xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
  - xii. Laundromats, drycleaners, and laundry service providers;
  - xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
  - xiv. Businesses that supply products needed for people to work from home;
  - xv. Businesses that supply other essential businesses with the support or supplies necessary to operate;
  - xvi. Businesses that ship or deliver groceries, food, goods or services directly to residences;
  - xvii. Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
  - xviii. Home-based care for seniors, adults, or children;
  - xix. Residential facilities and shelters for seniors, adults, and children;

- xx. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- xxi. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following mandatory conditions:
  - 1. Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).
  - 2. Children shall not change from one group to another.
  - 3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
  - 4. Childcare providers shall remain solely with one group of children.
- g. For the purposes of this Order, “Minimum Basic Operations” include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
  - i. The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.
  - ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
- h. For the purposes of this Order, “Essential Travel” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section below.
  - i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
  - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the jurisdiction.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
- i. For purposes of this Order, residences include hotels, motels, shared rental units and similar facilities.
- j. For purposes of this Order, “Social Distancing Requirements” includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer,

covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

11. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat to public health.
12. This Order shall become effective at 12:01 a.m. on March 17, 2020 and will continue to be in effect until 11:59 p.m. on April 7, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
13. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website ([www.sccphd.org](http://www.sccphd.org)); and (3) provided to any member of the public requesting a copy of this Order.
14. If any provision of this Order to the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**

  
Sara H. Cody, M.D.  
Health Officer of the County of Santa Clara

Dated: 3/16/20

Approved as to form and legality:

  
James R. Williams  
County Counsel

Dated: 3/16/2020

Order of the County Health Officer  
to Shelter in Place

# EXHIBIT “7”

**County of Santa Clara**  
**Public Health Department**



Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> Floor  
San José, CA 95126  
408.792.3798

**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SANTA CLARA DIRECTING  
ALL INDIVIDUALS LIVING IN THE COUNTY TO CONTINUE  
SHELTERING AT THEIR PLACE OF RESIDENCE EXCEPT FOR  
ESSENTIAL NEEDS; CONTINUING TO EXEMPT HOMELESS  
INDIVIDUALS FROM THE ORDER BUT URGING GOVERNMENT  
AGENCIES TO PROVIDE THEM SHELTER AND HAND SANITATION  
FACILITIES; RESTRICTING ACCESS TO RECREATION AREAS;  
REQUIRING ESSENTIAL BUSINESSES TO IMPLEMENT SOCIAL  
DISTANCING PROTOCOLS; CLARIFYING AND FURTHER LIMITING  
ESSENTIAL BUSINESS ACTIVITIES, INCLUDING CONSTRUCTION; AND  
DIRECTING ALL BUSINESSES AND GOVERNMENTAL OPERATIONS TO  
FURTHER CEASE NON-ESSENTIAL OPERATIONS**

**DATE OF ORDER: MARCH 31, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; Cal. Penal Code §§ 69, 148(a)(1); Santa Clara County Ordinance Code § A1-28.)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the March 16, 2020 Order of the Health Officer directing all individuals to shelter in place (“Prior Shelter Order”). This Order clarifies, strengthens, and extends certain terms of the Prior Shelter Order to increase social distancing and reduce person-to-person contact in order to further slow transmission of Novel Coronavirus Disease 2019 (“COVID-19”). As of the effective date and time of this Order set forth in Section 16 below, all individuals, businesses, and government agencies in the County of Santa Clara (“County”) are required to follow the provisions of this Order.
2. The intent of this Order is to ensure that the maximum number of people shelter in their places of residence to the maximum extent feasible to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services to those in need. All provisions of this Order must be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.

3. All individuals currently living within the County are ordered to shelter at their place of residence. They may leave their residence only for Essential Activities, Essential Governmental Functions, Essential Travel, to work for Essential Businesses, or to perform Minimum Basic Operations for non-essential businesses, all as defined in Section 13. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 13.k, except as expressly provided in this Order.
5. All businesses with a facility in the County, except Essential Businesses, as defined in Section 13.f, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 13.g. For clarity, all businesses may continue operations consisting exclusively of owners, employees, volunteers, or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. But Essential Businesses are directed to maximize the number of employees who work from home. Essential Businesses may only assign those employees who cannot perform their job duties from home to work outside the home. All Essential Businesses shall prepare, post, and implement a Social Distancing Protocol at each of their facilities at which they are maintaining operations, as specified in Section 13.h. Businesses that include an Essential Business component at their facilities alongside non-essential components must, to the extent feasible, scale down their operations to the Essential Business component only; provided, however, that mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products. Essential Businesses must follow industry-specific guidance issued by the Health Officer related to COVID-19.
6. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel or Essential Activities together.
7. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel, as defined below in Section 13.i, is prohibited. People may use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses, maintain Essential Governmental Functions, or to perform Minimum Basic Operations at non-essential businesses. Transit agencies and people riding on public transit must comply with Social Distancing Requirements, as defined in Section 13.k, to the greatest extent feasible. This Order allows travel into or out of the County only to perform Essential Activities, operate Essential

Businesses, maintain Essential Governmental Functions, or perform Minimum Basic Operations at non-essential businesses.

8. This Order is issued based on evidence of increasing occurrence of COVID-19 within the County and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other interpersonal interactions can result in preventable transmission of the virus. This public health emergency has substantially worsened since the County issued the Prior Shelter Order on March 16, 2020, with a significant escalation in the number of positive cases, hospitalizations, and deaths, and increasing strain on health care resources. At the same time, evidence suggests that the restrictions on mobility and social distancing requirements imposed by the Prior Shelter Order are slowing the rate of increase in community transmission and confirmed cases by limiting interactions among people, consistent with scientific evidence of the efficacy of similar measures in other parts of the country and world. The scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission as much as possible to protect the most vulnerable, to prevent the health care system from being overwhelmed, and to prevent deaths. Extension of the Prior Shelter Order and strengthening of its restrictions are necessary to further reduce the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the County and advancing toward a point in the public health emergency where transmission can be controlled.
9. This Order is also issued in light of the existence, as of March 29, 2020, of 848 cases of COVID-19 in the County, as well as at least 2,092 confirmed cases (up from 258 confirmed cases on March 15, 2020, just before the Prior Shelter Order) and at least 51 deaths (up from three deaths on March 15, 2020) in the seven Bay Area jurisdictions jointly issuing this Order, including a significant and increasing number of suspected cases of community transmission and likely further significant increases in transmission. This Order is necessary to slow the rate of spread, and the Health Officer will re-evaluate it as further data becomes available.
10. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the February 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, and the February 10, 2020 Resolution

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of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency.

11. This Order is issued in light of evidence that the Prior Shelter Order has been generally effective in increasing social distancing, but that at this time additional restrictions are necessary to further mitigate the rate of transmission of COVID-19, to prevent the health care system from being overwhelmed, and prevent death. This Order comes after the release of substantial guidance from the County Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including an increasing number of orders imposing similar social distancing requirements and mobility restrictions to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19, as changing circumstances dictate.
12. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer (the “State Shelter Order”) , which set baseline statewide restrictions on non-residential business activities effective until further notice, as well as the Governor’s March 19, 2020 Executive Order N-33-20 directing California residents to follow the State Shelter Order. The State Shelter Order was complementary to the Prior Shelter Order. This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this County, which are necessary to control the public health emergency as it is evolving within the County and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the County will worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order, including limiting such travel to performance of Essential Travel or Essential Activities; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that Essential Businesses comply with the Social Distancing Requirements. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County.
13. Definitions and Exemptions.
  - a. For the purposes of this Order, individuals may leave their residence only to perform the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the

extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are:

- i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, or visiting a health care professional.
- ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, products needed to work from home, or products necessary to maintain the habitability, sanitation, and operation of residences.
- iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:
  1. Outdoor recreation activity at parks, beaches, and other open spaces must be in conformance with any restrictions on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking, or closure to all public access;
  2. Use of recreational areas with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, outdoor gym equipment, picnic areas, dog parks, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers;
  3. Use of shared facilities for recreational activities outside of residences, including, but not limited to, golf courses, tennis and pickle ball courts, rock parks, climbing walls, pools, spas, shooting and archery ranges, gyms, disc golf, and basketball courts is prohibited and those areas must be closed for recreational purposes, including by signage and, as appropriate, by physical barriers. Such facilities may be repurposed during the emergency to provide essential services needed to address the COVID-19 pandemic; and
  4. Sports or activities that include the use of shared equipment may only be engaged in by members of the same household or living unit.
- iv. To perform work for an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations, as defined in this Section.
- v. To provide necessary care for a family member or pet in another household who has no other source of care.
- vi. To attend a funeral with no more than 10 individuals present.
- vii. To move residences, but only if it is not possible to defer an already planned move, if the move is necessitated by safety, sanitation, or habitability reasons,

or if the move is necessary to preserve access to shelter. When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention.

- b. For the purposes of this Order, individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.
- c. For the purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate employees, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new employees or contractors to perform such functions. Each governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.
- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.

- f. For the purposes of this Order, “Essential Businesses” are:
- i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.
  - iii. Food cultivation, including farming, livestock, and fishing;
  - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
  - v. Construction, but only of the types listed in this subparagraph below:
    1. Projects immediately necessary to the maintenance, operation, or repair of Essential Infrastructure;
    2. Projects associated with Healthcare Operations, including creating or expanding Healthcare Operations, provided that such construction is directly related to the COVID-19 response;
    3. Affordable housing that is or will be income-restricted, including multi-unit or mixed-use developments containing at least 10% income-restricted units;
    4. Public works projects if specifically designated as an Essential Governmental Function by the lead governmental agency;
    5. Shelters and temporary housing, but not including hotels or motels;
    6. Projects immediately necessary to provide critical non-commercial services to individuals experiencing homelessness, elderly persons, persons who are economically disadvantaged, and persons with special needs;
    7. Construction necessary to ensure that existing construction sites that must be shut down under this Order are left in a safe and secure manner, but only to the extent necessary to do so; and
    8. Construction or repair necessary to ensure that residences and buildings containing Essential Businesses are safe, sanitary, or habitable to the extent such construction or repair cannot reasonably be delayed;
  - vi. Newspapers, television, radio, and other media services;
  - vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services (and not, by way of example, car sales or car washes). This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business;

- viii. Bicycle repair and supply shops;
- ix. Banks and related financial institutions;
- x. Service providers that enable residential transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other residential viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when the occupant is still residing in the residence);
- xi. Hardware stores;
- xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, and operation of residences and Essential Businesses, but not for cosmetic or other purposes;
- xiii. Arborists, landscapers, gardeners, and similar service professionals, but only to the limited extent necessary to maintain the habitability, sanitation, operation of businesses or residences, or the safety of residents, employees, or the public (such as fire safety or tree trimming to prevent a dangerous condition), and not for cosmetic or other purposes (such as upkeep);
- xiv. Businesses providing mailing and shipping services, including post office boxes;
- xv. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
- xvi. Laundromats, drycleaners, and laundry service providers;
- xvii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
- xviii. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains;
- xix. Businesses that supply other Essential Businesses with the support or supplies necessary to operate, but only to the extent that they support or supply these Essential Businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts;
- xx. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;

- xxi. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
  - xxii. Home-based care for seniors, adults, children, and pets;
  - xxiii. Residential facilities and shelters for seniors, adults, and children;
  - xxiv. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities;
  - xxv. Services to assist individuals in finding employment with Essential Businesses;
  - xxvi. Moving services that facilitate residential or commercial moves that are allowed under this Order;
  - xxvii. Childcare facilities providing services that enable owners, employees, volunteers, and contractors for Essential Businesses, Essential Governmental Functions, or Minimum Basic Operations to work as allowed under this Order. Children of owners, employees, volunteers, and contractors who are not exempt under this Order may not attend childcare facilities. To the extent possible, childcare facilities must operate under the following conditions:
    - 1. Childcare must be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day).
    - 2. Children shall not change from one group to another.
    - 3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other.
    - 4. Childcare providers shall remain solely with one group of children.
- g. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, employees, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions.
  - ii. The minimum necessary activities to facilitate owners, employees, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
- h. For the purposes of this Order, all Essential Businesses must prepare and post by no later than 11:59 p.m. on April 2, 2020 a “Social Distancing Protocol” for each of their facilities in the County frequented by the public or employees. The Social Distancing Protocol must be substantially in the form attached to this Order as Appendix A. The Social Distancing Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Social Distancing Protocol must also be provided to each employee performing work at the facility. All Essential Businesses shall implement the Social Distancing Protocol and

provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing Protocol must explain how the business is achieving the following, as applicable:

- i. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete the Essential Business activity;
  - ii. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
  - iii. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and employees, and in locations where there is high-frequency employee interaction with members of the public (e.g. cashiers);
  - iv. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
  - v. Regularly disinfecting other high-touch surfaces; and
  - vi. Posting a sign at the entrance of the facility informing all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into one's elbow; not shake hands or engage in any unnecessary physical contact.
  - vii. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention's guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).
- i. For the purposes of this Order, "Essential Travel" means travel for any of the following purposes:
- i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
  - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the County.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
  - vii. Travel to manage after-death arrangements and burial.
  - viii. Travel to arrange for shelter or avoid homelessness.
  - ix. Travel to avoid domestic violence or child abuse.
  - x. Travel for parental custody arrangements.

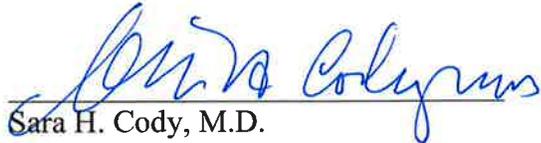
- xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
- j. For purposes of this Order, “residences” include hotels, motels, shared rental units and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.
- k. For purposes of this Order, “Social Distancing Requirements” means:
  - i. Maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit;
  - ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19;
  - iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands); and
  - iv. Avoiding all social interaction outside the household when sick with a fever or cough.

All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order.

- 14. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).
- 15. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.

16. This Order shall become effective at 11:59 p.m. on March 31, 2020 and will continue to be in effect until 11:59 p.m. on May 3, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
17. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website ([www.sccphd.org](http://www.sccphd.org)); and (3) provided to any member of the public requesting a copy of this Order.
18. If any provision of this Order to its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

**IT IS SO ORDERED:**

  
Sara H. Cody, M.D.  
Health Officer of the County of Santa Clara

Dated: 3/31/2020

Approved as to form and legality:

  
James R. Williams  
County Counsel

Dated: 3/31/2020

Attachments: Appendix A – Social Distancing Protocol

**Appendix A: Social Distancing Protocol**

Business name: Click or tap here to enter text.

Facility Address: Click or tap here to enter text.

Approximate gross square footage of space open to the public: Click or tap here to enter text.

**Businesses must implement all applicable measures listed below, and be prepared to explain why any measure that is not implemented is inapplicable to the business.**

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**Signage:**

Signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, into one's elbow; and not shake hands or engage in any unnecessary physical contact.

Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.

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**Measures To Protect Employee Health (check all that apply to the facility):**

Everyone who can carry out their work duties from home has been directed to do so.

All employees have been told not to come to work if sick.

Symptom checks are being conducted before employees may enter the work space.

All desks or individual work stations are separated by at least six feet.

Break rooms, bathrooms, and other common areas are being disinfected frequently, on the following schedule:

Break rooms:

Bathrooms:

Other (Click or tap here to enter text.): Click or tap here to enter text.

Disinfectant and related supplies are available to all employees at the following location(s):

Hand sanitizer effective against COVID-19 is available to all employees at the following location(s):

Soap and water are available to all employees at the following location(s):

Copies of this Protocol have been distributed to all employees.

Optional—Describe other measures: Click or tap here to enter text.

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**Measures To Prevent Crowds From Gathering (check all that apply to the facility):**

Limit the number of customers in the store at any one time to Click or tap here to enter text.[insert maximum number here], which allows for customers and employees to easily maintain at least six-foot distance from one another at all practicable times.

Post an employee at the door to ensure that the maximum number of customers in the facility set forth above is not exceeded.

Placing per-person limits on goods that are selling out quickly to reduce crowds and lines. Explain:

Optional—Describe other measures: Click or tap here to enter text.

**Appendix A: Social Distancing Protocol**

**Measures To Keep People At Least Six Feet Apart (check all that apply to the facility)**

- Placing signs outside the store reminding people to be at least six feet apart, including when in line.
- Placing tape or other markings at least six feet apart in customer line areas inside the store and on sidewalks at public entrances with signs directing customers to use the markings to maintain distance.
- Separate order areas from delivery areas to prevent customers from gathering.
- All employees have been instructed to maintain at least six feet distance from customers and from each other, except employees may momentarily come closer when necessary to accept payment, deliver goods or services, or as otherwise necessary.
- Optional—Describe other measures: Click or tap here to enter text.

**Measures To Prevent Unnecessary Contact (check all that apply to the facility):**

- Preventing people from self-serving any items that are food-related.
  - Lids for cups and food-bar type items are provided by staff; not to customers to grab.
  - Bulk-item food bins are not available for customer self-service use.
- Not permitting customers to bring their own bags, mugs, or other reusable items from home.
- Providing for contactless payment systems or, if not feasible, sanitizing payment systems regularly. Describe:
- Optional—Describe other measures (e.g. providing senior-only hours): Click or tap here to enter text.

**Measures To Increase Sanitization (check all that apply to the facility):**

- Disinfecting wipes that are effective against COVID-19 are available near shopping carts and shopping baskets.
- Employee(s) assigned to disinfect carts and baskets regularly.
- Hand sanitizer, soap and water, or effective disinfectant is available to the public at or near the entrance of the facility, at checkout counters, and anywhere else inside the store or immediately outside where people have direct interactions.
- Disinfecting all payment portals, pens, and styluses after each use.
- Disinfecting all high-contact surfaces frequently.
- Optional—Describe other measures: Click or tap here to enter text.

\* Any additional measures not included here should be listed on separate pages, which the business should attach to this document.

**You may contact the following person with any questions or comments about this protocol:**

**Name:** Click or tap here to enter text.

**Phone number:** Click or tap here to enter text.

# EXHIBIT “8”

**County of Santa Clara  
Public Health Department**



Health Officer  
976 Lenzen Avenue, 2<sup>nd</sup> Floor  
San José, CA 95126  
408.792.3798

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**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SANTA CLARA DIRECTING  
ALL INDIVIDUALS IN THE COUNTY TO CONTINUE SHELTERING AT  
THEIR PLACE OF RESIDENCE EXCEPT FOR ESSENTIAL NEEDS AND  
IDENTIFIED OUTDOOR ACTIVITIES IN COMPLIANCE WITH SPECIFIED  
REQUIREMENTS; CONTINUING TO EXEMPT HOMELESS INDIVIDUALS  
FROM THE ORDER BUT URGING GOVERNMENT AGENCIES TO  
PROVIDE THEM SHELTER; REQUIRING ALL BUSINESSES AND  
RECREATION FACILITIES THAT ARE ALLOWED TO OPERATE TO  
IMPLEMENT SOCIAL DISTANCING, FACE COVERING, AND CLEANING  
PROTOCOLS; AND DIRECTING ALL BUSINESSES, FACILITY  
OPERATORS, AND GOVERNMENTAL AGENCIES TO CONTINUE THE  
TEMPORARY CLOSURE OF ALL OTHER OPERATIONS NOT ALLOWED  
UNDER THIS ORDER**

**DATE OF ORDER: APRIL 29, 2020**

**Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; Cal. Penal Code §§ 69, 148(a)(1); Santa Clara County Ordinance Code § A1-28.)**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SANTA CLARA (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the March 31, 2020 Order of the Health Officer directing all individuals to shelter in place (“Prior Order”). This Order amends, clarifies, and extends certain terms of the Prior Order to ensure continued social distancing and limit person-to-person contact to reduce the rate of transmission of Novel Coronavirus Disease 2019 (“COVID-19”). This Order continues to restrict most activity, travel, and governmental and business functions. But in light of progress achieved in slowing the spread of COVID-19 in the County of Santa Clara (the “County”) and neighboring counties, the Order allows a limited number of additional Essential Businesses and certain lower risk Outdoor Businesses (both as defined in Section 16 below) to resume operating. This initial, measured resumption of those activities is designed to keep the overall volume of person-to-person contact very low to prevent a surge in COVID-19 cases in the County and neighboring counties. The activities allowed by this Order will be assessed on an ongoing basis and may need to be modified if the risk associated with COVID-

19 increases in the future. As of the effective date and time of this Order set forth in Section 19 below, all individuals, businesses, and government agencies in the County are required to follow the provisions of this Order.

2. The primary intent of this Order is to ensure that County residents continue to shelter in their places of residence to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services. This Order allows a limited number of additional essential and outdoor business activities to resume while the Health Officer continues to assess the transmissibility and clinical severity of COVID-19 and monitors indicators described in Section 11. All provisions of this Order must be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
3. All individuals currently living within the County are ordered to shelter at their place of residence. They may leave their residence only for Essential Activities as defined in Section 16.a and Outdoor Activities as defined in Section 16.m, Essential Governmental Functions as defined in Section 16.d, Essential Travel as defined in Section 16.i, to work for Essential Businesses as defined in Section 16.f, and Outdoor Businesses as defined in Section 16.l, or to perform Minimum Basic Operations for other businesses that must remain temporarily closed, as provided in Section 16.g. For clarity, individuals who do not currently reside in the County must comply with all applicable requirements of the Order when in the County. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 16.k, except as expressly provided in this Order, and are also strongly urged to wear face coverings as provided in the Health Officer's April 17, 2020 Critical Guidance on Facial Coverings (the "Face Covering Guidance").
5. All businesses with a facility in the County, except Essential Businesses and Outdoor Businesses, as defined in Section 16, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 16. For clarity, all businesses may continue operations consisting exclusively of owners, personnel, volunteers, or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. But all businesses are directed to maximize the number of personnel who work from home. Essential Businesses and Outdoor Businesses may only assign those personnel who cannot perform their job duties from home to work outside the home. Outdoor Businesses must conduct all business and transactions involving members of the public outdoors.
6. As a condition of operating under this Order, the operators of all businesses must prepare or update, post, implement, and distribute to their personnel a Social Distancing Protocol for each

of their facilities in the County frequented by personnel or members of the public, as specified in Section 16.h. Businesses that include an Essential Business or Outdoor Business component at their facilities alongside other components must, to the extent feasible, scale down their operations to the Essential Business and Outdoor Business components only; provided, however, mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products. All businesses allowed to operate under this Order must follow any industry-specific guidance issued by the Health Officer related to COVID-19.

7. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order. Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel, Essential Activities, or Outdoor Activities together.
8. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel, as defined below in Section 16.i, is prohibited. People may use public transit only for purposes of performing Essential Activities and Outdoor Activities, or to travel to and from work for Essential Businesses or Outdoor Businesses, to maintain Essential Governmental Functions, or to perform Minimum Basic Operations at non-essential businesses. Transit agencies and people riding on public transit must comply with Social Distancing Requirements, as defined in Section 16.k, to the greatest extent feasible, and personnel and passengers must wear Face Coverings as provided by the Face Covering Guidance. This Order allows travel into or out of the County only to perform Essential Activities and Outdoor Activities, to operate or perform work for Essential Businesses or Outdoor Businesses, to maintain Essential Governmental Functions, or to perform Minimum Basic Operations at non-essential businesses.
9. This Order is issued based on evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; continued uncertainty regarding the degree of undetected asymptomatic transmission; scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19; and further evidence that others, including younger and otherwise healthy people, are also at risk for serious outcomes. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Further, evidence shows that the virus can survive for hours to days on surfaces and be indirectly transmitted between individuals. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other direct or indirect interpersonal interactions can result in preventable transmission of the virus.

10. The collective efforts taken to date regarding this public health emergency have slowed the virus' trajectory, but the emergency and the attendant risk to public health remain significant. As of April 27, 2020, there are 2,105 confirmed cases of COVID-19 in the County (up from 123 on March 15, 2020, just before the first shelter-in-place order) as well as at least 7,273 confirmed cases (up from 258 confirmed cases on March 15, 2020) and at least 266 deaths (up from 3 deaths on March 15, 2020) in the seven Bay Area jurisdictions jointly issuing this Order. The cumulative number of confirmed cases continues to increase, though the rate of increase has slowed in the days leading up to this Order. Evidence suggests that the restrictions on mobility and social distancing requirements imposed by the Prior Order (and the March 16, 2020 shelter-in-place order) are slowing the rate of increase in community transmission and confirmed cases by limiting interactions among people, consistent with scientific evidence of the efficacy of similar measures in other parts of the country and world.
  
11. The local health officers who jointly issued the Prior Order are monitoring several key indicators ("COVID-19 Indicators"), which are among the many factors informing their decisions whether to modify existing shelter-in-place restrictions. Progress on some of these COVID-19 Indicators—specifically related to hospital utilization and capacity—makes it appropriate, at this time, to ease certain restrictions imposed by the Prior Order to allow individuals to engage in a limited set of additional activities and perform work for a limited set of additional businesses associated with the lower risk of COVID-19 transmission, as set forth in Section 16.m. But the continued prevalence of the virus that causes COVID-19 requires most activities and business functions to remain restricted, and those activities that are permitted to occur must do so subject to social distancing and other infection control practices identified by the Health Officer. Progress on the COVID-19 Indicators will be critical to determinations by the local health officers regarding whether the restrictions imposed by this Order may be further modified. The Health Officer will continually review whether modifications to the Order are justified based on (1) progress on the COVID-19 Indicators; (2) developments in epidemiological and diagnostic methods for tracing, diagnosing, treating, or testing for COVID-19; and (3) scientific understanding of the transmission dynamics and clinical impact of COVID-19. The COVID-19 Indicators include, but are not limited to, the following:
  - a. The trend of the number of new COVID-19 cases and hospitalizations per day.
  - b. The capacity of hospitals and the health system in the County and region, including acute care beds and Intensive Care Unit beds, to provide care for COVID-19 patients and other patients, including during a surge in COVID-19 cases.
  - c. The supply of personal protective equipment (PPE) available for hospital staff and other healthcare providers and personnel who need PPE to safely respond to and treat COVID-19 patients.
  - d. The ability and capacity to quickly and accurately test persons to determine whether they are COVID-19 positive, especially those in vulnerable populations or high-risk settings or occupations.

- e. The ability to conduct case investigation and contact tracing for the volume of cases and associated contacts that will continue to occur, isolating confirmed cases and quarantining persons who have had contact with confirmed cases.
12. The scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission to help (a) protect the most vulnerable; (b) prevent the health care system from being overwhelmed; (c) prevent long-term chronic health conditions, such as cardiovascular, kidney, and respiratory damage and loss of limbs from blood clotting; and (d) prevent deaths. Extension of the Prior Order is necessary to slow the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the County and advancing toward a point in the public health emergency where transmission can be controlled. At the same time, since the Prior Order was issued the County has made significant progress in expanding health system capacity and healthcare resources and in slowing community transmission of COVID-19. In light of progress on these indicators, and subject to continued monitoring and potential public health-based responses, it is appropriate at this time to allow additional Essential Businesses and Outdoor Businesses to operate in the County. Outdoor Businesses, by virtue of their operation outdoors, likely carry a lower risk of transmission than most indoor businesses. Because Outdoor Businesses, as defined in section 16.1, generally involve only brief and limited person-to-person interactions, they also likely carry lower risk of transmission than business activities prohibited under the Order, which tend to involve prolonged interactions between individuals in close proximity or in confined spaces where transmission is more likely. Existing Outdoor Businesses also constitute a relatively small proportion of business activity in the County, and therefore do not substantially increase the volume of interaction between persons in the County when reopened.
  13. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the February 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Declaration of a Local Health Emergency, and the February 10, 2020 Resolution of the Board of Supervisors of the County of Santa Clara Ratifying and Extending the Proclamation of a Local Emergency.
  14. This Order comes after the release of substantial guidance from the Health Officer, the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials throughout the United States and around the world, including the widespread adoption of orders imposing similar social distancing requirements and mobility restrictions to combat the spread and harms of COVID-19. The Health Officer will continue to assess the quickly evolving situation and may modify or extend this Order, or issue additional Orders, related to COVID-19, as changing circumstances dictate.

15. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer (the “State Shelter Order”), which set baseline statewide restrictions on non-residential business activities, effective until further notice, as well as the Governor’s March 19, 2020 Executive Order N-33-20 directing California residents to follow the State Shelter Order. The State Shelter Order was complementary to the Prior Order and is complementary to this Order. This Order adopts in certain respects more stringent restrictions addressing the particular facts and circumstances in this County, which are necessary to control the public health emergency as it is evolving within the County and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the County will worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that all businesses with facilities that are allowed to operate under the Order comply with the Social Distancing Requirements. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County. In addition, to the extent any federal guidelines allow activities that are not allowed by this Order, this Order controls and those activities are not allowed.

16. Definitions and Exemptions.

- a. For the purposes of this Order, individuals may leave their residence only to perform the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are:
  - i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, or visiting a health care professional.
  - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, products needed to work from home, or products necessary to maintain the habitability, sanitation, and operation of residences.
  - iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:

1. Outdoor recreation activity at parks, beaches, and other open spaces must comply with any restrictions on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking, or closure to all public access;
  2. Use of outdoor recreational areas and facilities with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, gym equipment, climbing walls, picnic areas, dog parks, pools, spas, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers;
  3. Sports or activities that include the use of shared equipment or physical contact between participants may only be engaged in by members of the same household or living unit; and
  4. Use of shared outdoor facilities for recreational activities that may occur outside of residences consistent with the restrictions set forth in subsections 1, 2, and 3, above, including, but not limited to, golf courses, skate parks, and athletic fields, must, before they may begin, comply with social distancing and health/safety protocols posted at the site and any other restrictions, including prohibitions, on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19.
- iv. To perform work for or access an Essential Business, Outdoor Business, or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations, as defined in this Section.
  - v. To provide necessary care for a family member or pet in another household who has no other source of care.
  - vi. To attend a funeral with no more than 10 individuals present.
  - vii. To move residences. When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention.
- b. For the purposes of this Order, individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any

interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.

- c. For the purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, recycling, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate personnel, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new personnel or contractors to perform such functions. Each governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.
- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- f. For the purposes of this Order, “Essential Businesses” are:
  - i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
  - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.

- iii. Food cultivation, including farming, livestock, and fishing;
- iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- v. Construction, but only as permitted under the State Shelter Order and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into this Order by this reference. Public works projects shall also be subject to Appendix B, except if other protocols are specified by the Health Officer;
- vi. Newspapers, television, radio, and other media services;
- vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services. This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business;
- viii. Bicycle repair and supply shops;
- ix. Banks and related financial institutions;
- x. Service providers that enable real estate transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other real estate viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when an occupant is present in a residence);
- xi. Hardware stores;
- xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, or operation of residences and Essential Businesses;
- xiii. Businesses providing mailing and shipping services, including post office boxes;
- xiv. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, or as allowed under subparagraph xxvi, provided that social distancing of six feet per person is maintained to the greatest extent possible;
- xv. Laundromats, drycleaners, and laundry service providers;
- xvi. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
- xvii. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains;

- xviii. Businesses that supply other Essential Businesses with the support or supplies necessary to operate, but only to the extent that they support or supply these Essential Businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts;
  - xix. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;
  - xx. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
  - xxi. Home-based care for seniors, adults, children, and pets;
  - xxii. Residential facilities and shelters for seniors, adults, and children;
  - xxiii. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities or in relation to death or incapacity;
  - xxiv. Services to assist individuals in finding employment with Essential Businesses;
  - xxv. Moving services that facilitate residential or commercial moves that are allowed under this Order; and
  - xxvi. Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages that enable owners, employees, volunteers, and contractors for Essential Businesses, Essential Governmental Functions, Outdoor Businesses, or Minimum Basic Operations to work as allowed under this Order. To the extent possible, these operations must comply with the following conditions:
    - 1. They must be carried out in stable groups of 12 or fewer children (“stable” means that the same 12 or fewer children are in the same group each day).
    - 2. Children shall not change from one group to another.
    - 3. If more than one group of children is at one facility, each group shall be in a separate room. Groups shall not mix with each other.
    - 4. Providers or educators shall remain solely with one group of children.The Health Officer will carefully monitor the changing public health situation as well as any changes to the State Shelter Order. In the event that the State relaxes restrictions on childcare and related institutions and programs, the Health Officer will consider whether to similarly relax the restrictions imposed by this Order.
- g. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, personnel, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:
- i. The minimum necessary activities to maintain and protect the value of the business’s inventory and facilities; ensure security, safety, and sanitation;

process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions. For clarity, this section does not permit businesses to provide curbside pickup to customers.

- ii. The minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.
- h. For the purposes of this Order, all businesses that are operating at facilities in the County visited or used by the public or personnel must, as a condition of such operation, prepare and post a “Social Distancing Protocol” for each of these facilities; provided, however, that construction activities shall instead comply with the Construction Project Safety Protocols set forth in Appendix B and not the Social Distancing Protocol. The Social Distancing Protocol must be substantially in the form attached to this Order as Appendix A, and it must be updated from prior versions to address new requirements listed in this Order or in related guidance or directives from the Health Officer. The Social Distancing Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and personnel. A copy of the Social Distancing Protocol must also be provided to each person performing work at the facility. All businesses subject to this paragraph shall implement the Social Distancing Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing Protocol must explain how the business is achieving the following, as applicable:
- i. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete Essential Business activity;
  - ii. Requiring face coverings to be worn by all persons entering the facility, other than those exempted from face covering requirements (e.g., young children);
  - iii. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
  - iv. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and personnel, and in locations where there is high-frequency employee interaction with members of the public (e.g., cashiers);
  - v. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
  - vi. Regularly disinfecting other high-touch surfaces;
  - vii. Posting a sign at the entrance of the facility informing all personnel and customers that they should: avoid entering the facility if they have any COVID-19 symptoms; maintain a minimum six-foot distance from one another; sneeze and cough into their own elbow; and not shake hands or engage in any unnecessary physical contact; and

- viii. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention’s guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).
- i. For the purposes of this Order, “Essential Travel” means travel for any of the following purposes:
  - i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, Minimum Basic Operations, Outdoor Activities, and Outdoor Businesses.
  - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
  - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
  - iv. Travel to return to a place of residence from outside the County.
  - v. Travel required by law enforcement or court order.
  - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
  - vii. Travel to manage after-death arrangements and burial.
  - viii. Travel to arrange for shelter or avoid homelessness.
  - ix. Travel to avoid domestic violence or child abuse.
  - x. Travel for parental custody arrangements.
  - xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
- j. For purposes of this Order, “residences” include hotels, motels, shared rental units, and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.
- k. For purposes of this Order, “Social Distancing Requirements” means:
  - i. Maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit;
  - ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective against COVID-19;
  - iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands);
  - iv. Wearing a face covering when out in public, consistent with the orders or guidance of the Health Officer; and
  - v. Avoiding all social interaction outside the household when sick with a fever, cough, or other COVID-19 symptoms.

All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order. Outdoor Activities and Outdoor Businesses must strictly adhere to these Social Distancing Requirements.

1. For purposes of this Order, “Outdoor Businesses” means:
  - i. The following businesses that normally operated primarily outdoors prior to March 16, 2020 and where there is the ability to fully maintain social distancing of at least six feet between all persons:
    1. Businesses primarily operated outdoors, such as wholesale and retail plant nurseries, agricultural operations, and garden centers.
    2. Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services.

For clarity, “Outdoor Businesses” do not include outdoor restaurants, cafes, or bars.

- m. For purposes of this Order, “Outdoor Activities” means:
  - i. To obtain goods, services, or supplies from, or perform work for, an Outdoor Business.
  - ii. To engage in outdoor recreation as permitted in Section 16.a.

17. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).

18. Pursuant to Government Code sections 26602 and 41601, Health and Safety Code section 101029, and Santa Clara County Ordinance Code section A1-34 *et seq.*, the Health Officer requests that the Sheriff, all chiefs of police in the County, and all enforcement officers ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.

19. This Order shall become effective at 11:59 p.m. on May 3, 2020 and will continue to be in effect until 11:59 p.m. on May 31, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Health Officer.
20. Copies of this Order shall promptly be: (1) made available at the County Government Center at 70 W. Hedding Street, San José, California; (2) posted on the County Public Health Department website ([www.sccphd.org](http://www.sccphd.org)); and (3) provided to any member of the public requesting a copy of this Order.
21. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

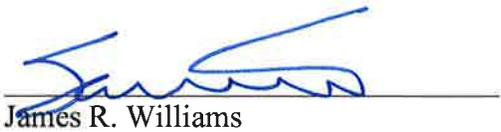
**IT IS SO ORDERED:**

  
Sara H. Cody, M.D.

Health Officer of the County of Santa Clara

Dated: 4/29/2020

Approved as to form and legality:

  
James R. Williams

County Counsel

Dated: 4/29/2020

Attachments: Appendix A – Social Distancing Protocol  
Appendix B1 – Small Construction Project Safety Protocol  
Appendix B2 – Large Construction Project Safety Protocol

**Appendix A: Social Distancing Protocol (Updated April 29, 2020)**

Business name:

Facility Address:

Approximate gross square footage of space open to the public:

**Businesses must implement all applicable measures listed below, and be prepared to explain why any measure that is not implemented is inapplicable to the business.**

---

**Signage:**

Signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have COVID-19 symptoms; maintain a minimum six-foot distance from one another; sneeze and cough into a cloth or tissue or, if not available, into one's elbow; wear face coverings, as appropriate; and not shake hands or engage in any unnecessary physical contact.

Signage posting a copy of the Social Distancing Protocol at each public entrance to the facility.

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**Measures To Protect Employee Health (check all that apply to the facility):**

Everyone who can carry out their work duties from home has been directed to do so.

All employees have been told not to come to work if sick.

Symptom checks are being conducted before employees may enter the work space.

Employees are required to wear face coverings, as appropriate.

All desks or individual work stations are separated by at least six feet.

Break rooms, bathrooms, and other common areas are being disinfected frequently, on the following schedule:

Break rooms:

Bathrooms:

Other ( ):

Disinfectant and related supplies are available to all employees at the following location(s):

Hand sanitizer effective against COVID-19 is available to all employees at the following location(s):

Soap and water are available to all employees at the following location(s):

Copies of this Protocol have been distributed to all employees.

Optional—Describe other measures:

---

**Measures To Prevent Crowds From Gathering (check all that apply to the facility):**

Limit the number of customers in the store at any one time to \_\_\_\_\_, which allows for customers and employees to easily maintain at least six-foot distance from one another at all practicable times.

Post an employee at the door to ensure that the maximum number of customers in the facility set forth above is not exceeded.

**Appendix A: Social Distancing Protocol (Updated April 29, 2020)**

- Placing per-person limits on goods that are selling out quickly to reduce crowds and lines. Explain:
- Optional—Describe other measures:

---

**Measures To Keep People At Least Six Feet Apart (check all that apply to the facility)**

- Placing signs outside the store reminding people to be at least six feet apart, including when in line.
- Placing tape or other markings at least six feet apart in customer line areas inside the store and on sidewalks at public entrances with signs directing customers to use the markings to maintain distance.
- Separate order areas from delivery areas to prevent customers from gathering.
- All employees have been instructed to maintain at least six feet distance from customers and from each other, except employees may momentarily come closer when necessary to accept payment, deliver goods or services, or as otherwise necessary.
- Optional—Describe other measures:

---

**Measures To Prevent Unnecessary Contact (check all that apply to the facility):**

- Preventing people from self-serving any items that are food-related.
- Lids for cups and food-bar type items are provided by staff; not to customers to grab.
- Bulk-item food bins are not available for customer self-service use.
- Not permitting customers to bring their own bags, mugs, or other reusable items from home.
- Providing for contactless payment systems or, if not feasible, sanitizing payment systems regularly.  
Describe:
- Optional—Describe other measures (e.g. providing senior-only hours):

---

**Measures To Increase Sanitization (check all that apply to the facility):**

- Disinfecting wipes that are effective against COVID-19 are available near shopping carts and shopping baskets.
- Employee(s) assigned to disinfect carts and baskets regularly.
- Hand sanitizer, soap and water, or effective disinfectant is available to the public at or near the entrance of the facility, at checkout counters, and anywhere else where people have direct interactions.
- Disinfecting all payment portals, pens, and styluses after each use.
- Disinfecting all high-contact surfaces frequently.
- Optional—Describe other measures:

\* Any additional measures not included here should be listed on separate pages and attached to this document.

**You may contact the following person with any questions or comments about this protocol:**

**Name:**

**Phone number:**

## Appendix B-1

### Small Construction Project Safety Protocol

1. Any construction project meeting any of the following specifications is subject to this Small Construction Project Safety Protocol (“SCP Protocol”), including public works projects unless otherwise specified by the Health Officer:
  - a. For residential projects, any single-family, multi-family, senior, student, or other residential construction, renovation, or remodel project consisting of 10 units or less. This SCP Protocol does not apply to construction projects where a person is performing construction on their current residence either alone or solely with members of their own household.
  - b. For commercial projects, any construction, renovation, or tenant improvement project consisting of 20,000 square feet of floor area or less.
  - c. For mixed-use projects, any project that meets both of the specifications in subsection 1.a and 1.b.
  - d. All other construction projects not subject to the Large Construction Project Safety Protocol set forth in Appendix B-2.
2. The following restrictions and requirements must be in place at all construction job sites subject to this SCP Protocol:
  - a. Comply with all applicable and current laws and regulations including but not limited to OSHA and Cal-OSHA. If there is any conflict, difference, or discrepancy between or among applicable laws and regulations and/or this SCP Protocol, the stricter standard shall apply.
  - b. Designate a site-specific COVID-19 supervisor or supervisors to enforce this guidance. A designated COVID-19 supervisor must be present on the construction site at all times during construction activities. A COVID-19 supervisor may be an on-site worker who is designated to serve in this role.
  - c. The COVID-19 supervisor must review this SCP Protocol with all workers and visitors to the construction site.
  - d. Establish a daily screening protocol for arriving staff to ensure that potentially infected staff do not enter the construction site. If workers leave the jobsite and return the same day, establish a cleaning and decontamination protocol prior to entry and exit of the jobsite. Post the daily screening protocol at all entrances and exits to the jobsite. More information on screening can be found online at: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>.
  - e. Practice social distancing by maintaining a minimum six-foot distance between workers at all times, except as strictly necessary to carry out a task associated with the construction project.

**Appendix B-1**

- f. Where construction work occurs within an occupied residential unit, separate work areas must be sealed off from the remainder of the unit with physical barriers such as plastic sheeting or closed doors sealed with tape to the extent feasible. If possible, workers must access the work area from an alternative entry/exit door to the entry/exit door used by residents. Available windows and exhaust fans must be used to ventilate the work area. If residents have access to the work area between workdays, the work area must be cleaned and sanitized at the beginning and at the end of workdays. Every effort must be taken to minimize contact between workers and residents, including maintaining a minimum of six feet of social distancing at all times.
- g. Where construction work occurs within common areas of an occupied residential or commercial building or a mixed-use building in use by on-site employees or residents, separate work areas must be sealed off from the rest of the common areas with physical barriers such as plastic sheeting or closed doors sealed with tape to the extent feasible. If possible, workers must access the work area from an alternative building entry/exit door to the building entry/exit door used by residents or other users of the building. Every effort must be taken to minimize contact between worker and building residents and users, including maintaining a minimum of six feet of social distancing at all times.
- h. Prohibit gatherings of any size on the jobsite, including gatherings for breaks or eating, except for meetings regarding compliance with this protocol or as strictly necessary to carry out a task associated with the construction project.
- i. Cal-OSHA requires employers to provide water, which should be provided in single-serve containers. Sharing of any of any food or beverage is strictly prohibited and if sharing is observed, the worker must be sent home for the day. Use of microwaves, water coolers, and other similar shared equipment is prohibited.
- j. Provide personal protective equipment (PPE) specifically for use in construction, including gloves, goggles, face shields, and face coverings as appropriate for the activity being performed. At no time may a contractor secure or use medical-grade PPE unless required due to the medical nature of a jobsite. Face coverings must be worn in compliance with the April 17, 2020 Guidance from the County of Santa Clara Public Health Department, available at: <https://www.sccgov.org/sites/covid19/Pages/learn-what-to-do.aspx#howto>.
- k. Strictly control “choke points” and “high-risk areas” where workers are unable to maintain six-foot social distancing and prohibit or limit use to ensure that six-foot distance can easily be maintained between individuals.
- l. Minimize interactions and maintain social distancing with all site visitors, including delivery workers, design professional and other project consultants, government agency representatives, including building and fire inspectors, and residents at residential construction sites.
- m. Stagger trades as necessary to reduce density and allow for easy maintenance of minimum six-foot separation.

### Appendix B-1

- n. Discourage workers from using others' desks, work tools, and equipment. If more than one worker uses these items, the items must be cleaned and disinfected with disinfectants that are effective against COVID-19 in between use by each new worker. Prohibit sharing of PPE.
- o. If hand washing facilities are not available at the jobsite, place portable wash stations or hand sanitizers that are effective against COVID-19 at entrances to the jobsite and in multiple locations dispersed throughout the jobsite as warranted.
- p. Clean and sanitize any hand washing facilities, portable wash stations, jobsite restroom areas, or other enclosed spaces daily with disinfectants that are effective against COVID-19. Frequently clean and disinfect all high touch areas, including entry and exit areas, high traffic areas, rest rooms, hand washing areas, high touch surfaces, tools, and equipment
- q. Maintain a daily attendance log of all workers and visitors that includes contact information, including name, phone number, address, and email.
- r. Post a notice in an area visible to all workers and visitors instructing workers and visitors to do the following:
  - i. Do not touch your face with unwashed hands or with gloves.
  - ii. Frequently wash your hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60% alcohol.
  - iii. Clean and disinfect frequently touched objects and surfaces such as work stations, keyboards, telephones, handrails, machines, shared tools, elevator control buttons, and doorknobs.
  - iv. Cover your mouth and nose when coughing or sneezing, or cough or sneeze into the crook of your arm at your elbow/sleeve.
  - v. Do not enter the jobsite if you have a fever, cough, or other COVID-19 symptoms. If you feel sick, or have been exposed to anyone who is sick, stay at home.
  - vi. Constantly observe your work distances in relation to other staff. Maintain the recommended minimum six feet at all times when not wearing the necessary PPE for working in close proximity to another person.
  - vii. Do not carpool to and from the jobsite with anyone except members of your own household unit, or as necessary for workers who have no alternative means of transportation.
  - viii. Do not share phones or PPE.
- s. In the event of a confirmed case of COVID-19 at any jobsite, the following must take place:
  - i. Immediately remove the infected individual from the jobsite with directions to seek medical care.
  - ii. Each location the infected worker was at must be decontaminated and sanitized by an outside vendor certified in hazmat clean ups, and work in these locations must cease until decontamination and sanitization is complete.
  - iii. The County Public Health Department must be notified immediately and any additional requirements per the County health officials must be completed, including full compliance with any tracing efforts by the County.

## Appendix B-2

### Large Construction Project Safety Protocol

1. Any construction project meeting any of the following specifications is subject to this Large Construction Project Safety Protocol (“LCP Protocol”), including public works projects unless otherwise specified by the Health Officer:
  - a. For residential construction projects, any single-family, multi-family, senior, student, or other residential construction, renovation, or remodel project consisting of more than 10 units.
  - b. For commercial construction projects, any construction, renovation, or tenant improvement project consisting of more than 20,000 square feet of floor area.
  - c. For construction of Essential Infrastructure, as defined in section 16.c of the Order, any project that requires five or more workers at the jobsite at any one time.
2. The following restrictions and requirements must be in place at all construction job sites subject to this LCP Protocol:
  - a. Comply with all applicable and current laws and regulations including but not limited to OSHA and Cal-OSHA. If there is any conflict, difference or discrepancy between or among applicable laws and regulations and/or this LCP Protocol, the stricter standard will apply.
  - b. Prepare a new or updated Site-Specific Health and Safety Plan to address COVID-19-related issues, post the Plan on-site at all entrances and exits, and produce a copy of the Plan to County governmental authorities upon request. The Plan must be translated as necessary to ensure that all non-English speaking workers are able to understand the Plan.
  - c. Provide personal protective equipment (PPE) specifically for use in construction, including gloves, goggles, face shields, and face coverings as appropriate for the activity being performed. At no time may a contractor secure or use medical-grade PPE, unless required due to the medical nature of a job site. Face coverings must be worn in compliance with the April 17, 2020 Guidance from the County of Santa Clara Public Health Department, available at: <https://www.sccgov.org/sites/covid19/Pages/learn-what-to-do.aspx#howto>.
  - d. Ensure that employees are trained in the use of PPE. Maintain and make available a log of all PPE training provided to employees and monitor all employees to ensure proper use of the PPE.
  - e. Prohibit sharing of PPE.

## Appendix B-2

- f. Implement social distancing requirements including, at minimum:
- i. Stagger stop- and start-times for shift schedules to reduce the quantity of workers at the jobsite at any one time to the extent feasible.
  - ii. Stagger trade-specific work to minimize the quantity of workers at the jobsite at any one time.
  - iii. Require social distancing by maintaining a minimum six-foot distance between workers at all times, except as strictly necessary to carry out a task associated with the project.
  - iv. Prohibit gatherings of any size on the jobsite, except for safety meetings or as strictly necessary to carry out a task associated with the project.
  - v. Strictly control “choke points” and “high-risk areas” where workers are unable to maintain minimum six-foot social distancing and prohibit or limit use to ensure that minimum six-foot distancing can easily be maintained between workers.
  - vi. Minimize interactions and maintain social distancing with all site visitors, including delivery workers, design professional and other project consultants, government agency representatives, including building and fire inspectors, and residents at residential construction sites.
  - vii. Prohibit workers from using others’ phones or desks. Any work tools or equipment that must be used by more than one worker must be cleaned with disinfectants that are effective against COVID-19 before use by a new worker.
  - viii. Place wash stations or hand sanitizers that are effective against COVID-19 at entrances to the jobsite and in multiple locations dispersed throughout the jobsite as warranted.
  - ix. Maintain a daily attendance log of all workers and visitors that includes contact information, including name, address, phone number, and email.
  - x. Post a notice in an area visible to all workers and visitors instructing workers and visitors to do the following:
    1. Do not touch your face with unwashed hands or with gloves.
    2. Frequently wash your hands with soap and water for at least 20 seconds or use hand sanitizer with at least 60% alcohol.
    3. Clean and disinfect frequently touched objects and surfaces such as workstations, keyboards, telephones, handrails, machines, shared tools, elevator control buttons, and doorknobs.
    4. Cover your mouth and nose when coughing or sneezing or cough or sneeze into the crook of your arm at your elbow/sleeve.
    5. Do not enter the jobsite if you have a fever, cough, or other COVID-19 symptoms. If you feel sick, or have been exposed to anyone who is sick, stay at home.
    6. Constantly observe your work distances in relation to other staff. Maintain the recommended minimum six-foot distancing at all times when not wearing the necessary PPE for working in close proximity to another person.
    7. Do not share phones or PPE.

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- xi. The notice in section 2.f.x must be translated as necessary to ensure that all non-English speaking workers are able to understand the notice.
  
- g. Implement cleaning and sanitization practices in accordance with the following:
  - i. Frequently clean and sanitize, in accordance with CDC guidelines, all high-traffic and high-touch areas including, at a minimum: meeting areas, jobsite lunch and break areas, entrances and exits to the jobsite, jobsite trailers, hand-washing areas, tools, equipment, jobsite restroom areas, stairs, elevators, and lifts.
  - ii. Establish a cleaning and decontamination protocol prior to entry and exit of the jobsite and post the protocol at entrances and exits of jobsite.
  - iii. Supply all personnel performing cleaning and sanitization with proper PPE to prevent them from contracting COVID-19. Employees must not share PPE.
  - iv. Establish adequate time in the workday to allow for proper cleaning and decontamination including prior to starting at or leaving the jobsite for the day.
  
- h. Implement a COVID-19 community spread reduction plan as part of the Site-Specific Health and Safety Plan that includes, at minimum, the following restrictions and requirements:
  - i. Prohibit all carpooling to and from the jobsite except by workers living within the same household unit, or as necessary for workers who have no alternative means of transportation.
  - ii. Cal-OSHA requires employers to provide water, which should be provided in single-serve containers. Prohibit any sharing of any food or beverage and if sharing is observed, the worker must be sent home for the day.
  - iii. Prohibit use of microwaves, water coolers, and other similar shared equipment.
  
- i. Assign a COVID-19 Safety Compliance Officer (SCO) to the jobsite and ensure the SCO's name is posted on the Site-Specific Health and Safety Plan. The SCO must:
  - i. Ensure implementation of all recommended safety and sanitation requirements regarding the COVID-19 virus at the jobsite.
  - ii. Compile daily written verification that each jobsite is compliant with the components of this LCP Protocol. Each written verification form must be copied, stored, and made immediately available upon request by any County official.
  - iii. Establish a daily screening protocol for arriving staff, to ensure that potentially infected staff do not enter the construction site. If workers leave the jobsite and return the same day, establish a cleaning and decontamination protocol prior to entry and exit of the jobsite. Post the daily screening protocol at all entrances and exit to the jobsite. More information on screening can be found online at: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>.
  - iv. Conduct daily briefings in person or by teleconference that must cover the following topics:
    - 1. New jobsite rules and pre-job site travel restrictions for the prevention of COVID-19 community spread.
    - 2. Review of sanitation and hygiene procedures.
    - 3. Solicitation of worker feedback on improving safety and sanitation.
    - 4. Coordination of construction site daily cleaning/sanitization requirements.
    - 5. Conveying updated information regarding COVID-19.

**Appendix B-2**

6. Emergency protocols in the event of an exposure or suspected exposure to COVID-19.
  - v. Develop and ensure implementation of a remediation plan to address any non-compliance with this LCP Protocol and post remediation plan at entrance and exit of jobsite during remediation period. The remediation plan must be translated as necessary to ensure that all non-English speaking workers are able to understand the document.
  - vi. The SCO must not permit any construction activity to continue without bringing such activity into compliance with these requirements.
  - vii. Report repeated non-compliance with this LCP Protocol to the appropriate jobsite supervisors and a designated County official.
- j. Assign a COVID-19 Third-Party Jobsite Safety Accountability Supervisor (JSAS) for the jobsite, who at a minimum holds an OSHA-30 certificate and first-aid training within the past two years, who must be trained in the protocols herein and verify compliance, including by visual inspection and random interviews with workers, with this LCP Protocol.
  - i. Within seven calendar days of each jobsite visit, the JSAS must complete a written assessment identifying any failure to comply with this LCP Protocol. The written assessment must be copied, stored, and, upon request by the County, sent to a designated County official.
  - ii. If the JSAS discovers that a jobsite is not in compliance with this LCP Protocol, the JSAS must work with the SCO to develop and implement a remediation plan.
  - iii. The JSAS must coordinate with the SCO to prohibit continuation of any work activity not in compliance with rules stated herein until addressed and the continuing work is compliant.
  - iv. The remediation plan must be sent to a designated County official within five calendar days of the JSAS's discovery of the failure to comply.
- k. In the event of a confirmed case of COVID-19 at any jobsite, the following must take place:
  - i. Immediately remove the infected individual from the jobsite with directions to seek medical care.
  - ii. Each location the infected worker was at must be decontaminated and sanitized by an outside vendor certified in hazmat clean ups, and work in these locations must cease until decontamination and sanitization is complete.
  - iii. The County Public Health Department must be notified immediately and any additional requirements per the County health officials must be completed, including full compliance with any tracing efforts by the County.
- l. Where construction work occurs within an occupied residential unit, any separate work area must be sealed off from the remainder of the unit with physical barriers such as plastic sheeting or closed doors sealed with tape to the extent feasible. If possible, workers must access the work area from an alternative entry/exit door to the entry/exit door used by residents. Available windows and exhaust fans must be used to ventilate the work area. If residents have access to the work area between workdays, the work area must be cleaned and

**Appendix B-2**

sanitized at the beginning and at the end of workdays. Every effort must be taken to minimize contact between workers and residents, including maintaining a minimum of six feet of social distancing at all times.

- m. Where construction work occurs within common areas of an occupied residential or commercial building or a mixed-use building in use by on-site employees or residents, any separate work area must be sealed off from the rest of the common areas with physical barriers such as plastic sheeting or closed doors sealed with tape to the extent feasible. If possible, workers must access the work area from an alternative building entry/exit door to the building entry/exit door used by residents or other users of the building. Every effort must be taken to minimize contact between worker and building residents and users, including maintaining a minimum of six feet of social distancing at all times.

# EXHIBIT “9”

# Executive Summary

## June 5, 2020 Shelter-in-Place Order Updates



Because of the continued substantial progress our community has achieved in slowing the spread of COVID-19, this updated Shelter-in-Place Order allows certain additional businesses and activities to resume, subject to restrictions to reduce transmission risk.

This updated Order will go into effect at 12:01 am on Friday, June 5, 2020, and will remain in effect until the Health Officer amends or rescinds it. This updated Order modifies the current order, which went into effect on May 22, 2020. This summary refers to the May 22 order as the "Current Order" and this updated Order as the "June 5 Order" or "Order."

### What changes does this updated Order make?

The June 5 Order allows several new categories of businesses and activities to reopen, subject to specific conditions and limitations. It also keeps key restrictions in place, requiring people to stay in their homes except when engaging in certain essential or allowed activities. The new activities and businesses allowed to reopen under the updated Order are referred to as "Additional Activities" and "Additional Businesses" and are explained in Appendices C-1 and C-2 to the Order. These and other significant changes are highlighted below.

#### **Additional Businesses:**

- Outdoor dining at restaurants and other facilities that prepare and serve food, subject to limitations/social distancing
- Retail and shopping centers for in-store shopping, subject to limitations/social distancing
- Childcare, summer camps, summer school, and all other educational or recreational programs for *all* children, in stable groups of up to 12 children
- All manufacturing, warehousing, and logistics, subject to limitations/social distancing
- House cleaning and other no-contact in-home services
- Low contact/no contact service businesses such as shoe repair, watch repair, and other similar services, subject to limitations/social distancing
- All pet grooming

#### **Additional Activities:**

- Outdoor small ceremonies and religious services, in groups no larger than 25
- All outdoor recreational activities that do not involve physical contact, with social distancing, including swimming pools, hiking, tennis, golf, etc.
- Camping, subject to limitations/social distancing
- Drive-in Theaters and other car-based gatherings

#### **Social Distancing Protocol:**

There has been no change to the Social Distancing Protocol businesses are required to implement under the Order. As a reminder:

- To operate, all businesses must complete a Social Distancing Protocol (Appendix A to the Order) using the template in Appendix A.

- To show that they are implementing the Social Distancing Protocol to keep their staff and customers safe from COVID-19, all businesses must print and post in a prominent place near the entrance to the businesses (1) a COVID-19 PREPARED Sign and (2) a Social Distancing Protocol Visitor Information Sheet. Both the Sign and Visitor Information Sheet can be found in Appendix A to the Order.
- All businesses must post signage required in the Social Distancing Protocol to educate customers about health and safety requirements. Sign templates are available on the County's [website](#).

***Construction Project Safety Protocols:***

The Construction Project Safety Protocol in Appendix B-1 and B-2 have changed as follows:

- The threshold for an essential infrastructure project subject to the Large Construction Project Safety Protocol has changed from five workers to 20 workers. All essential infrastructure projects with less than 20 workers present at the jobsite at any one time are now subject to the Small Construction Project Safety Protocol in Appendix B-1.
- Appendix B-1 now specifies that specified steps must be taken if a worker at a construction site tests positive for COVID-19, and both appendices now state that COVID-19 cases associated with construction must be immediately reported to the County Public Health Department by both telephone and by email.

# EXHIBIT “10”



# What's Open?

Subject to social distancing protocols and COVID-19 related safety requirements to protect workers, customers and the community.

## Business and Government Agencies

### Already Open

- All healthcare services
- All essential governmental activities
- All essential infrastructure, including internet/communications
- Grocery stores, pharmacies, and similar essential businesses
- Agencies providing food/shelter/social services
- Newspapers, television, and radio
- Gas stations, auto-supply, and auto-repair
- Bicycle repair and supply shops
- Banks and related financial institutions
- Hardware stores
- Plumbers, electricians, exterminators, and other home repair services
- Mailing and shipping services
- Minimum Basic Operations for all businesses, including offices
- Landscaping and gardening services
- Most manufacturing
- Medically necessary pet grooming
- All retail stores, but for curbside pickup only
- Real estate agents, escrow agents, notaries, and title companies
- Plant nurseries and garden centers
- Laundromats, dry cleaners, and laundry services
- Restaurants, but only for delivery or carry out
- Airlines, taxis, rental cars, and rideshare services
- Home-based care for seniors/children/pets
- Residential facilities and homeless shelters
- All businesses that deliver goods to homes

### Open June 5, 2020

- Outdoor dining at restaurants
- In-store shopping at retail and shopping centers
- All manufacturing, warehousing, and logistics
- House cleaning and other no-contact in-home services
- Low contact/no contact service businesses including shoe repair, watch repair, and other similar services
- Pet grooming and dog walking

## Education, Childcare, and Children's Activities

### Already Open

- Educational institutions including public and private K-12 schools, colleges, and universities, but only for facilitating distance learning or performing essential functions
- Childcare establishments for children of workers of allowable businesses in stable groups of 12
- Summer camps and other educational or recreational programs for children of workers of allowable businesses in stable groups of 12
- Change of groups allowed every four weeks

### Open June 5, 2020

- All childcare, summer camps, summer school, and all other educational or recreational programs for all children in stable groups up to 12 children
- Change of group allowed every three weeks

## Outdoor Ceremonies, Outdoor Religious Gatherings, and Outdoor Recreation

### Already Open

- Outdoor recreational activities with members of one's own household
- Parks and outdoor recreation areas
- Outdoor museums, outdoor historical sites, and publicly accessible gardens
- Car parades

### Open June 5, 2020

- Small outdoor ceremonies and outdoor religious gatherings in groups no larger than 25
- All outdoor recreational activities that do not involve physical contact, with social distancing and with up to one other household, including hiking, tennis, Frisbee and golf
- Outdoor swimming pools
- Camping
- Drive-in theaters and other automobile-based gatherings

# EXHIBIT “11”

## Appendix C-1: Additional Businesses Allowed to Operate

Effective June 5, 2020

### General Requirements

The “Additional Businesses” listed below may begin operating, subject to the requirements set forth in the Order and to any additional requirements set forth below or in separate industry-specific guidance by the Health Officer. These businesses were selected to implement a measured expansion of commercial activity based on health-related considerations including the risks of COVID-19 transmission associated with types and modes of business operations, the ability to substantially mitigate transmission risks associated with the operations, and related factors, such as the following:

- **Increase in mobility and volume of activity**—the overall impact the reopening will have on the number of people leaving their homes and traveling to work at or access the business;
- **Contact intensity**—the type (close or distant) and duration (brief or prolonged) of the contact involved in the business;
- **Number of contacts**—the approximate number of people that will be in the setting at the same time;
- **Modification potential**—the degree to which mitigation measures can decrease the risk of transmission.

To mitigate the risk of transmission to the greatest extent possible, each Additional Business must, before resuming operations:

- 1) Prepare and complete a Social Distancing Protocol (SDP) for each of its facilities in the County used by Personnel or the public, using the template provided in Appendix A to the Order.
- 2) The COVID-19 PREPARED Sign and SDP Visitor Information Sheet, which are included with Appendix A, must be printed and posted at or near the entrance of the facility, such as a window, and shall be easily viewable by the public and Personnel from outside the facility.
- 3) The SDP must be distributed to all Personnel working at the facility. Implement all measures in the Social Distancing Protocol prior to opening.
- 4) Print and post all signage required in the SDP. Several sign templates are available on the Public Health Department’s website at:  
<https://www.sccgov.org/sites/covid19/Pages/learn-what-to-do-flyers.aspx>.

As used in this Appendix C-1, “Personnel” means the following people who provide goods or services or perform operations associated with the Additional Business in the County: employees; contractors and sub-contractors (such as those who sell goods or perform services onsite or who deliver goods for the business); independent contractors (such as “gig workers” who perform work via the Additional Business’s application or other online interface); vendors who are permitted to sell goods onsite; volunteers; and other individuals who regularly provide services onsite at the request of the Additional Business.

In addition, each Additional Business must comply with Social Distancing Requirements and all relevant state guidance and local directives. Where differences exist between the state guidance and local public health directives related to the COVID-19 pandemic, the most restrictive provision controls.

### **List of Additional Businesses**

For purposes of the Order, Additional Businesses include the following:

#### **(1) Retail**

- a. Basis for Addition. Retail typically involves a moderate level of contact for a short duration of time and can proceed with limitations to ensure adequate social distancing and decrease the risk of transmission.
- b. Description and Conditions to Operate. All retail businesses, including wholesale businesses, may operate subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Unless operating as an Essential Business or Outdoor Business or to carry out an Essential Governmental Function, the total number of Personnel present at a facility that qualifies under this category must at any one time be no more than one Personnel per 300 gross square feet of the facility, and no more than one customer per 200 square feet of space open to the public.

#### **(2) Manufacturing**

- a. Basis for Addition. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions to Operate. All manufacturing businesses may operate subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Unless operating as an Essential Business or to carry out an Essential Governmental Function, the total number of persons (including Personnel, customers, delivery persons, or other persons) present at a facility that qualifies under this category must at any one time be no more than one person per 300 gross square feet of the facility.

#### **(3) Logistics, Warehousing, Delivery, and Distribution**

- a. Basis for Addition. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions to Operate. All logistics, warehousing, delivery, and distribution businesses may operate subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Unless operating as an Essential Business or to carry out an Essential Governmental Function, the total number of persons (including Personnel,

customers, delivery persons, or other persons) present at a facility that qualifies under this category must at any one time be no more than one person per 300 gross square feet of the facility.

- ii. All delivery and distribution activities must take place with the minimum number of persons in a vehicle necessary to safely operate the vehicle and carry out relevant job functions.
- iii. In addition to the requirements set forth in the Order regarding face coverings, Personnel must wear face coverings at all times when inside a vehicle to carry out operations that qualify under this category, except Personnel who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.

**(4) Outdoor Museums, Outdoor Historical Sites, and Publicly Accessible Gardens**

- a. Basis for Addition. Visiting outdoor museums, outdoor historical sites, and publicly accessible gardens involves low contact intensity and a low number of contacts so long as proper social distancing is maintained at all times. Interactions and activities that occur outdoors carry a lower risk of transmission than most indoor interactions and activities. Because outdoor recreation is already allowed under the Order, resumption of this activity should result in only a relatively modest increase in mobility and may decrease congestion in other outdoor locations like public parks and beaches.
- b. Description and Conditions. Outdoor museums, outdoor historical sites, and publicly accessible gardens may open subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Members of the public are not allowed to access any indoor facilities associated with outdoor museums, outdoor historical sites, or publicly accessible gardens, except to use restrooms, which must be frequently cleaned. All business and transactions involving members of the public must occur outdoors.
  - ii. Businesses operating under this category must implement measures to ensure that social distancing of at least six feet is maintained at all times other than between members of the same household.

**(5) Childcare, Camps, and other Educational or Recreational Institutions for All Children**

- a. Basis for Addition. These businesses are critical to children's physical, mental, and social development, and also play a vital role in families' social and economic wellbeing. However, these programs involve a relatively high quantity, intensity, and duration of contacts, and children are often unable to consistently follow social distancing and sanitation requirements that apply to other types of businesses. Risk associated with this category of businesses can be mitigated to some degree with limitations on the size of the groups and on intermixing between groups. In addition, because many of these businesses are already allowed to operate for some children, this addition creates a relatively modest expansion of activity.

- b. Description and Conditions to Operate. All childcare establishments, camps, and other educational or recreational institutions or programs may provide their services to all children subject to the following limitations in addition to those required elsewhere in the Order:
- i. Programs must be carried out in stable groups of 12 or fewer children (“stable” means that the same 12 or fewer children are in the same group each day).
  - ii. Children within a program shall not change from one group to another within that program.
  - iii. If more than one group of children is at one facility, each group shall be in a separate room. Groups shall not mix with each other.
  - iv. Providers or educators shall remain solely with one group of children.
  - v. Children may not move from one program to another more frequently than once every three weeks, or take part in more than one program simultaneously.

**(6) Limited Services That Do Not Require Customer Contact**

- a. Basis for Addition. The limited services allowed to open involve minimal, low-intensity, short-duration interaction between Personnel and customers. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions to Operate. Limited services that do not require customer contact including but not limited to, pet grooming (including mobile pet grooming), pet daycare, dog walking, repair services (including shoe, watch, jewelry, and other repair services), home cooking services, tailoring, car detailing, residential and janitorial cleaning services, and home maintenance, may operate subject to the following limitations in addition to those required elsewhere in the Order:
- i. If the service is operated out of a business facility that is not an Essential Business or Outdoor Business or used to carry out an Essential Governmental Function, the total number of persons (including Personnel, customers, delivery persons, or other persons) present at the facility must any one time be no more than one person per 300 gross square feet of the facility, and no more than one customer per 200 square feet of space open to the public.
  - ii. To the extent feasible, all interactions and transactions between Personnel and customers must occur outdoors.
  - iii. To the extent feasible, businesses must provide an option to customers that allows them to order and pay for products online or by phone prior to arriving at the facility.
  - iv. To the extent feasible, items serviced must be disinfected prior to being returned to customers.

**(7) Outdoor Dining**

- a. Basis for Addition. Outdoor dining provides access to freshly prepared meals at a relatively low risk of transmission. Because food service will be limited to outdoor areas, the overall volume of increased activity will be modest. In addition, interactions and activities that occur outdoors carry a lower risk of transmission than most indoor interactions and activities. Risks associated with these operations can be substantially mitigated with conditions to ensure adequate social distancing and limit intermixing between households.
- b. Description and conditions to operate: Restaurants and other food facilities that provide sit-down food service may provide outdoor, sit-down meals, subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Outdoor seating arrangements shall limit the number of patrons at a single table to no more than six (6) individuals, all of whom must be from the same household or living unit. Members of separate households or living units are not allowed to dine at the same table.
  - ii. All tables must be separated to ensure that six-foot minimum social distance can easily be maintained between all members of separate households or living units at all times. For clarity, patrons who are members of the same household or living unit and seated together at a table do not need to be six feet apart.
  - iii. Alcohol may be sold to patrons in conjunction with a meal, but it may not be sold independently.
  - iv. Bar areas must remain closed to customers.
  - v. Entertainment events are not allowed at this time.
  - vi. Outdoor dining, placement of outdoor seating arrangements, and food service must be in compliance with local laws, regulations, and permitting requirements.
  - vii. Facilities that open for outdoor dining must offer curbside pickup, takeaway, and/or delivery service alternatives.

**(8) Outdoor Swimming Pools**

- a. Basis for Addition. Outdoor swimming pools have few high-touch surfaces and do not require shared equipment. Risks associated with outdoor swimming pools can be substantially mitigated with limitations to ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions to Operate. Outdoor swimming pools may operate subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Lap swimming must be limited to one swimmer per lane, except that members of the same household or living unit may occupy a single lane.
  - ii. Use of shared swimming areas must be limited to no more than one swimmer per 300 square feet of shared pool space.
  - iii. Except for members of the same household, swimmers shall remain at least six feet apart at all times.
  - iv. At least one person, separate from a lifeguard, shall be on duty at all times to ensure that the social distancing protocol applicable to the facility and all limitations herein are followed.

- v. Locker rooms shall be closed to the public, except for use as a restroom.
- vi. All gathering shall be prohibited outside the pool, such as on pool decks, except that members of a household may observe a child or other person swimming to ensure safety and supervision.

**(9) Campgrounds**

- a. Basis for Addition. Camping is an outdoor activity and can occur with members of one's own household without generating substantial risk of contact with other households. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions. Campgrounds may operate subject to the following limitations additional to those required elsewhere in the Order:
  - i. Only designated camping spots shall be used.
  - ii. Each camping spot shall be occupied by no more than one household or living unit.
  - iii. If camping spots are immediately adjacent to one another, there shall at least one closed camping spot between each open camping spot to maintain adequate distance between households or living units.
  - iv. Yurts, dorms, cabins, "glamping" facilities, and other permanent facilities may not be used, except for restrooms, food lockers, dishwashing stations, and drinking water stations, which must be frequently sanitized.
  - v. To the extent feasible, reservations shall be made by phone or online prior to arrival.

# EXHIBIT “12”

## Appendix C-2: Allowed Additional Activities

Effective June 5, 2020

### General Requirements

The “Additional Activities” listed below may resume, subject to the requirements set forth in the Order and to any additional requirements set forth below or in separate guidance by the Health Officer. These activities were selected to implement a measured expansion of activity based on health-related considerations including the risks of COVID-19 transmission associated with types and modes of activity, the ability to substantially mitigate transmission risks associated with the operations, and related factors, such as the following:

- **Increase in mobility and volume of activity**—the overall impact resumption of the activity will have on the number of people leaving their homes and interacting with others in the community;
- **Contact intensity**—the type (close or distant) and duration (brief or prolonged) of the contact involved in the activity;
- **Number of contacts**—the approximate number of people that will be in the setting at the same time;
- **Modification potential**—the degree to which mitigation measures can decrease the risk of transmission.

### List of Additional Activities

For purposes of the Order, Additional Activities include the following:

#### (1) Automobile Parades

- a. Basis for Addition. Automobile parades have zero- or low-contact intensity because people of the same household must remain in their automobiles together throughout the event. Automobile parades also carry a relatively low risk that they will result in prohibited gatherings of people outside the vehicles because the parades are mobile, and congregating at a fixed location is not allowed. The activity is also expected to result in only a marginal increase in mobility, and little-to-no physical interaction with others in the community. This activity provides a low-risk option for people seeking to celebrate special occasions outside their homes.
- b. Description and Conditions. Automobile parades are allowed, subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Parades must comply with all laws and applicable permitting requirements.
  - ii. Only members of the same household may occupy a single automobile.
  - iii. People may not leave their automobiles at any time during the parade.
  - iv. Participating automobiles may not congregate at a fixed location.
  - v. No bicycles or motorcycles may participate.

(2) **Automobile-based Gatherings and Drive-thru Events**

- a. **Basis for Addition.** Automobile-based gatherings and drive-thru events have low-contact intensity because people of the same household must remain in their automobiles, except for narrow exceptions. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. **Description and Conditions.** Automobile-based gatherings and drive-thru events for any purpose, including but not limited to drive-in theaters, drive-through ceremonies, and automobile-based ceremonies, are allowed, subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Gatherings and events must comply with all laws and applicable permitting requirements.
  - ii. No more than 100 automobiles may be present at any one time.
  - iii. A person or business, as that term is defined in the Order, must serve as the designated host for gathering or event, and must ensure compliance with all requirements in the Order and in this Appendix C-2.
  - iv. For gatherings of more than 10 vehicles, the host must request security staffing by the local law enforcement agency with primary jurisdiction for the location of the event and pay any costs established by that law enforcement agency. If the law enforcement agency declines to provide such security, the host is responsible for acquiring private security sufficient to ensure compliance with the Order and this Appendix C-2. The amount of security necessary shall be determined by the entity providing security but should be no more than that deemed necessary to maintain safety and ensure compliance with the Order and this Appendix C-2. For clarity, if the host already employs security officers, it may use its existing security officers.
  - v. Food, beverages, and other concessions may not be provided or sold for consumption at the gathering or event.
  - vi. No equipment or items may be shared amongst persons, except amongst members of the same household or living unit.
  - vii. Gatherings and events shall last no more than three hours.
  - viii. Occupants of a vehicle must be members of the same household or living unit and may not change vehicles during the event.
  - ix. No person may leave their automobiles at any time during the event except to use the restroom, occupy a stage as allowed in Paragraph 2(b)(xi), or for an emergency. This requirement does not apply to event personnel or security, who must maintain at least six-foot social distance at all times feasible.
  - x. Face coverings must be worn at all times when outside a vehicle, or when the windows or convertible top of a vehicle are open, except by people who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.

- xii. Only five persons may occupy a stage at any one time, and shall remain at least six feet apart at all times.
- xiii. Automobiles shall remain at least six feet apart at all times.
- xiv. No bicycles or motorcycles may participate.
- xv. If a restroom is made available to participants in the gathering or event, it must be frequently sanitized, and measures must be put in place to ensure that at least six-foot social distance is maintained by people when inside the facility or waiting in line.

**(3) Outdoor Recreational and Athletic Activities**

- a. Basis for Addition. Non-contact recreational and athletic activities have low-to-moderate levels of transmission risk. Risks associated with these activities can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions. Non-contact recreational and athletic activities with members of other households may occur subject to the following limitations in addition to those required elsewhere in the Order:
  - i. No more than two households or living units may engage in these recreational and athletic activities together at any one time.
  - ii. No equipment (except balls, frisbees, or other projectiles) may be shared between households or living units.
  - iii. All recreational and athletic activities with members of another household or living unit must occur entirely outdoors.
  - iv. Members of separate households or living units must remain at least six feet apart at all times.
  - v. Face coverings must be worn when recreating with members of another household or living unit, except when actively exercising or by people who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.

**(4) Use of Dog Parks**

- a. Basis for Addition. Dog parks are outdoor locations that typically provide ample space for people to distance from one another. Risks associated with this activity can be mitigated through measures that ensure adequate social distancing and limit intermixing between households.
- b. Description and Conditions. Dog parks may open to the public subject to the following limitations in addition to those required elsewhere in the Order:
  - i. No person shall enter a dog park if it is not possible to easily maintain at least six feet of separation from all other persons.

- ii. Face coverings must be worn at all times, except by people who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.

**(5) Small Outdoor Ceremonies and Religious Gatherings**

- a. Basis for Addition. Although ceremonies and religious gatherings carry a substantial risk of transmission, they are vital to people's social and spiritual well being. The risk associated with these activities is mitigated when the activities occur outdoors, and when the total number of participants is limited. Risks associated with these activities can be further mitigated through measures that decrease exposure, ensure adequate social distancing, and limit intermixing between households.
- b. Description and Conditions. Outdoor ceremonies and religious gatherings, including but not limited to funerals and weddings, may occur subject to the following limitations in addition to those required elsewhere in the Order:
  - i. Ceremonies and gatherings must occur entirely outdoors, except that participants may use restrooms, provided that the restrooms are frequently sanitized.
  - ii. No more than 25 persons may be present at any one time.
  - iii. A person or business, as that term is defined in the Order, must serve as the designated host for the ceremony or gathering, and must ensure compliance with all requirements in the Order and in this Appendix C-2.
  - iv. The host must maintain a list with the names and contact information of all participants. If a participant tests positive for COVID-19, the host shall assist the County Public Health Department in any case investigation and contact tracing associated with the gathering.
  - v. Food, beverages, and other concessions may not be provided or sold for consumption at the ceremony or gathering, except as necessary for ceremonial purposes with maximization of all safety precautions and avoidance of sharing.
  - vi. No equipment or items may be shared amongst persons, except amongst members of the same household or living unit.
  - vii. No singing or shouting is allowed due to significantly increased risk of COVID-19 transmission.
  - viii. All participants must wear face coverings at all times, except people who are exempted from the face covering requirement pursuant to the Health Officer's Critical Guidance on Face Coverings.
  - ix. Except for members of the same household or living unit, all participants must remain at least six feet from one another at all times.

# EXHIBIT “13”

**\* Can I leave home to go to a service at my church, synagogue, or mosque?**

No. For your safety as well as the safety of fellow worshippers, religious gatherings, ceremonies, and events held inside places of worship are not allowed at this time. People may go inside places of worship as necessary to offer remote access to services (such as by email, video streaming, or teleconference) or to maintain other minimum basic operations, like security. While remote gatherings are encouraged as the safest alternative, worshippers may now participate in small outdoor religious gatherings and automobile-based gatherings in compliance with the provisions described in [Appendix C-2](#) and below.

**\*\* Can I attend a religious service or other ceremony outdoors?**

The June 5 Order allows you to gather with others for small outdoor religious services and other ceremonies (like weddings and funerals), so long as you follow these rules:

1. No more than 25 people may be present at any time.
2. The entire event must occur outdoors.  
People may only go inside during the event to use the restroom, so long as restrooms are frequently cleaned.
3. Everyone must remain at least six feet apart at all times, except for members of the same household.
4. There must be a host (a person or business) for the gathering, who makes sure that everyone follows the rules.

5. That host must keep a list of the names and contact information for participants. If a participant tests positive for COVID-19, the host must help the County Public Health Department identify other participants who may have been exposed to help prevent further spread of COVID-19.
6. Food, beverages, and other concessions may not be provided or sold, except as necessary for ceremonial purposes (without sharing and with safety precautions).
7. No sharing of equipment or other items, except between members of the same household.
8. No singing or shouting (these increase risk of COVID-19 spread).
9. All participants must wear face coverings at all times (except for children 6 years old and younger or if medically inadvisable).

# EXHIBIT “14”



June 1 at 4:55 PM · 🌐

We recognize that peaceful protest in response to the pain, anger and mourning due to deeply rooted inequities and systemic racism is a fundamental right that is critical to the health of our democracy. As residents of the County exercise this right, we respectfully remind everyone that our community is still facing a health crisis and fighting COVID-19. [🗨️]

[🗨️]

We urge those engaging in peaceful protest to keep their own health and the health of others in mind by following important practices, such as using face coverings and, to the extent possible, maintaining social distancing. We also encourage those who have been in close contact with others at large gatherings to take the opportunity to get tested for COVID-19 within three to five days of gathering, and to watch for any symptoms of COVID-19. There are many locations across the County that offer free testing, which can be found at [sccfreetest.org](https://sccfreetest.org).

**Please be safe as we  
move through these  
difficult times  
together.**



We are with you, and we hear you. Here are some tips for staying as COVID-safe as possible while fighting for racial justice:

- ✓ Wear a face covering
- ✓ Wear eye protection
- ✓ Yelling can project virus particles, use signs or noisemakers instead
- ✓ Bring plenty of water to stay hydrated
- ✓ Use hand sanitizer
- ✓ Do not attend if you are feeling ill
- ✓ Get tested within three to five days and watch for symptoms: [SCCFreeTest.org](https://www.sccgov.org/health/SCCFreeTest.org)

Please be safe and kind to one another as we move through these difficult times together.

#ApartTogetherSCC

# Tips for being COVID-safe while protesting.

For more COVID-19 information, visit [sccgov.org/coronavirus](https://www.sccgov.org/coronavirus)



# EXHIBIT “C”

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

CALVARY CHAPEL SAN JOSE, et al.,  
Plaintiffs,  
v.  
SARA CODY, et al.,  
Defendants.

Case No. 20-cv-03794-BLF

**ORDER GRANTING MOTION TO  
DISMISS AND STAY UNDER  
YOUNGER ABSTENTION DOCTRINE**

[Re: ECF No. 224]

United States District Court  
Northern District of California

In this case, Plaintiffs Calvary Chapel San Jose and its Pastor Mike McClure (together “Calvary”) challenge Defendant the County of Santa Clara’s enforcement of public health orders related to the COVID-19 pandemic. Calvary asks this Court to find that the public health orders violate its civil rights and that fines predicated on the orders that the County seeks to collect in a proceeding in state court are unlawful.

Before the Court is the County’s motion to dismiss and stay Calvary’s claims under the *Younger* abstention doctrine. *See* Mot., ECF No. 224; Reply ECF No. 242. Calvary opposes the motion. Opp’n, ECF No. 234. The Court heard oral argument on the motion on January 26, 2023. ECF No. 269. For the reasons discussed below and during oral argument, the County’s motion to dismiss and stay is GRANTED.

**I. BACKGROUND**

Calvary brought this action on June 9, 2020, against Santa Clara County’s Public Health Officer and members of Santa Clara County’s Board of Supervisors. Compl., ECF No. 1. The complaint asserted causes of action under the federal and California constitutions and sought to enjoin enforcement of certain public health orders related to COVID-19. *Id.* The County moved to dismiss the Complaint on July 20, 2020. *See* ECF No. 20.

1 On October 27, 2020, the County and its Public Health Officer filed a complaint in Santa  
2 Clara County Superior Court. *See* Request for Judicial Notice (“RJN”) Ex. A, ECF No. 242-1.  
3 The County sought to enjoin Calvary from violating public health orders. *Id.* At the time, no  
4 matters had come before the Court. Pending matters were scheduled for hearing in November  
5 2020.

6 This Court heard argument on the County’s motion to dismiss on November 5, 2020. *See*  
7 ECF No. 32. The Court granted the motion to dismiss that day in a four-page order. ECF No. 30.  
8 Calvary filed an amended complaint about three weeks later. Am. Compl., ECF No. 38. The  
9 complaint added several causes of action, including a claim under the Bane Act, for which Calvary  
10 sought penalties. *Id.* at p.35.

11 Shortly after filing its amended complaint, Calvary applied for a temporary restraining  
12 order. *Ex Parte* Appl. for TRO (“TRO Appl.”), ECF No. 42. Calvary asked this Court to enjoin  
13 enforcement of a preliminary injunction issued by the Santa Clara Superior Court that “allow[ed]  
14 enforcement officers to ensure compliance with State and County public health orders.” *Id.* at 3,  
15 14. This Court denied Calvary’s application, “find[ing] it inappropriate to interfere with the Santa  
16 Clara County Superior Court proceedings” and indicating that *Younger* abstention would preclude  
17 federal court involvement. Order Deny. Appl. For TRO 1, ECF No. 67. The County did not  
18 affirmatively seek an order on *Younger* abstention at that time.

19 This Court held an initial case management conference on January 21, 2021. ECF No. 71.  
20 On March 4, 2021, the Court permitted Calvary to file a second amended complaint pursuant to a  
21 stipulation by the parties. *See* ECF Nos. 80, 81. Two months later, the parties stipulated to permit  
22 Calvary to file a third amended complaint. *See* ECF Nos. 87, 88. Shortly thereafter, this Court  
23 stayed discovery until 10 days after the filing of Calvary’s third amended complaint noting that  
24 “[i]t is not reasonable to require Defendants to respond to discovery without knowing the  
25 boundaries of the claims against them.” ECF No. 97.

26 In July 2021, the County amended its complaint in the state court action seeking to collect  
27 fines for violations of the public health orders. *See* 1st Am. Compl. for Inj. Relief and to Recover  
28 Admin. Fines, *California v. Calvary Chapel San Jose*, No. 20CV372285 (July 29, 2021).

1 On September 30, 2021, Calvary filed its third amended complaint. Third Am. Compl.,  
 2 ECF No. 116. The complaint again challenged the constitutionality of the public health orders and  
 3 included a claim under the Bane Act. *Id.* The County filed a motion to dismiss the complaint,  
 4 which the Court granted in part and denied in part. *See* ECF Nos. 135, 156.

5 Calvary subsequently filed a fourth amended complaint. 4th Am. Compl. (“4AC”), ECF  
 6 No. 167. The County again filed a motion to dismiss. ECF No. 179. The Court granted in part  
 7 and denied in part the County’s motion. ECF No. 222. In its order, the Court granted the  
 8 County’s motion to dismiss Calvary’s Bane Act claim without leave to amend. *See id.* at 14.

9 The County filed the present motion to dismiss five days after the Court dismissed  
 10 Calvary’s Bane Act claim. *See* Mot. Shortly thereafter, the County filed its answer to the fourth  
 11 amended complaint. *See* ECF No. 229.

## 12 **II. JUDICIAL NOTICE**

13 The County requests the Court judicially notice 11 documents filed in the Santa Clara  
 14 Superior Court in *The People of the State of California v. Calvary Chapel San Jose*, No.  
 15 20CV372285 and 4 documents filed in California Court of Appeal in *Calvary Chapel San Jose v.*  
 16 *The People of the State of California*, No. H048708. *See* Request for Judicial Notice (“RJN”),  
 17 ECF No. 242-1.

18 The documents filed in Santa Clara Superior Court are: (1) Complaint for Injunctive  
 19 Relief, RJN Ex. A; (2) Opposition to Motion for Preliminary Injunction, RJN Ex. B; (3)  
 20 Memorandum of Points and Authorities in Opposition to Plaintiff’s Request for Contempt and/or  
 21 Sanctions, RJN Ex. C; (4) Motion for Reconsideration of the Court’s Order Granting the  
 22 Preliminary Injunction, or, in the Alternative, Motion to Dissolve the Preliminary Injunction and  
 23 Vacate the Contempt Proceedings, RJN Ex. D; (5) Memorandum of Points and Authorities in  
 24 Opposition to Plaintiffs’ Ex Parte Application for Order to Show Cause re: Contempt and/or  
 25 Sanctions, RJN Ex. E; (6) Defendants Calvary Chapel San Jose and Mike McClure’s Closing  
 26 Argument, RJN Ex. F; (7) Memorandum of Points and Authorities in Support of Defendants’  
 27 Motion to Dissolve the Preliminary Injunction, RJN Ex. G; (8) Defendants’ Notice of Demurrer  
 28 and Demurrer to the First Amended Complaint, RJN Ex. H; (9) Defendants’ Reply in Support of

1 Motion to Dissolve the Preliminary Injunction, RJN Ex. I; (10) Defendants’ Reply in Support of  
 2 Demurrer to First Amended Complaint, RJN Ex. J; and (11) Defendants’ Answer to the First  
 3 Amended Complaint for Injunctive Relief and to Recover Administrative Fines, RJN Ex. K.

4 The documents filed in the California Court of Appeal are: (1) Verified Petition for  
 5 Immediate Review, RJN Ex. L; (2) Reply in Support of Petition for Immediate Review, RJN Ex.  
 6 M; (3) Appellants’ Opening Brief, RJN Ex. N; and (4) Reply in Support of Appellants’ Opening  
 7 Brief, RJN Ex. O.

8 Courts may properly take judicial notice of other court filings and matters of public record.  
 9 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (citing *Burbank-*  
 10 *Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998)).  
 11 Calvary has neither opposed the request for judicial notice nor disputed the authenticity of the  
 12 documents. The Court GRANTS the request for judicial notice.

13 The Court also takes judicial notice of the First Amended Complaint for Injunctive Relief  
 14 and to Recover Administrative Fines filed in *The People of the State of California v. Calvary*  
 15 *Chapel San Jose*, No. 20CV372285, on July 29, 2021 (“State Court FAC”). See Fed. R. Evid.  
 16 201(c)(1) (“The court . . . may take judicial notice on its own”); *Ray v. Lara*, 31 F.4th 692, 697  
 17 (9th Cir. 2022) (“Although neither party requested judicial notice of the complaint in [another  
 18 case], this court may take judicial notice on its own.” (internal quotations omitted)).

### 19 **III. LEGAL STANDARD**

20 The parties dispute whether the County’s motion is procedurally proper. The County  
 21 contends that it properly brings its motion under Federal Rule of Civil Procedure 12(h)(3), which  
 22 requires that a court dismiss an action over which it lacks subject matter jurisdiction. Mot. 2. The  
 23 County further contends that the motion would also be proper under Rule 12(b)(1). *Id.* Calvary  
 24 responds that the County’s motion is improper because *Younger* is not jurisdictional. Opp’n 2-4.  
 25 Calvary contends that the County’s motion should have been brought as “a motion for abstention”  
 26 or a motion under Rule 12(b)(6). The County replies that the Ninth Circuit has considered such  
 27 motions under Rule 12(b)(1), 12(b)(6), or as a freestanding “motion for abstention.” Reply 1. The  
 28 County further replies that the procedural vehicle argument is immaterial, as the pleadings closed

1 shortly after they filed their motion, and the motion can therefore be treated as a motion for  
2 judgment on the pleadings under Rule 12(c). *Id.* at 2.

3 The Court agrees that the County’s motion can be treated as a motion for judgment on the  
4 pleadings under Federal Rule of Civil Procedure 12(c) now that the pleadings are closed.  
5 Accordingly, the Court will interpret the County’s motion as a motion brought under Rule 12(c)  
6 and finds that *Younger* abstention may be raised in such a motion. *See, e.g., Saraswati v. Cnty. of*  
7 *San Diego*, No. 07CV1415 WQH POR, 2010 WL 4569888, at \*2 (S.D. Cal. Nov. 4, 2010)  
8 (“*Younger* abstention is properly raised in a motion for judgment on the pleadings pursuant  
9 to Rule 12(c).” (citing *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v.*  
10 *City of San Jose*, 546 F.3d 1087, 1089 (9th Cir.2008)).

11 Federal Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed—but  
12 early enough not to delay trial—a party may move for judgment on the pleadings.” A Rule 12(c)  
13 motion is “functionally identical” to a Rule 12(b)(6) motion, and the same legal standard applies  
14 to both. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir.  
15 2011). Thus, when considering a Rule 12(c) motion, a district court “must accept the facts as pled  
16 by the nonmovant.” *Id.* at 1053. The district court then must apply the *Iqbal* standard to  
17 determine “whether the complaint’s factual allegations, together with all reasonable inferences,  
18 state a plausible claim for relief.” *Cafasso*, 637 F.3d at 1054 & n.4 (citing *Ashcroft v. Iqbal*, 556  
19 U.S. 662 (2009)).

20 “When considering a judgment on the pleadings, a court should not blindly accept the  
21 allegations in the pleadings as true if these allegations are contradicted by uncontested facts set  
22 forth in (1) exhibits to the nonmoving party’s pleading, (2) documents that are referred to in the  
23 non-moving party’s pleading, or (3) facts that are included in materials that can be judicially  
24 noticed.” *Yang v. Dar Al-Handash Consultants*, 250 F. App’x 771, 772 (9th Cir. 2007).

#### 25 **IV. DISCUSSION**

26 The County seeks *Younger* abstention, asserting that a ruling by this Court on Calvary’s  
27 federal claims would interfere with state proceedings. Mot. 1. The Court is mindful that its  
28 “obligation to hear and decide a case is ‘virtually unflagging.’” *Sprint Commc’ns, Inc. v. Jacobs*,

1 571 U.S. 69, 77 (2013) (citing *Colorado River Water Conservation Distr. v. United States*, 424  
 2 U.S. 800, 871 (1976)). An exception to this general rule is the doctrine of abstention, which  
 3 involves a “decision by a federal court to decline to exercise jurisdiction over the underlying  
 4 claims for reasons of comity.” *Washington v. Los Angeles Cty. Sheriff’s Dep’t*, 833 F.3d 1048,  
 5 1058 (9th Cir. 2016) (citations omitted). *Younger* and its progeny “espouse a strong federal policy  
 6 against federal-court interference with pending state judicial proceedings absent extraordinary  
 7 circumstances.” *Middlesex Cnty. Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423, 431  
 8 (1982); *Younger v. Harris*, 401 U.S. 37 (1971). The Supreme Court has “identified two sources  
 9 for this policy: the constraints of equity jurisdiction and the concern for comity in our federal  
 10 system.” *Gilbertson v. Albright*, 381 F.3d 965, 970 (9th Cir. 2004). “*Younger* abstention permits  
 11 federal courts to preserve respect for state functions such that the national government protects  
 12 federal rights and interests in a way that will not unduly interfere with the legitimate activities of  
 13 the States.” *Herrera v. City of Palmdale*, 918 F.3d 1037, 1043 (9th Cir. 2019) (internal quotations  
 14 omitted). “*Younger* abstention is a jurisprudential rather than a jurisdictional question.”  
 15 *Kleenwell Biohazard Waste & Gen. Ecology Consultants, Inc. v. Nelson*, 48 F.3d 391, 394 n.3 (9th  
 16 Cir. 1995).

#### 17 **A. Younger Abstention**

18 A federal court may abstain under *Younger* in three categories of cases: “(1) parallel,  
 19 pending state criminal proceedings, (2) state civil proceedings that are akin to criminal  
 20 prosecutions, and (3) state civil proceedings that implicate a State’s interest in enforcing the orders  
 21 and judgments of its courts.” *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754,  
 22 759 (9th Cir. 2014) (internal quotation marks and citations omitted). First identified in *New*  
 23 *Orleans Public Service, Inc. v. Council of New Orleans* (“*NOPSI*”), 491 U.S. 350 (1989), these  
 24 three categories are known as the *NOPSI* categories. *See Sprint*, 571 U.S. at 72-73..

25 To warrant *Younger* abstention, a state civil action must fall into one of the *NOPSI*  
 26 categories and must also satisfy three “*Middlesex* factors”: the state proceedings must (1) be  
 27 “ongoing,” (2) “implicate important state interests,” and (3) provide “an adequate opportunity . . .  
 28 to raise constitutional challenges.” *Herrera*, 918 F.3d at 1044 (quoting *Middlesex*, 457 U.S. at

1 432). If the state proceedings fall into one of the *NOPSI* categories and meet the three *Middlesex*  
 2 factors, a federal court may abstain under *Younger* so long as “the federal action would have the  
 3 practical effect of enjoining the state proceedings.”<sup>1</sup> *Id.* quoting (*ReadyLink*, 754 F.3d at 759).

4 Even if all the requirements for *Younger* abstention have been met, a federal court may  
 5 reject abstention upon a showing of “bad faith, harassment, or any other unusual circumstance that  
 6 would call for equitable relief.” *See Younger*, 401 U.S. at 45. “A plaintiff who seeks to head off  
 7 *Younger* abstention bears the burden of establishing that one of the exceptions applies.” *Diamond*  
 8 “*D*” *Const. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002) (citations omitted).

9 Calvary argues that the County has not met the *Middlesex* factors and it has waived  
 10 *Younger* abstention.

### 11 **1. *NOPSI* Categories**

12 The County’s suit in state court is a nuisance action to enjoin Calvary’s violations of state  
 13 and county public health orders. RJN Ex. A; State Court FAC. The County contends and Calvary  
 14 does not dispute that the proceeding falls within the third *NOPSI* category because it is a civil  
 15 enforcement proceeding. Mot. 4. And the Ninth Circuit has recognized that such nuisance actions  
 16 to enforce state and local laws fall within the third *NOPSI* category. *See Herrera*, 918 F.3d at  
 17 1045. Accordingly, the Court finds that the state proceeding falls within the third *NOPSI*  
 18 category. The Court therefore proceeds to analyze whether the state proceeding satisfies the  
 19 *Middlesex* factors.

### 20 **2. *Middlesex* Factors**

21 As noted above, to warrant *Younger* abstention, a state civil action must satisfy three  
 22 “*Middlesex* factors”: the state proceedings must (1) be “ongoing,” (2) “implicate important state  
 23 interests,” and (3) provide “an adequate opportunity . . . to raise constitutional challenges.”  
 24 *Herrera*, 918 F.3d at 1044 (quoting *Middlesex*, 457 U.S. at 432).

25  
 26  
 27 <sup>1</sup> The Ninth Circuit has also referred to the three *Middlesex* factors and the requirement that the  
 28 federal action have the practical effect of enjoining the state court proceedings together as  
 “*Younger* factors.” *See Credit One Bank, N.A. v. Hestrin*, No. 21-56271, 60 F.4th 1260, 2023 WL  
 2213469, at \*3 (9th Cir. Feb. 27, 2023).

**a. State Proceedings are Ongoing**

1 “State proceedings are ongoing for the purposes of *Younger* abstention if they are initiated  
2 before any proceedings of substance on the merits have taken place in the federal court. Put  
3 another way, the commencement of state proceedings only ceases to require federal abstention  
4 after the federal court proceedings have moved beyond an embryonic stage.” *Credit One Bank,*  
5 *N.A. v. Hestrin*, 60 F.4th 1260, 2023 WL 2213469, at \*4 (9th Cir. Feb. 27, 2023) (citations and  
6 internal quotations marks omitted).

7 The County argues that the state proceedings are considered “ongoing” for *Younger*  
8 purposes because County filed its enforcement action in state court before any proceedings of  
9 substance on the merits had taken place in this Court. Mot. 5. The County notes that when it filed  
10 its complaint in state court, this Court had not yet held a hearing or case management conference.  
11 Reply 5. Calvary argues that this factor is not satisfied because this Court has now heard multiple  
12 motions to dismiss and motions to stay, the parties have “finalized fact discovery,” and the parties  
13 have conducted a settlement conference. Opp’n 8.

14 This factor of the *Younger* analysis looks to the extent to which a federal court has  
15 considered the merits of a case before the state proceeding was initiated. *See Credit One*, 2023  
16 WL 2213469, at \*4. For example, in *Credit One*, the court held that the state action was  
17 “ongoing” where, at the time the state action was filed, the federal docket contained only 25  
18 entries and the only significant proceeding that had occurred in the federal court was the denial of  
19 a motion to dismiss that only briefly touched on the merits of the case. *Id.* at \*4-5. Conversely, in  
20 *Hoye v. City of Oakland*, the court held that the state court proceeding was not “ongoing” where it  
21 was filed after the federal court had denied a motion for a temporary restraining order and held  
22 four status conferences and hearings. 653 F.3d 835, 844 (9th Cir. 2011). Likewise in *Nationwide*  
23 *Biweekly Administration, Inc. v. Owen*, the court held that the state action was not “ongoing”  
24 where it was filed after “the district court spent a substantial amount of time evaluating the merits  
25 of the cases in considering and denying (in a detailed and reasoned order) Nationwide’s motions  
26 for preliminary injunctions.” 873 F.3d 716, 729 (9th Cir. 2017).

27 The Court finds the state court proceeding here is “ongoing” for *Younger* purposes because  
28

1 the federal court had not considered the merits of the case at all before the state court proceeding  
2 was initiated. At the time the state court case was filed, the docket in this federal action contained  
3 only 23 entries. Most were routine administrative entries common in all federal cases: the  
4 complaint, summonses, clerk’s entries, a motion to dismiss, and a clerk’s entry setting a  
5 scheduling conference. The motion had not yet been heard by the Court. Nor had the Court held  
6 any other hearing or issued a substantive ruling on any issue in the case. This Court had done  
7 even less on the case before the state court case was filed than the court in *Credit One*, which had  
8 ruled on a motion to dismiss and at least briefly considered the merits of the case. *See Credit One*,  
9 2023 WL 2213469, at \*4. Therefore, just as the state court proceedings were ongoing for *Younger*  
10 purposes in *Credit One*, they are “ongoing” for *Younger* purposes here.

11 Calvary asks this Court to look to the current status of the federal proceeding, rather than  
12 the status when the state court case was filed, to determine whether any proceedings of substance  
13 of the merits have taken place. But the cases upon which Calvary relies do not support this  
14 standard. *See Hoye*, 653 F.3d at 844 (analyzing status of federal proceedings as of date state case  
15 was filed); *Nationwide*, 873 F.3d at 730 (same). Accordingly, the Court declines consider  
16 proceedings that occurred in this Court after initiation of the state court proceeding in its analysis  
17 of this *Middlesex* factor.

18 Calvary also notes that the County sought injunctive relief in its original complaint in state  
19 court “but did not seek to collect fines from Plaintiffs until July 2021.” Opp’n 9. In its briefing,  
20 Calvary made no attempt to explain the import of this point. At oral argument, however, Calvary  
21 argued that the Court should make this assessment as of the date of the amended complaint.  
22 Calvary has not identified, and the Court is not aware of, any case in which a court has taken the  
23 approach Calvary endorses. Calvary’s contention is contrary to longstanding Ninth Circuit  
24 precedent which requires this analysis to be made as of the filing of the state proceedings. *See*  
25 *Credit One*, 2023 WL 2213469, at \*4; *Nationwide*, 873 F.3d at 728 (“State proceedings are  
26 ‘ongoing’ if they are initiated ‘before any proceedings of substance on the merits have taken place  
27 in the federal court.’” (quoting *Hicks v. Miranda*, 422 U.S. 332, 349 (1975))).  
28

1 As the state court action was initiated before any proceedings of substance on the merits have  
2 taken place in this Court, the Court finds that the state proceeding was ongoing and the first  
3 *Middlesex* factor is satisfied.

4 **b. State Proceedings Implicate Important State Interests**

5 The second *Middlesex* factor requires that the state proceedings implicate important state  
6 interests. *Herrera*, 918 F.3d at 1044. The *Younger* doctrine recognizes that a state’s ability to  
7 enforce its laws “‘against socially harmful conduct that the State believes in good faith to be  
8 punishable under its laws and Constitution’” is a “basic state function” with which federal courts  
9 should not interfere. *Miofsky v. Superior Court of the State of Cal., In and For Sacramento Cnty.*,  
10 703 F.2d 332, 336 (9th Cir. 1983) (quoting *Younger*, 401 U.S. at 51-52). “Where the state is in an  
11 enforcement posture in the state proceedings, the ‘important state interest’ requirement is easily  
12 satisfied, as the state’s vital interest in carrying out its executive functions is presumptively at  
13 stake.” *Potrero Hills Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876, 884 (9th Cir. 2011) (citing  
14 *Fresh Int’l Corp. v. Agric. Labor Rels. Bd.*, 805 F.2d 1353, 1360 n.8 (9th Cir. 1986)).

15 The County argues that the state court action implicates important state interests because it  
16 seeks to enforce public health orders that were issued to slow the spread of COVID-19. Mot. 6.  
17 Calvary concedes that the County has an interest in enforcing health and safety orders but argues  
18 that “[the County’s] interest in protecting the public from COVID-19 is now a moot issue.”  
19 Opp’n 9. Calvary also argues that “the County does not have a legitimate interest in collecting  
20 unconstitutional fines predicated upon unconstitutional public health orders.” *Id.* Finally, Calvary  
21 argues that the abstention is inappropriate in cases involving facial challenges based on the First  
22 Amendment. *Id.* at 10.

23 The Court finds that the state enforcement action here implicates important state interests.  
24 The Ninth Circuit has held that state actions seeking to enforce health and safety provisions and to  
25 abate public nuisances implicate important state interests and thus satisfy the second *Middlesex*  
26 factor. *See Herrera*, 918 F.3d at 1045 (citing *Woodfeathers, Inc. v. Washington Cnty., Or.*, 180  
27 F.3d 1017, 1021 (9th Cir. 1999), and *Potrero Hills Landfill*, 657 F.3d at 884). The state court  
28 action here is such a proceeding. This is evident from the face of the complaint, which asserts

1 causes of action for public nuisance and violation of public health orders. *See* RJN Ex A, ¶¶ 75-  
2 87; State Court FAC.

3 Calvary concedes that “the County does have an interest in enforcing health and safety  
4 provisions.” Opp’n 9. Calvary nevertheless argues that the action does not implicate important  
5 state interests because the County “now primarily seeks to collect . . . fines from Plaintiffs.” *Id.*  
6 The Ninth Circuit “ha[s] been clear that ‘[w]here the state is in an enforcement posture in the state  
7 proceedings, the ‘important state interest’ requirement is easily satisfied.” *Credit One*, 2023 WL  
8 2213469, at \*10 (quoting *Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876, 883-84 (9th Cir. 2011)).  
9 Here, the County is seeking to enforce public health orders in the state proceeding and is thus in an  
10 “enforcement posture.” This is true whether the County seeks this enforcement through an  
11 injunction or through fines. Accordingly, the “important state interest” requirement is “easily  
12 satisfied.” *See id.*

13 Calvary also argues that the action here does not implicate important state interests because  
14 “the County does not have a legitimate interest in collecting unconstitutional fines predicated on  
15 unconstitutional public health orders.” Opp’n 9. But Calvary’s premise is flawed, as the fines are  
16 predicated on multiple public health orders that have not been found unconstitutional by any court.  
17 Calvary may prove correct that the orders are unconstitutional, but the Court cannot assume that  
18 outcome at this stage in the analysis. *Cf. Hicks v. Miranda*, 422 U.S. 332, 352 (1975) (reversing  
19 district court for not dismissing a under *Younger* and noting that “it seems to us that the District  
20 Court’s judgment rests almost entirely on its conclusion that the California obscenity statute was  
21 unconstitutional and unenforceable. But even assuming that the District Court was correct in its  
22 conclusion, the statute had not been so condemned in November 1973.”)

23 Finally, Calvary asserts that “[t]he Supreme Court and Ninth Circuit have refrained from  
24 abstaining in cases involving facial challenges based on the First Amendment.” Opp at 10. But  
25 *Younger* itself belies this argument, as *Younger* involved a facial First Amendment challenge and  
26 the Supreme Court held that the federal court should have abstained. *See Younger*, 401 U.S. at 38-  
27 39, 54. Indeed, clarifying the primary case upon which Calvary relies, the Supreme Court in  
28 *Younger* explained, “We do not think [*Dombrowski v. Pfister*, 380 U.S. 479 (1965),] stands for the

1 proposition that a federal court can properly enjoin enforcement of a statute solely on the basis of  
 2 a showing that the statute ‘on its face’ abridges First Amendment rights.” *Id.* at 53. Rather,  
 3 federal intervention requires some additional showing of “bad faith, harassment, or any other  
 4 unusual circumstance that would call for equitable relief.” *Id.* at 54.<sup>2</sup>

5 In view of the foregoing analysis, the Court finds that the state proceeding implicates the  
 6 important state interest of enforcing public health orders and therefore satisfies the second  
 7 *Middlesex* factor.

8 **c. State Proceedings Provide Adequate Opportunity to Raise Constitutional**  
 9 **Challenges**

10 The inquiry under the third *Middlesex* factor is whether the state proceeding will provide  
 11 plaintiffs a sufficient forum for raising their federal constitutional challenges. *Younger* abstention  
 12 reflects a general sense of respect for the integrity of state proceedings, and a presumption “that  
 13 state procedures will afford an adequate remedy, in the absence of unambiguous authority to the  
 14 contrary.” *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987). Thus, “[w]here vital state interests  
 15 are involved, a federal court should abstain ‘unless state law clearly bars the interposition of the  
 16 constitutional claims.’” *Lebbos v. Judges of Superior Court, Santa Clara Cnty.*, 883 F.2d 810,  
 17 815 (9th Cir. 1989) (quoting *Middlesex*, 457 U.S. at 432). This factor “does not turn on whether  
 18 the federal plaintiff actually avails himself of the opportunity to present federal constitutional  
 19 claims in the state proceeding, but rather whether such an opportunity exists.” *Herrera*, 918 F.3d  
 20 at 1046; *Canatella v. California*, 404 F.3d 1106, 1111 (9th Cir. 2005). “[T]he burden on this point  
 21 rests on the federal plaintiff to show ‘that state procedural law barred presentation of [its] claims.’”  
 22 *Herrera*, 918 F.3d at 1037 (quoting *Pennzoil*, 481 U.S. at 14).

23 The County argues that this factor is met here because Calvary has had an opportunity to  
 24 raise its federal constitutional challenges in the state proceedings and has, in fact, done so. Mot. 6;  
 25 Reply 8. Calvary responds that the state court is set to hear a summary judgment motion filed by

26 \_\_\_\_\_  
 27 <sup>2</sup> Calvary also relies on *Playtime Theaters, Inc. v. City of Renton*, 748 F.2d 527 (9th Cir. 1984).  
 28 That opinion stated that “*Pullman* abstention would almost never be appropriate in first  
 amendment cases.” *Playtime Theaters*, 748 F.2d at 532. It notably did not invoke the First  
 Amendment as a reason to avoid *Younger* abstention. *Id.* at 533.

1 the County and Calvary “does not have an adequate opportunity to file a cross-complaint in state  
2 court and reach a decision on the merits before the state court rules on the County’s motion.”  
3 Opp’n 10-11.

4 The Court finds this *Middlesex* factor satisfied. Calvary has the burden of showing that  
5 state procedural law barred presentation of its claims, *Herrera*, 918 F.3d at 1037, and it has made  
6 no such showing. Indeed, it appears that Calvary has presented its constitutional defenses  
7 throughout the state court proceedings. *See* RJN Ex. B, at 7-8; RJN Ex. C, at 1, 5-10; RJN Ex. D,  
8 at 1-2, 5-11; RJN Ex. E, at 1, 6-12; RJN Ex. F, at 1-4, 6-7; RJN Ex. G, at 1, 4-10; RJN, Ex. H, at  
9 1, 3-12; RJN Ex. I, at 1-7; RJN Ex. J, at 1-7; RJN Ex. K, at 3; RJN Ex. L, at 7-8; RJN Ex. M, at 5-  
10 14; RJN Ex. N, at 5, 13-18; RJN Ex. O, at 4-11. On this record, the Court cannot say that Calvary  
11 was barred from presenting its claims. *See Woodfeathers*, 180 F.3d at 1020 (“State courts are  
12 presumed adequate to raise federal questions in the absence of unambiguous authority to the  
13 contrary.” (internal quotation marks and citation omitted)).

14 The Court finds unconvincing Calvary’s argument that it “do[es] not have an adequate  
15 opportunity to file a cross-complaint in state court and reach a decision on the merits before the  
16 state court rules on the County’s [pending motion for summary judgment].” Opp’n 10-11.  
17 Calvary cites no authority for the proposition that it must be able to present its constitutional  
18 arguments as claims in a cross-complaint rather than raise them as defenses as it did here. Even if  
19 Calvary were right that this requirement exists, Calvary’s argument would fail because Calvary  
20 has made no effort to show that it was barred from filing such a cross-complaint. *See, e.g.,*  
21 *Herrera*, 918 F.3d at 1037 (“A federal court’s exercise of *Younger* abstention does not turn on  
22 whether the federal plaintiff actually avails himself of the opportunity to present federal  
23 constitutional claims in the state proceeding, but rather whether such an opportunity exists.”); *see*  
24 *also Gilbertson v. Albright*, 381 F.3d 965, 983 (9th Cir. 2004) (“Although Gilbertson could have  
25 presented all of his constitutional claims in the state proceeding, he chose not to do so. However,  
26 failure to avail himself of the opportunity does not mean that the state procedures are  
27 inadequate.”) (citing *Juidice v. Vail*, 430 U.S. 327, 337 (1977)).

28 The Court finds that Calvary has not shown that state procedural law barred or bars

1 presentation of its claims and therefore finds that the state proceeding satisfies the third *Middlesex*  
2 factor.

3 \* \* \*

4 The Court finds that the state proceeding satisfies the three *Middlesex* factors. The Court  
5 therefore proceeds to analyze whether the federal action would have the practical effect of  
6 enjoining the state proceedings.

### 7 **3. Effect of Relief on Ongoing State Action**

8 The final *Younger* factor requires that “the requested relief seeks to enjoin or has the  
9 practical effect of enjoining the ongoing state judicial proceeding.” *Credit One*, 2023 WL  
10 2213469, at \*3. Under Ninth Circuit case law, “‘direct interference’ is not required as a  
11 precondition for *Younger* abstention.” *Gilbertson*, 381 F.3d at 978.

12 The County argues that each form of relief Calvary requests—injunctive, declaratory, and  
13 monetary—would have the practical effect of enjoining the state proceeding. Mot. 7-9. Calvary  
14 argues that adjudicating its claims in this Court would not enjoin the state court proceedings  
15 because it does not “ask the Court to enjoin the state court proceedings” and “the County would  
16 simply be bound by the rulings of this Court under issue and claim preclusion.” Opp’n 11.

17 The Ninth Circuit’s decision in *Herrera v. City of Palmdale*, 918 F.3d 1037 (9th Cir.  
18 2019), is instructive. In *Herrera*, the City of Palmdale brought a nuisance suit against a motel  
19 owner in state court. *Herrera*, 918 F.3d at 1041. The City sought a declaration that the motel is a  
20 public nuisance, appointment of a receiver to take possession and control of the property, and  
21 injunctive relief prohibiting the motel owner from maintaining public nuisances and requiring the  
22 motel owner to abate its violations of the law. *Id.* at 1041-42. The motel owner sued the city in  
23 federal court under § 1983 alleging numerous federal constitutional violations and violation of the  
24 Fair Housing Act. *Id.* at 1041. The motel owner sought injunctive, declaratory, and monetary  
25 relief. *Id.* The Ninth Circuit analyzed each form of relief in turn. *Id.* at 1048-49.

26 Addressing the request for injunctive relief, the court explained that “[c]ertainly, the [motel  
27 owner’s] request that the Court enjoin the City from closing the motel and evicting the [owner]  
28 would enjoin directly the state action.” *Id.* at 1048. Turning to the declaratory relief, the court

1 held that abstention was also appropriate because it would have the same practical effect as  
 2 injunctive relief on a pending state proceeding as a result of the preclusive effect of the federal  
 3 Court judgment. *Id.* Finally, addressing the request for monetary relief, the Court determined that  
 4 relief on certain of the claims would create a federal court judgment with preclusive effect over the  
 5 ongoing state action. *Id.* The court provided the example of a determination by the federal court  
 6 that the state action constituted an unconstitutional taking. *Id.* The court explained that “[p]lainly,  
 7 such determination that the state proceeding itself is unconstitutional would interfere with the  
 8 ongoing enforcement action in the same way as a declaratory judgment by the federal court.” *Id.*  
 9 The court concluded, therefore, that *Younger* abstention was also appropriate to these claims. *Id.*  
 10 at 1048-49.

11 The Court finds that the injunctive, declaratory, and monetary relief Calvary seeks here,  
 12 like the relief sought in *Herrera*, would enjoin or have the practical effect of enjoining the state  
 13 proceeding. As to injunctive relief, Calvary’s complaint “seeks to enjoin enforcement of the  
 14 fines.” 4th Am. Compl. (“4AC”) ¶¶ 104, 109, 119, 125, 132, 136, ECF No. 167. Calvary thus  
 15 asks this Court to enjoin the very relief the County seeks in state court to enforce the public health  
 16 orders. *See* Opp’n 9; State Court FAC, at p.38. Abstention is therefore appropriate because  
 17 granting the relief Calvary requests would “enjoin directly the state action.” *See Herrera*, 918  
 18 F.3d at 1048.

19 Abstention is also appropriate as to Calvary’s request for declaratory relief because  
 20 granting the relief would have the practical effect of enjoining the state proceeding. Calvary’s  
 21 complaint requests a judicial declaration that the public health orders upon which the fines were  
 22 predicated are unconstitutional. 4AC ¶¶ 104, 109, 119, 125, 132, 136. As Calvary’s complaint  
 23 concedes, “[s]uch a determination will resolve the constitutionality of the fines levied against the  
 24 Plaintiffs.” *See id.* Thus, a determination in this Court on the constitutionality of the public health  
 25 orders would preclude the state court from making such a determination and would have the  
 26 practical effect of enjoining it from ruling on the County’s request for fines. Abstention is  
 27 therefore appropriate because the declaratory relief Calvary requests would “have the same  
 28 practical impact as injunctive relief on [the] pending state proceeding as a result of the preclusive

1 effect of [this Court's] judgment.” *See Herrera*, 918 F.3d at 1048.

2 Abstention is appropriate as to Calvary's request for nominal damages for the same reason.  
3 Calvary seeks nominal damages for each alleged violation of its civil rights. 4AC ¶¶ 104, 109,  
4 119, 125, 132, 136. To grant this relief, this Court would first have to determine whether the  
5 County violated Calvary's civil rights through its attempts to enforce the public health orders—  
6 including through its attempts to collect fines in state court. Such a determination “would create a  
7 federal court judgment with preclusive effect over the ongoing state action.” *See Herrera*, 918  
8 F.3d at 1048. *Younger* abstention is therefore appropriate here because success by Calvary on its  
9 claims for nominal damages “would invalidate the [state] enforcement proceeding.” *See id.* at  
10 1048-49.

11 Neither of the two cases on which Calvary relies undermines the conclusion that *Younger*  
12 abstention is appropriate here. In the first, *AmerisourceBergen Corp. v. Roden*, the Ninth Circuit  
13 held abstention was not appropriate because there was only a “potential conflict” with ongoing  
14 state court proceedings. 495 F.3d 1143, 1151 (9th Cir. 2007). There, a former employee sued his  
15 employer in state court for breach of contract related to his termination. *Id.* at 1145. While the  
16 state court proceeding was ongoing, the employer filed an action in federal court seeking a  
17 judgment that the employee breached his contract with the employer by failing to repay a loan. *Id.*  
18 at 1146. The district court abstained under *Younger*, but the Ninth Circuit reversed. *Id.* at 1147.  
19 The Ninth Circuit held that the employer's claim did not have the practical effect of enjoining the  
20 state court proceedings because the employee had not disputed his obligation to repay the loan in  
21 state court and the employer had not attempted to enforce its right to receive repayment in state  
22 court. *Id.* at 1151. Thus, there was only a “potential conflict” because a decision from the federal  
23 court would not dictate the outcome of any issue pending before the state court. Here, however,  
24 this Court is being asked to determine the constitutionality of the fines the County seeks to collect  
25 in the state court proceeding. *See* 4AC ¶¶ 104, 109, 119, 125, 132, 136. The conflict here is  
26 therefore not merely “potential,” as a decision from this Court that the fines are unconstitutional  
27 would have the effect of enjoining the state court proceeding.

28 The second case on which Calvary relies, *Montclair Parkowners Association v. City of*

1 *Montclair*, 264 F.3d 829 (9th Cir. 2001), is even further afield. In *Montclair*, the plaintiff brought  
2 parallel affirmative litigation in federal and state court, asserting claims under the federal  
3 constitution in federal court and claims under state law in state court. *Id.* at 830-31. The court  
4 held that the “mere pendency of a parallel state court proceeding challenging [a law challenged in  
5 federal court] is insufficient to trigger *Younger* abstention.” *Id.* at 831. *Montclair* is therefore  
6 distinguishable from the case before this Court, as it is not the “mere pendency” of the County’s  
7 enforcement action that renders abstention appropriate here. Rather, it is the fact that Calvary asks  
8 this Court to rule on the constitutionality of the very relief the County seeks to obtain in state  
9 court.

10 In sum, the Court finds that Calvary’s requested relief has the practical effect of enjoining  
11 the ongoing state judicial proceeding. Therefore, because the state proceedings fall within a  
12 *NOPSI* category and satisfy the *Middlesex* factors, abstention under *Younger* is appropriate absent  
13 an exception.

#### 14 **4. Younger Exceptions for Bad Faith and Irreparable Injury**

15 If state proceedings are conducted in bad faith or to harass the litigant, or other  
16 extraordinary circumstances exist, the district court may exercise jurisdiction even when the  
17 criteria for *Younger* abstention are met. *Baffert v. California Horse Racing Bd.*, 332 F.3d 613, 621  
18 (9th Cir. 2003) (citing *Gibson v. Berryhill*, 411 U.S. 564, 578–79 (1973), and *Partington v.*  
19 *Gedan*, 961 F.2d 852, 861 (9th Cir.1992)). “A plaintiff who seeks to head off *Younger* abstention  
20 bears the burden of establishing that one of the exceptions applies.” *Diamond “D” Const. Corp.*  
21 *v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002) (citations omitted). For the following reasons, no  
22 such showing has been made here.

##### 23 **a. Bad Faith**

24 In rare cases, a district court may exercise jurisdiction even when *Younger* abstention  
25 would otherwise be warranted. “In the *Younger* abstention context, bad faith ‘generally means  
26 that a prosecution has been brought without a reasonable expectation of obtaining a valid  
27 conviction.’” *Baffert v. Cal. Horse Racing Bd.*, 332 F.3d 613, 621 (9th Cir. 2003) (quoting *Kugler*  
28 *v. Helfant*, 421 U.S. 117, 126 n.6 (1975)). Such “bad faith” might arise in cases involving

1 “repeated harassment by enforcement authorities with no intention of securing a conclusive  
2 resolution” or where there is evidence of “pecuniary bias by the tribunal.” *Partington v. Gedan*,  
3 961 F.2d 852, 861–62 (9th Cir. 1992). “[I]t is only when the state proceeding is brought with no  
4 legitimate purpose that [the] state interest in correcting its own mistakes dissipates’ and the ‘bad  
5 faith’ exception to *Younger* applies.” *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579, 596-97  
6 (9th Cir. 2022) (quoting *Diamond “D” Const.*, 282 F.3d at 200)).

7 Calvary argues that the County has acted in bad faith by filing its motion “at this stage,”  
8 after the close of fact discovery, and “is attempting to forum shop to avoid an adverse decision by  
9 this Court.” Opp’n 12-13. The County responds that it brought its motion as soon as *Younger*  
10 applied to all of the remaining claims and did so before the pleadings had even closed. Reply 10.  
11 The County further notes that the bad faith exception focuses on whether the state court  
12 proceeding, not an action taken in federal court, is in bad faith. *Id.*

13 The Court finds no bad faith here. Calvary does not contend, much less offer any facts to  
14 suggest, that the state proceeding was brought with no legitimate purpose. *See Applied*  
15 *Underwriters*, 37 F.4th at 596. Calvary instead focuses on the County’s filing of this motion as  
16 evidence of bad faith. Although there has never been a barrier to earlier filing of this abstention  
17 motion, the Court declines to find that filing now was made in bad faith. The Court is also not  
18 convinced by Calvary’s bald assertion that “[t]he County has acted with no intention of securing a  
19 conclusive resolution in this case.” Opp’n 13. Indeed, Calvary asserted in its briefing that the  
20 state proceeding is nearing a hearing on summary adjudication. *Id.* at 10. Accordingly, the Court  
21 finds no bad faith warranting its intervention in the state proceeding.

#### 22 **b. Other Extraordinary Circumstance**

23 Federal court intervention in a state proceeding may be warranted upon a showing of  
24 “extraordinary circumstances” that present a “danger of irreparable loss [that] is both great and  
25 immediate.” *See Younger*, 401 U.S. at 45. “[S]uch circumstances must be ‘extraordinary’ in the  
26 sense of creating an extraordinarily pressing need for immediate federal equitable relief, not  
27 merely in the sense of presenting a highly unusual factual situation.” *Moore v. Sims*, 442 U.S.  
28 415, 433 (1979) (quoting *Kugler v. Helfant*, 421 U.S. 117, 124 (1975)).

1 Calvary asserts that it will “suffer irreparable injury if the Court does not continue to  
2 exercise its jurisdiction.” Opp’n 13. The County responds that Calvary has not identified an  
3 irreparable injury because it has not pointed to any alleged constitutional violation that could not  
4 be vindicated after the conclusion of the state court proceedings. Reply. 10-11.

5 Calvary has not demonstrated an irreparable injury that would justify this Court’s  
6 intervention. Calvary’s asserted irreparable injury appears to be that it will have to litigate in state  
7 court. This cannot be an irreparable injury within the meaning of *Younger*, as it would nullify the  
8 doctrine. To the extent Calvary means to assert that its irreparable injury is that the state court  
9 may grant the County’s requested relief, this too is not an irreparable injury within the meaning of  
10 *Younger*. Cf. *Baffert*, 332 F.3d at 321 (“Plaintiff’s claim of ‘extraordinary circumstances’ is rooted  
11 only in the claimed constitutional violation.”).

12 \* \* \*

13 In sum, the Court finds that all of the conditions required for the application of *Younger* are  
14 satisfied and Calvary has not demonstrated an exception to *Younger* that would justify federal  
15 court intervention in the state proceeding.

16 **B. Waiver**

17 Calvary contends that even if the requirements for the application of *Younger* are satisfied,  
18 the Court should decline to abstain because the County waived its right to raise the doctrine.  
19 Specifically, Calvary argues that the County has “waived [*Younger*] abstention through untimely  
20 filing.” Opp’n 5. Calvary notes that the County litigated multiple motions to dismiss before  
21 raising the doctrine. *Id.* at 6. The County replies that it did not waive *Younger* because it never  
22 did so through an express statement. Reply 3. The County further notes that it raised *Younger*  
23 early in the case in response to Calvary’s motion for a temporary restraining order and now raises  
24 it again, shortly after this Court’s dismissal of Calvary’s Bane Act claim, at the first instance at  
25 which *Younger* applies to all of Calvary’s claims. *Id.* at 2.

26 A state may waive its right to raise *Younger* abstention where “the State expressly  
27 urge[s] . . . the District Court to proceed to an adjudication of the constitutional merits.” *See*  
28 *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 800 (9th Cir. 2001) (citing *Ohio*

1 *C.R. Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 626 (1986)); *see also Ohio Bureau of*  
2 *Emp. Servs. v. Hodory*, 431 U.S. 471, 480 (1977) (“If the State voluntarily chooses to submit to a  
3 federal forum, principles of comity do not demand that the federal court force the case back into  
4 the State's own system.”).

5 The Court finds applicable the Ninth Circuit’s analysis in *Columbia Basin Apartment*  
6 *Association v. City of Pasco*, 268 F.3d 791 (9th Cir. 2001). There, the Ninth Circuit held that the  
7 City of Pasco did not waive its right to raise *Younger* even though (1) the City had agreed to stay  
8 state proceedings pending resolution of the federal proceedings; (2) the City had moved for, and  
9 the district court had decided, summary judgment on the merits in the federal proceeding; and (3)  
10 *Younger* was raised for the first time on appeal. 268 F.3d at 796, 799-800. The Court explained  
11 that “the record [did] not reflect that the City ‘expressly urge[d]’ the district court to adjudicate the  
12 constitutional merits of this case. . . . On the contrary, the City filed its claims in state court. The  
13 Appellants filed this matter in a federal forum.” *Id.* at 800.

14 The record here provides an even less compelling basis to find waiver than in *Columbia*  
15 *Basin*. Here, the County raised *Younger* in a motion to dismiss less than a week after the Court  
16 dismissed Plaintiffs’ Bane Act claim. The County justifies this timing by arguing that this is the  
17 “first instance of this litigation during which *all* of Plaintiffs’ claims unquestionably require  
18 abstention under *Younger*.” Reply 3. At the time, the County had not filed a summary judgment  
19 motion. On this record, the Court does not find that the County has waived the right to invoke the  
20 *Younger* doctrine.

21 None of the cases on which Calvary relies compels a different outcome. In two of the  
22 cases Plaintiffs rely upon, the state voluntarily chose to submit to the federal forum and therefore  
23 expressly waived their right to invoke *Younger*. *Ohio Bureau of Emp. Servs. v. Hodory*, 431 U.S.  
24 471, 479 (1977) (“[A]ppellants have not argued that *Younger* requires a remand with directions to  
25 the District Court to abstain, and at oral argument they resisted the suggestion of such a remand.”);  
26 *Brown v. Hotel & Rest. Emps. & Bartenders Int'l Union Loc. 54*, 468 U.S. 491, 500 n.9 (1984) (no  
27 abstention where state’s attorney general “submit[ted] to the jurisdiction of [the] Court in order to  
28 obtain a more expeditious and final resolution of the merits of the constitutional issue”). In

1 another, the Ninth Circuit held that the state court proceedings were not “ongoing” because the  
2 state trial court had stayed its proceedings pending resolution of the federal proceedings. *Walnut*  
3 *Properties, Inc. v. City of Whittier*, 861 F.2d 1102, 1106-07 (9th Cir. 1988). In another, the  
4 Seventh Circuit held that non-state parties who appealed an order preliminarily enjoining a state  
5 commission could not invoke *Younger* on behalf of the state commission because the state  
6 commission did not itself appeal. *Kendall-Jackson Winery, Ltd. v. Branson*, 212 F.3d 995, 997  
7 (7th Cir. 2000).

8 Calvary’s reliance on *Adibi v. California State Board of Pharmacy*, 461 F. Supp. 2d 1103  
9 (N.D. Cal. 2006), is also misplaced. There, the court held on summary judgment that abstention  
10 was warranted under *Younger* and noted “the primacy of *Younger* abstention even when belatedly  
11 raised.” *Adibi*, 461 F. Supp. 2d at 1109. Although the court discussed a court’s potential  
12 discretion when abstention comes up late in the litigation, it noted Ninth Circuit authority stating  
13 that “[i]n addressing *Younger* abstention issues, district courts . . . may not exercise jurisdiction  
14 when [the specific legal] standards are met; there is no discretion vested in the district courts to do  
15 otherwise.” *Id.* at 1111 & n.3 (citing *Green v. City of Tucson*, 255 F.3d 1086, 1093 (9th Cir.  
16 2001)). Consistent with Ninth Circuit precedent, the Court finds that it does not have discretion to  
17 abstain where, as here, the requirements for *Younger* abstention are met. *See Green*, 255 F.3d at  
18 1093; *Canatella*, 404 F.3d at 1113; *see also Columbia Basin*, 268 F.3d at 799 (“When the case is  
19 one in which the *Younger* doctrine applies, the case must be dismissed.” (quoting *H.C. ex rel.*  
20 *Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000)).

21 Even if abstention were discretionary, the Court would abstain. In *Adibi*, the Court stated  
22 that “[t]o the extent courts have some discretion in deciding whether to abstain when the issue of  
23 abstention comes up late in the litigation, courts generally consider [1] competing ‘fairness  
24 considerations,’ [2] whether abstention would result in ‘duplicitous [sic] litigation and waste of  
25 resources,’ and [3] whether belated abstention would serve the ‘purposes that animate the  
26 abstention principle.’” 461 F. Supp. 2d at 1111-12 (citations omitted). Calvary contends that  
27 “[f]airness requires this case to continue” because abstaining would “allow[] the County to avoid  
28 an adverse judgment.” Opp. 7. The Court finds no merit in the bald assertion that either party has

1 a greater or lesser chance of an “adverse judgment” in this Court or the state court. Moreover, the  
2 other two considerations highlighted in *Adibi* strongly favor abstention. First, the state proceeding  
3 remains ongoing, and thus continued action in this Court would result in wasted resources by  
4 allowing these matters to proceed in parallel. Second, *Younger* abstention is animated by  
5 primarily “the concern for comity in our federal system.” *Gilbertson*, 381 F.3d at 970. Abstention  
6 here respects this concern, as the state court proceeding remains ongoing and Plaintiffs have not  
7 identified any bar to having their rights vindicated in that forum. The Court finds therefore that  
8 even if it had discretion to decline to abstain, it would not exercise that discretion.

9 Finally, *Hill v. Blind Industries and Services of Maryland*, 179 F.3d 754 (9th Cir. 1999),  
10 does not undermine the Court’s conclusion. There, the Ninth Circuit held that a party waived  
11 Eleventh Amendment immunity—not *Younger* abstention—by participating in extensive pretrial  
12 activities and waiting until the first day of trial before objecting to the federal court’s jurisdiction.  
13 *Hill*, 179 F.3d at 756. The court was concerned that the party had sought to hedge its bets by  
14 waiting until the first day of trial. *Id.* at 756. The court noted that the trial court properly took the  
15 issue under advisement, which gave the party the opportunity to withdraw the motion if it  
16 prevailed at trial. *Id.* That issue is not present here. The County filed its motion five days after  
17 the Court dismissed Plaintiffs’ Bane Act claim, before the pleadings were set and before the Court  
18 had ruled on any motion for summary judgment, not during, or even of the eve of trial. Although  
19 the Court agrees with Calvary that the County could have raised this issue earlier, it does not  
20 perceive that the County is raising the issue at this stage as a tactic to hedge its bets.

21 Accordingly, the Court finds that the County has not waived its right to invoke *Younger*  
22 abstention. As the Court has found that all of the requirements for *Younger* abstention have been  
23 met, the Court turns to the impact of *Younger* abstention on the present case.

### 24 **C. Application of *Younger* to the Instant Case**

25 The Ninth Circuit has explained that the application of *Younger* abstention depends on the  
26 nature of a plaintiff’s claims. Specifically, “when a court abstains under *Younger*, claims for  
27 injunctive and declaratory relief are typically dismissed.” *Herrera v. City of Palmdale*, 918 F.3d  
28 1037, 1042 (9th Cir. 2019). However, the Ninth Circuit “has also recognized that, when a district

1 court abstains from considering a *damages* claim under *Younger*, it must *stay*—rather than  
2 dismiss—the damages action until state proceedings conclude.” *Id.* (emphasis in original).

3 Here, Calvary seeks injunctive relief, declaratory relief, and nominal damages. *See* 4AC  
4 ¶¶ 104, 109, 119, 125, 132, 136. Accordingly, Calvary’s claims for injunctive and declaratory  
5 relief are DISMISSED WITHOUT PREJUDICE to pursue the claims in the state court  
6 proceeding, and Calvary’s claims for nominal damages are STAYED pending resolution of the  
7 state court proceeding.

8 **V. ORDER**

9 For the foregoing reasons, it is hereby ordered that Calvary’s claims are:

- 10 1. DISMISSED WITHOUT PREJUDICE to the extent they seek injunctive relief;
- 11 2. DISMISSED WITHOUT PREJUDICE to the extent they seek declaratory relief; and
- 12 3. STAYED pending resolution of the state court proceeding to the extent they seek monetary  
13 relief.

14 The Parties shall file a joint status report within 10 days of the conclusion of the state court  
15 proceeding.

16  
17 Dated: March 10, 2023



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BETH LABSON FREEMAN  
United States District Judge