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10 UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 (Oakland Division)

13 JANICE ALTMAN, et al.,

14 Plaintiffs,

15 v.

16 COUNTY OF SANTA CLARA, et al.

17 Defendants.

No. 20CV02180JST

**DEFENDANTS' JOINT OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A  
PRELIMINARY INJUNCTION**

Date: May 20, 2020

Time: 2:00 p.m.

Judge: Honorable Jon S. Tigar

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## I. INTRODUCTION

The plaintiffs in this case—individual gun and gun-shop owners, retail businesses that sell guns, ammunition, and access to shooting ranges, and gun advocacy organizations—argue that emergency shelter-in-place orders (“Health Orders” or “Orders”) issued by Bay Area jurisdictions, including the four county Defendants in this case, violate their Second Amendment rights. The abridgment, purportedly, stems from the fact that while the Orders allow “Essential Businesses” to operate during the COVID-19 pandemic, they do not deem gun stores or shooting ranges essential. Plaintiffs request an injunction requiring Defendants, during a health crisis, to exempt arms-related commerce from expert medical judgment.

The Court should deny the request. To obtain injunctive relief, Plaintiffs must, first and foremost, demonstrate they will likely succeed. They cannot do that for at least three reasons. One is that the Health Orders—emergency directives issued to fight a once-in-a-lifetime viral pandemic—deserve deference. The Court can enjoin the enforcement of such orders only if “arbitrary” and “unreasonable.” They are neither.

Second, Plaintiffs’ broadside ignores a basic constitutional precept: Neutral, generally applicable laws do not trigger heightened scrutiny merely because they happen to incidentally burden protected conduct. Here, the Health Orders could not be broader: They reach all businesses and all individuals in Defendants’ jurisdictions. Plaintiffs do not seriously argue—let alone establish—that the Orders’ neutrality masks an invidious intent to attack gun commerce. Nor can Plaintiffs credibly claim that they bear the Orders’ brunt disproportionately. The Health Orders temporarily burden every resident’s individual liberties—from free speech to free exercise—for the greater good of all. These, in short, are *Health* Orders, not firearms regulations. As such, they elicit only rational basis review, which they readily satisfy.

Third, even if the Health Orders could somehow be construed as firearms regulations, intermediate scrutiny would apply because the burdens they incidentally impose on Second Amendment rights are modest. The Orders do not restrict who can bear arms, when, or where; what types of arms one can keep; or how one uses, carries, or stores those arms. They merely limit one’s ability—temporarily—to engage in arms-related commerce: to buy *new* weapons, *more* ammunition,

1 and shoot targets at commercial facilities. The burdens are particularly weak here, as each  
2 individual Plaintiff fails, conspicuously, to claim he or she did not already own firearms before the  
3 Health Orders issued, and each organizational Plaintiff likewise presents no evidence of any member  
4 unable to defend hearth and home.

5 Thus, here, as in virtually every post-*Heller* case, if any tiered analysis applied, it would be  
6 intermediate, not strict. To survive, the Health Orders need only “substantially relate” to an  
7 “important government interest.” Fighting the worst pandemic since 1918 qualifies as important.  
8 And the Orders appropriately relate to that objective if public health experts could reasonably  
9 conclude, first, that transacting business in person can spread disease; second, that closing all but the  
10 most essential businesses is the best way to save lives; and, third, that during a health crisis the most  
11 essential businesses are those that directly or indirectly satisfy basic human needs such as food,  
12 medicine, and shelter. Two courts in the Ninth Circuit recently answered each of these questions  
13 affirmatively. This Court should too.

14 The Health Orders also do not offend due process. Plaintiffs, insisting they do, first argue the  
15 Orders are under-and over-inclusive. But that argument merely restates their Second Amendment  
16 claim, and Plaintiffs cannot obtain indirectly, through substantive due process, that which the  
17 specific, enumerated right does not guarantee them directly. Plaintiffs next insist the Health Orders  
18 violate separation of powers principles. However, their brief does not cite a single case, or provide  
19 any meaningful argument, to flesh out that claim. Plaintiffs’ final due process theory—that  
20 vagueness voids the Orders—is equally bare-bones. They do not explain what about the Orders,  
21 which contain many examples and definitions, is so confusing as to make arbitrary and standard-less  
22 enforcement inevitable. Nor could they.

23 Because both claims lack merit, the Court need not consider the remaining requirements for a  
24 preliminary injunction. But at least one—the public interest—separately undermines Plaintiffs’  
25 request. The public has a stake in this case, and its interests are clear: to save lives and prevent  
26 suffering. That interest vastly outweighs the temporary, limited impact the Health Orders  
27 incidentally impose on Plaintiffs’ rights. Their attempt to interfere with emergency efforts to protect  
28 public health during a pandemic should be rejected.

## II. FACTUAL BACKGROUND

Coronaviruses—a family of viruses named for the spikes that protrude from their membranes, which resemble a crown, or “corona”—affect birds and mammals, including humans. Declaration of Sara H. Cody, M.D. (“Cody Decl.”) ¶ 7. A “novel” coronavirus is one not previously identified in humans. *Id.* COVID-19 refers to the disease caused by a coronavirus that health authorities first recorded in China late last year. *Id.* ¶ 6. It is highly contagious. People spread the virus by coughing, sneezing, and through close personal contact. *Id.* ¶¶ 8-9. Infection can also occur when individuals touch contaminated surfaces and transfer the virus to their eyes, mouth, or nose. *Id.* ¶ 9. People can be both asymptomatic and contagious. *Id.* In mild cases, symptoms include fever, fatigue, cough, and shortness of breath. *Id.* ¶ 7. Severe cases cause pneumonia, multiple organ failure, and death. *Id.* There is currently no vaccine for the novel coronavirus and no specific treatment or cure for COVID-19. *Id.* ¶ 7. Since January, COVID-19 has spread exponentially, quickly becoming a pandemic. *Id.*

Santa Clara County was an initial hot spot for the disease.<sup>1</sup> *Id.* ¶ 10. As of March 5, 2020, its Public Health Department had confirmed 31 cases. *Id.* ¶ 11. Ten days later, it confirmed 92 more, with additional cases and deaths occurring in neighboring Bay Area jurisdictions. *Id.* ¶¶ 11, 18. That same day, under authority granted by the California Health and Safety Code, the Health Officers of seven Bay Area jurisdictions, including Santa Clara, San Mateo, Alameda, and Contra Costa counties—all Defendants here—issued “substantively identical” orders (Plaintiffs’ Memorandum of Points and Authorities (“Mot.”) at pp. 5, 7, 8) directing their residents to shelter in place. Cody Decl. ¶ 12, Ex. A (“Initial Health Orders”).<sup>2</sup> The Initial Health Orders attempted “to slow the spread of COVID-19 to the maximum extent possible.” Ex. A ¶ 1. They permitted residents to leave home only for specified reasons, including to operate or patronize “Essential Businesses.” Ex. A ¶ 2. The Orders identified 21 such businesses, most of which provide goods and

<sup>1</sup> Jurisdiction-specific data for San Mateo, Alameda and Contra Costa Counties are set forth in the concurrently filed Declarations of Drs. Scott Morrow, Erica Pan, and Chris Farnitano.

<sup>2</sup> Unless otherwise indicated, all cited exhibits are to the Cody Declaration.

1 services related to healthcare, food, medicine, hygiene, housing, mobility, and infrastructure. Ex. A  
 2 ¶ 10.f. The Initial Health Orders took effect March 17, 2020 and were set to expire, unless earlier  
 3 extended, on April 7, 2020. Ex. A ¶ 12.

4 During the interim, however, conditions deteriorated. By late March, the same seven Bay  
 5 Area jurisdictions logged 2,092 cases and 51 deaths (Ex. B ¶ 9), even as the Initial Orders appeared  
 6 to have slowed transmission rates (*id.* ¶ 8). Thus, on March 31, 2020, their respective Public Health  
 7 Officers jointly issued new, stricter orders (“First Superseding Health Orders”; together with the  
 8 “Initial Health Orders,” the “Orders” or “Health Orders”). Cody Decl. ¶ 19. The First Superseding  
 9 Health Orders named two objectives: to further slow COVID-19’s spread and to “mitigate the  
 10 [disease’s] impact” on “critical healthcare services...” Ex. B ¶ 2. To achieve those aims, they  
 11 extended the shelter period until May 3, 2020 (Ex. B ¶16), clarified and narrowed which businesses  
 12 qualify as “essential” (*id.* ¶ 13.f) and made Essential Businesses follow specific “Social Distancing  
 13 Protocols” (*id.* ¶ 13.h); *see also* Cody Decl. ¶¶ 19-22.

14 The First Superseding Health Orders apply to “[a]ll individuals currently living” in the  
 15 issuing counties (Ex. B ¶ 3) and to “business[es],” defined broadly to include “any for-profit, non-  
 16 profit, or educational entity . . . regardless of the nature of the service, the function it performs, or its  
 17 corporate or entity structure” (*id.* ¶ 13.e); *see also* Ex. A ¶ 10.e. They do not exempt houses of  
 18 worship. They make only a limited exception for funerals—at which just 10 or fewer individuals  
 19 can attend (Ex. B ¶ 13.a.vi)—and for educational institutions, which may remain open solely to  
 20 facilitate “distance learning” (*id.* 13.f.xv). Neither round of orders exempts gun retailers or shooting  
 21 ranges. Neither, in fact, says anything at all about firearms. The First Superseding Health Orders  
 22 mention “shooting and archery ranges” only as one among many examples of recreational facilities  
 23 that must temporarily close. Ex. B ¶ 13.a.iii.C (also identifying “golf courses, tennis and pickle ball  
 24 courts, rock parks, climbing walls, pools, spas, gyms, disc golf, and basketball courts”). The Initial  
 25 Health Orders do not mention them at all.

26 The plaintiffs in this case are eight individuals, three gun and ammunition retailers, and five  
 27 advocacy organizations. *See* First Amended Complaint (“FAC”) ¶¶ 11-26. They maintain the  
 28 Health Orders should have deemed firearms retailers and shooting ranges essential and that those

1 businesses could, if allowed to operate, follow social distancing protocols. Mot. at 19:27-20:8.  
 2 Plaintiffs also suggest that, if those businesses followed “best practices,” there would be no reason to  
 3 keep them closed. *Id.* But each additional exemption from the Health Orders increases the risks of  
 4 community transmission. Cody Decl. ¶ 22; Declaration of George W. Rutherford, M.D.  
 5 (“Rutherford Decl.”) ¶ 11. And, by practicing social distancing, businesses cannot eliminate the  
 6 additional transmission risks their operation creates. Rutherford Decl. ¶ 12; Cody Decl. ¶ 17. The  
 7 Defendant Public Health Experts therefore deliberately defined “Essential Businesses” narrowly to  
 8 reach only businesses that directly and indirectly meet residents’ basic needs. Cody Dec. ¶¶ 21-22;  
 9 Rutherford Decl. ¶ 11. Firearms retailers do not qualify.

10 Plaintiffs sue not just the four counties identified above (and their respective Sheriffs, Public  
 11 Health Officers and, in the case of Santa Clara, its District Attorney) but also four cities within their  
 12 boundaries (San Jose, Mountain View, Pacifica, and Pleasant Hill), the Police Chiefs of those cities,  
 13 and San Jose’s Mayor. *See* FAC ¶¶ 27-48. Plaintiffs allege that law enforcement agencies in each  
 14 city have enforced, or threatened to enforce, the Health Orders against firearms retailers. *Id.* ¶¶ 89,  
 15 111, 122-23. However, Plaintiffs do not allege—let alone attempt to prove—that law enforcement  
 16 agencies have selectively enforced the Health Orders exclusively or primarily against businesses  
 17 with a Second Amendment nexus. Nor could they, as officers have made all manner of non-  
 18 compliant businesses close.<sup>3</sup> In fact, one of the articles cited by the FAC reports that, the same day  
 19 the San Jose Police Department closed a gun shop, it took the same action against “three smoke  
 20 shops, a pet grooming business and a flower shop.”<sup>4</sup>

21 Plaintiffs allege the Health Orders are “ideologically driven” (FAC ¶ 87); provide “political  
 22 cover to impose bans and restrictions on rights [Defendants] do not like” (*id.* ¶ 1); and reflect  
 23 “animus” towards firearms retailers and related businesses (*id.* ¶¶ 86, 134). They cite only two  
 24  
 25

26 <sup>3</sup> *See* Declarations of Neal Valenzuela, Dan Steidle, Colby Staysa, Robert Imobersteg, Jenna  
 27 McAlpin, Bryan Hill, and Armando Espitia.

28 <sup>4</sup> *See* <https://www.mercurynews.com/2020/03/18/coronavirus-san-jose-orders-gun-store-to-close-in-one-of-first-tests-of-essential-under-shelter-order/> (cited at FAC ¶ 86, n.8)

1 sources for these claims. The first is a hearsay statement in a newspaper article, attributed to San  
 2 Jose’s Mayor, that “we cannot have . . . *panic* buying of guns.” *See* FAC ¶ 86 (emphasis added).  
 3 Plaintiffs neither explain how a desire to avoid panic buying reflects animus nor attempt to tie the  
 4 Mayor to the drafting of County-issued Orders. Second, Plaintiffs cite a notice that a shooting range  
 5 posted on its website, which states simply that it had been “[c]losed” by an unidentified “order of the  
 6 Santa Clara County District Attorney.” *Id.* ¶ 87. Plaintiffs make no attempt to explain how that  
 7 notice reflects any Second Amendment animus either.

8 Although Plaintiffs allege that they are “concerned about” their “safety” and emphasize that  
 9 these are “uncertain times” (*id.* ¶ 10) and times of “crisis” (*id.* ¶¶ 7-8, 131, 134, 136), they identify  
 10 no specific threats or evidence of increased crime. No individual Plaintiff alleges he or she did not  
 11 already own guns and ammunition before the Initial Health Orders issued, and the organizational  
 12 Plaintiffs also fail to identify members without arms.

13 Since Plaintiffs filed this lawsuit, the Defendant Public Health Officers have continued to  
 14 protect the community from COVID-19, which continues to spread exponentially. Worldwide,  
 15 authorities have now confirmed nearly 3.1 million cases and 218,000 deaths, though actual numbers  
 16 are likely higher due to limited testing and incomplete reporting. Cody Decl. ¶¶ 6, 10. The U.S. has  
 17 gone from just one confirmed case on January 21, 2020 to well over one million today; from zero  
 18 deaths to nearly 60,000 (*id.*)—more than total U.S. combat fatalities in the Vietnam War. It is  
 19 officially the worst pandemic since 1918.

20 And yet the Bay Area, at the hands of the same Defendant Public Health Officers, has gone  
 21 from an early COVID-19 hot spot to a region with proportionally few cases and fatalities compared  
 22 to other parts of the U.S. Rutherford Decl. ¶¶ 13-19. The number of deaths in New York, for  
 23 example, where COVID-19 appears to have emerged later, exceed those in the Bay Area by well  
 24 over a factor of ten. *Id.* ¶ 18. A leading expert unaffiliated with Defendants attributes the Bay  
 25 Area’s success to both the early timing and strict terms of the Orders. *Id.* ¶¶ 13-19. Locally,  
 26 COVID-19’s transmission rate has begun to flatten. *Id.* ¶ 19; Cody Decl. ¶¶ 23-32. Whereas the  
 27 number of cases doubled every five days as of March 16, 2020, the virus now takes about 60 days to  
 28 achieve that same feat. Cody Decl. ¶ 23. The Health Orders’ restrictions will not last forever. Now,



1 however, is not the time to abandon them.<sup>5</sup>

### 2 III. ARGUMENT

#### 3 A. A PRELIMINARY INJUNCTION IS AN EXTRAORDINARY REMEDY

4 A “preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v.*  
 5 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). One may issue only if the moving party “clearly  
 6 show[s]” that, absent injunctive relief, he will suffer “immediate and irreparable injury, loss, or  
 7 damage.” *Id.*; *see also* Fed. R. Civ. P. 65. To satisfy that burden, the movant must establish that it  
 8 will likely (i) succeed on the merits and (ii) suffer irreparable harm without preliminary injunctive  
 9 relief, (iii) that the equities tip in its favor, and (iv) that an injunction would further the public  
 10 interest. *Winter*, 555 U.S. at 20. Plaintiffs cannot meet their burden here, as the claims they press—  
 11 for deprivations of Second Amendment (FAC ¶¶ 127-46) and due process (*id.* ¶¶ 147-55) rights—  
 12 lack merit, and the injunction they seek, which would prevent enforcement of emergency health  
 13 directives, contravenes the public interest.

#### 14 B. PLAINTIFFS’ SECOND AMENDEDMENT CLAIM WILL NOT SUCCEED

##### 15 1. The Orders Satisfy Deferential Standards for Emergency Directives

16 “[T]he liberty secured by the Constitution . . . does not import an absolute right in each  
 17 person to be, at all times and in all circumstances, wholly freed from restraint.” *Jacobson v.*  
 18 *Commonwealth of Massachusetts*, 197 U.S. 11, 26 (1905). Individual rights, rather, must at times  
 19 give way to the “principle of self-defense,” which confers on the “community . . . the right to protect  
 20 itself against” forces that “threaten[] the safety of its members.” *Id.* “[A]n epidemic of disease”  
 21 qualifies as a threat implicating core, self-defensive police powers. Courts may invalidate  
 22 emergency measures taken to repel such threats only if they bear “no real or substantial relation to  
 23 th[eir] objects” or “beyond all question” effect “a plain, palpable invasion of rights . . . .” *Id.* at 31.  
 24 *Jacobson*, which involved compulsory vaccination during a smallpox epidemic, alternatively framed

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25  
 26 <sup>5</sup> On April 29, 2020, the County Defendants issued new versions of the health orders that extend the  
 27 shelter period until May 31, 2020 and relax certain restrictions. The FAC does not challenge those  
 28 orders, and Plaintiffs’ brief does not address them. If Plaintiffs do place them at issue, Defendants  
 will, at the Court’s direction, file a supplemental brief defending them.

1 the question as whether the government acted in an “arbitrary, unreasonable manner.” *Id.* at 28.  
 2 Other courts, considering emergency curfews that curtail constitutional rights, have articulated a  
 3 slightly different but equally deferential test: That “the scope of review is limited to . . .  
 4 determin[ing] whether” state “actions were taken in good faith and whether there is some factual  
 5 basis” for them. *Smith v. Avino*, 91 F.3d 105, 109 (11th Cir. 1996) (upholding post-hurricane curfew  
 6 against constitutional challenge and noting that “[i]n an emergency situation, fundamental  
 7 rights . . . may be temporarily limited or suspended”); *United States v. Chalk*, 441 F.2d 1277, 1281  
 8 (4th Cir. 1971) (same, as to riot-induced curfew).

9 Here, whether the Court applies *Jacobson* or other emergency-powers cases, the result  
 10 would be the same. Under *Jacobson*, the Health Orders “substantial[ly] relat[e] to” their  
 11 objectives—minimizing COVID-19 transmission rates and conserving healthcare resources—by  
 12 limiting the number and types of organizations that can expose their employees, customers, and  
 13 business partners to infection. The Orders are also not “beyond question” arbitrary or unreasonable,  
 14 as they were drawn neutrally, apply temporarily, and reasonably make limited exceptions only for  
 15 businesses that support the basic needs of residents. *See In re Abbott*, 954 F.3d 772, 783 (5th Cir.  
 16 2020) (holding that district court erred by declining to apply *Jacobson* to COVID-19 health  
 17 directive; upholding order against due process challenge due to its facial neutrality, limited temporal  
 18 scope, and reasonable exceptions). Likewise, under curfew authorities, the Health Orders survive  
 19 judicial review because Plaintiffs do not (and cannot) argue Defendants did not issue them “in good  
 20 faith” or that there is no “factual basis” for the lines that they draw. Plaintiffs urge this Court to  
 21 redraw those lines, but doing so would “usurp the function[]” of “another branch of government” to  
 22 effect emergency health measures. *Id.* at 801.

23 Plaintiffs do not address *Jacobson* or other emergency-powers authorities. They instead cite  
 24 *Bateman v. Perdue*, 881 F. Supp. 2d. 709 (E.D.N.C. 2012) for the claim that the “calculus does not  
 25 change in an emergency, declared or otherwise.” Mot. at 17:3-15. But, besides being an out-of-  
 26 circuit district court case, *Bateman* did not consider whether a different standard should apply during  
 27 emergencies; it merely imported, without discussion, standards from cases that involved non-  
 28 emergency enactments. Because a “decision is not precedent on issues that were neither raised by

counsel nor discussed in the opinion of the court,” *Bateman* provides Plaintiffs no support. *Watkins v. U.S. Army*, 875 F.2d 699, 721 (9th Cir. 1989) (quoting *Sethy v. Alameda County Water Dist.*, 545 F.2d 1157, 1159–60 (9th Cir.1976) (en banc)). The statutes *Bateman* considered also differ from the Health Orders in two respects. First, they were not facially neutral because they specifically targeted “dangerous weapon[s].” *Bateman*, 881 F. Supp. 2d. at 711. Second, the North Carolina Legislature determined that, whenever a state of emergency existed (a frequent occurrence there, *id.* at 711), some of those regulations applied automatically, broadly barring firearm possession and transportation, while localities were automatically authorized to impose other, even broader restrictions on possession, transportation, and use. *Bateman*, 881 F. Supp. 2d at 710-11. Here, in contrast, health officials acted in response to a particular threat, whose magnitude is nearly unprecedented. Their judgments about what *this* emergency requires deserve greater deference than the blanket determinations *Bateman* considered.

## 2. The Orders Do Not Trigger Heightened Second Amendment Scrutiny

Even without regard to emergency-specific standards, the Orders easily pass constitutional muster. The Second Amendment provides: “A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.” U.S. Const. amend. II. It confers “an individual right to keep and bear arms,” *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), which the Fourteenth Amendment’s Due Process Clause protects against state and local infringement, *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 750 (2010). But just as the First Amendment does not require “judicial scrutiny” of every law that “happens to burden expressive conduct,” the Second Amendment does not demand trenchant inspection of every regulation that incidentally implicates arms. *Talk of the Town v. Dep’t of Fin. & Bus. Servs. ex rel. City of Las Vegas*, 343 F.3d 1063, 1073 (9th Cir. 2003). And while courts have yet to consider neutral and generally applicable regulations like the Orders in Second Amendment environs, well-developed First Amendment precedent guides the way. *See Heller*, 554 U.S. at 595 (referencing First Amendment precedents); *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 960-61 (9th Cir. 2014) (stating that “First Amendment principles” guide Second Amendment analyses). First Amendment jurisprudence asks whether broad enactments target constitutionally protected activities

1 such as speech or religion. If not, they elicit no heightened scrutiny, regardless of whether they  
 2 happen incidentally to burden that conduct.

3 Two lines of cases illustrate the principle. The first, involving free expression, springs from  
 4 *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986). There, a sheriff’s department uncovered “illicit  
 5 sexual activities” occurring at Cloud Books, an adult bookstore. *Id.* at 698-99. Local officials  
 6 closed the store for one year based on health code provisions that defined “places of  
 7 prostitution . . . as public health nuisances.” *Id.* Cloud Books argued the penalty “impermissibly  
 8 burden[ed] its First Amendment protected bookselling activities.” *Id.* at 705. The Supreme Court  
 9 disagreed for two reasons. First, the conduct that drew the penalty—illicit sexual conduct—involved  
 10 “no element of protected expression.” *Id.* Second, the health law did not “single out bookstores or  
 11 others engaged in First Amendment protected activities for . . . its burden.” *Id.* (distinguishing tax  
 12 imposed on “large quantities of newsprint and ink,” whose burdens fell “almost exclusively . . . upon  
 13 the shoulders of newspapers”). The case was therefore no different than one where officials closed a  
 14 store for “Fire Code violations or health hazards . . . .” *Id.* Enforcing “a public health regulation of  
 15 general application” did “not implicate[]” the First Amendment at all, even though the regulated  
 16 business also “happen[ed] to sell books.” *Id.* at 707.

17 The Ninth Circuit applied *Arcara* in *Talk of the Town*. That case involved a “business  
 18 licensed to present erotic dancing”—Talk of the Town (TOT)—which had violated a municipal code  
 19 barring alcohol consumption in establishments without a liquor license. *Talk of the Town*, 343 F.3d  
 20 at 1065. When the City of Las Vegas attempted to close the club for three weeks, TOT argued that  
 21 penalty would infringe its First Amendment rights. The Ninth Circuit rejected the argument that  
 22 because nude dancing involved “constitutionally protected expression,” *id.* at n.11, TOT’s closure  
 23 triggered First Amendment scrutiny, *id.* at 1068. By requiring a liquor license, the City did not  
 24 “regulate conduct containing an element of protected expression.” *Id.* at 1069-70. The law also did  
 25 not disproportionately burden individuals engaging in expressive conduct; it “applied to all business,  
 26 whether . . . bookstores or bars.” *Id.* As the burdens on TOT were an “incidental result” of a  
 27 “generally applicable liquor license requirement,” the First Amendment did not apply,  
 28 notwithstanding the “mere happenstance” that protected activity occurred at TOT. *Id.* at 1072. That

TOT’s “First Amendment rights [would] be completely suppressed for the duration of the suspension” did not change that conclusion. *Id.* at 1073.

The Health Orders Plaintiffs challenge are indistinguishable, in relevant respects, from those upheld in *Arcara* and *Talk of the Town*. The behavior they regulate—potentially disease-spreading, interpersonal contact—is no more arms-related than the regulated conduct in those cases was expressive. There is, to be sure, a difference: Whereas the businesses in those cases engaged in two separate activities—one non-expressive (harboring prostitution, allowing liquor consumption without a license), and another expressive (book selling, nude dancing), Plaintiffs here want to violate social distancing directives *while* buying, selling, and shooting guns. But, either way, the association of protected and unprotected activity is “mere happenstance” and thus constitutionally irrelevant. Plaintiffs cannot claim constitutional protection from broad, neutral health directives just because arms-related commerce would violate them.

The Health Orders also do not “single out” gun shops to “almost exclusively” bear their burdens. Plaintiffs do not address the point directly (their arguments simply assume, incorrectly, that the Orders constitute non-neutral regulations of firearms), but they do argue that, due to the face-to-face nature of firearms transactions, the Orders burden gun stores, and thus gun rights, disproportionately. *See* Mot. at 14:15-18. Their argument overlooks the fact that many types of businesses—barbershops, bars, sports venues, and gyms, to name just a few—also cannot transact business “remotely” and therefore have been “shut down” completely. *Id.* So have institutions central to other individual constitutional rights, including libraries, houses of worship, and jury trials. Orders that burden everyone single out no one.

The second line of cases, involving free exercise, stems from *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990). There, citing a rule against paying individuals who lost their jobs due to “work-related misconduct,” Oregon denied unemployment benefits to the respondents, who had been fired for ingesting peyote during religious ceremonies. *Id.* at 874. They challenged the statute under the Free Exercise Clause, arguing the state could not “require[] any individual to observe a generally applicable law that requires (or forbids) the performance of an act that his religious belief forbids (or requires).” *Id.* at 878. The

1 Supreme Court emphasized that the law forbidding peyote use was “not specifically directed at [any]  
 2 religious practice” and “constitutional as applied to those who use the drug” for non-sacramental  
 3 reasons. *Id.* Noting that the “right to ignore generally applicable law . . . is a constitutional  
 4 anomaly,” the Court declined to apply heightened scrutiny.

5 By contrast, in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520  
 6 (1993), the Supreme Court considered ordinances barring animal sacrifice that were neither neutral  
 7 nor generally applicable. The laws said nothing about religion. However, their legislative history  
 8 (they were enacted in “direct response to the opening of a church,” *id.* at 540), operation (“almost the  
 9 only conduct subject to” them was that church’s rituals, *id.* at 535) and overbreadth (they  
 10 “proscribe[d] more religious conduct”—including sanitary slaughters—“than...necessary to achieve  
 11 their stated ends,” *id.* at 538) established that lawmakers had crafted language that, despite its facial  
 12 neutrality, was designed to “suppress[] ...religion (*id.* at 540). The ordinances also did not apply  
 13 generally because they were “underinclusive to a substantial extent” (*id.* at 547): They purported to  
 14 protect public health and prevent animal cruelty but placed no restrictions on secular activities like  
 15 hunting that implicated the same concerns (*id.* at 542-43).

16 The Ninth Circuit applied *Smith* and *Lukumi* this year. In *Parents for Privacy v. Barr*, 949  
 17 F.3d 1210 (9th Cir. 2020), an Oregon public school allowed transgender students to use bathrooms  
 18 and other facilities that matched their gender identity. *Id.* at 1217. The student-plaintiffs argued that  
 19 policy violated their free-exercise rights because, by forcing them to share facilities with individuals  
 20 of the opposite biological sex, it prevented them from “practicing the modesty that their faith  
 21 requires of them.” *Id.* at 1234. Disagreeing, the Ninth Circuit found the policy neutral: It made “no  
 22 reference to any religious practice” and, unlike *Lukumi*, bore no evidence having effected a  
 23 “religious gerrymander.” *Id.* at 1235. The policy also applied generally, as it “affect[ed] all students  
 24 and staff” and did not, as in *Lukumi*, “place demands on exclusively religious persons or conduct.”  
 25 *Id.* at 1236. Being “neutral and generally applicable,” the challenged rule elicited only rational basis  
 26 review, which it readily satisfied. *Id.* at 1236-38.

27 Here, the Health Orders’ congruence with *Smith* and *Parents for Privacy* could not be  
 28 clearer. As in those cases, the Orders say nothing expressly about guns or gun sales. Also as in



1 those cases—and in contrast to *Lukumi*—Plaintiffs, despite being the burden-bearing movants,  
 2 provide not one iota of evidence that its facial neutrality masks any arms-related animosity.  
 3 Although Plaintiffs *allege* the Orders were “ideologically driven” and reflect “animus” against guns,  
 4 they identify no *evidence*, and present no *argument*, supporting either claim—no facts suggesting  
 5 Defendants issued the Orders in “direct response” to any firearms-related concern; no reason to  
 6 believe the orders operate non-neutrally, either because “almost the only conduct” they reach relates  
 7 to guns or because authorities have selectively enforced them in that manner; and no evidence the  
 8 Orders “proscribe more [Second Amendment] conduct than . . . necessary to achieve their stated  
 9 ends.” *Lukumi*, 508 U.S. at 538. Quite the contrary. Plaintiffs admit that, for reasons wholly  
 10 unrelated to the Orders, all commercial firearms and ammunition transactions must occur in-person.  
 11 Mot. at 13:25-14:12. All, therefore, raise transmission risks. Plaintiffs’ offer to “adhere[] to . . . best  
 12 practices” (Mot. at 20:4-8) does not eliminate that risk.

13 The Orders also apply generally. Plaintiffs suggest they do not because they exempt  
 14 numerous types of businesses. But “[g]eneral applicability does not mean absolute universality.”  
 15 *Olsen v. Mukasey*, 541 F.3d 827, 832 (8th Cir. 2008). Thus, in *Stormans, Inc. v. Wiesman*, 794 F.3d  
 16 1064, 1081 (9th Cir. 2015), the Ninth Circuit rejected an argument that, because a Washington law  
 17 that otherwise required pharmacies to fill all prescriptions (including contraceptive pills) carved out  
 18 secular but not religiously motivated exceptions, it lacked general applicability. The court explained  
 19 that the exceptions—for fraud, inability to pay, lack of supplies, and emergencies—were necessary  
 20 for pharmacies “to operate in the normal course of business.” *Id.* at 1080. Thus, far from  
 21 contradicting the “proffered interest[s]” underlying the enactment, *Lukumi*, 508 U.S. at 543, those  
 22 exceptions “further[ed] the rules’ stated goal of ensuring timely and safe patient access to  
 23 medications,” *Stormans*, 794 F.3d at 1080.

24 Here, likewise, the Health Orders’ exceptions further their “proffered interests” to protect  
 25 the community from disease and conserve healthcare resources: residents cannot shelter in place  
 26 without food, medicine, and (to state the obvious) shelter. Plaintiffs emphasize that the exceptions  
 27 extend—“arbitrari[ly], they say—to “convenience stores,” “auto-supply stores,” “landscapers,”  
 28 “gardeners,” “bicycle repair and supply” stores, and “hardware stores.” Mot. at 21:3-15. But

1 convenience stores qualify only if they sell food (Cody Decl., Ex. B at 13.f.ii) and are often the only  
 2 option for low income individuals who live far from full service grocers; auto-supply and bicycle  
 3 stores repair vehicles necessary for medical staff and other essential employees to travel to work;  
 4 landscapers and gardeners can work only to “maintain . . . habitability” and “safety”—by abating  
 5 weeds, for example, in fire-prone regions (*id.* at 13.f.xiii); and many habitability-impairing  
 6 problems, from broken appliances to overflowing toilets, can be fixed only with supplies hardware  
 7 stores stock. These exceptions hardly place the Health Orders’ aims at odds with their means, let  
 8 alone establish that their restrictions are being imposed “only against conduct with a [Second  
 9 Amendment] motivation.” *Lukumi*, 508 U.S. at 543; *see also Hampsmire v. City of Santa Cruz*, 899  
 10 F. Supp. 2d 922, 936 (N.D. Cal. 2012) (rejecting argument that noise ordinance was not generally  
 11 applicable because it exempted dins caused by “garbage collection, street sweeping and other public  
 12 health activities”—but not itinerant preaching—as those exemptions did not “undermine the City’s  
 13 interest in curbing excessive noise”).

14 Thus, under both free expression and free exercise lines of cases, the Health Orders—neutral  
 15 and generally applicable regulations—avoid heightened scrutiny. And while the principle has not  
 16 been applied in Second Amendment contexts, two Ninth Circuit judges have articulated it there. *See*  
 17 *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 698 (9th Cir. 2017) (en banc) (Bea, J. dissenting) (noting  
 18 in Second Amendment case that “[i]f there were a zoning measure of general application to bar retail  
 19 stores of any kind within 500 feet of residences to lower traffic or noise, we wouldn’t be here.”);  
 20 *Pena v. Lindley*, 898 F.3d 969, 1008 (9th Cir. 2018) (Bybee, J., concurring in part, dissenting in part)  
 21 (“[R]ules of general applicability do not violate the Second Amendment just because they place  
 22 conditions on commercial sales. . . . Fire codes, sales taxes, and commercial licenses are ordinary  
 23 conditions on commercial sales generally.”) They were right to do so. Regulations that apply  
 24 generally and do not target protected rights, either by design or disproportionate impact, raise no  
 25 constitutional concerns. That principle ends the analysis, for Plaintiffs do not—and cannot—argue  
 26 the Orders have no rational basis.

### 27 **3. If the Health Orders Elicit Second Amendment Review, They Satisfy It**

28 Even if the Court scrutinized the Health Orders as though they regulated firearms, the result



1 would be the same. The Ninth Circuit applies a two-part test to firearms regulations. It first asks  
 2 whether a law “burdens conduct protected by the Second Amendment.” *Jackson*, 746 F.3d at 960.  
 3 If so, it identifies and applies the “appropriate level of scrutiny.” *Id.*

4 Here, the claims made by seven Plaintiffs—three retail establishments and four individuals—  
 5 that their right to “sell and transfer” arms has been curtailed (FAC ¶¶ 14-17, 19-21)—fail at step one,  
 6 because “the Constitution does not confer a freestanding right on commercial proprietors to sell  
 7 firearms.” *Teixeira*, 873 F.3d at 673. The remaining claims fail at step two, because even if the  
 8 Health Orders incidentally burden a Second Amendment right to acquire arms, intermediate scrutiny  
 9 applies, and the Orders satisfy it.

#### 10 **a. At Most, The Health Orders Elicit Intermediate Scrutiny**

11 The appropriate level of scrutiny turns on (1) “how closely the law comes to the core of the  
 12 Second Amendment right;” and (2) how severely, if at all, the law burdens that right. *Jackson*, 746  
 13 F.3d at 963. “Intermediate scrutiny is appropriate if [either] the regulation . . . does not implicate the  
 14 core Second Amendment right *or* does not place a substantial burden on that right.” *Fyock v.*  
 15 *Sunnyvale*, 779 F.3d 991, 998–99 (9th Cir. 2015). The core Second Amendment right is that of  
 16 “law-abiding, responsible citizens to use arms in defense of hearth and home.” *Bauer v. Becerra*,  
 17 858 F.3d 1216, 1222 (9th Cir. 2017).

18 Here, Plaintiffs initially argue that the Health Orders are “categorically unconstitutional.”  
 19 Mot. at 13:13-14. Citing *Heller*, they claim that because the Orders effect “a destruction of a  
 20 fundamental, individual right” (Mot. at 14:19-20), “any interest-balancing test, including tiered  
 21 scrutiny, is inappropriate” (*id.* at 15:8-10). But *Heller* did not announce a new categorical standard  
 22 for firearms regulations. It instead held that “[u]nder any of the standards of scrutiny that we have  
 23 applied to enumerated constitutional rights,” the regulation challenged there “would fail  
 24 constitutional muster.” *Heller*, 554 U.S. at 628-629. In the language Plaintiffs cite about “interest-  
 25 balancing,” the Court rejected not the application of those traditional standards but a new form of  
 26 analysis Justice Breyer proposed in dissent. *Id.* at 634. (“Justice Breyer . . . proposes. . . *none of the*  
 27 *traditionally expressed levels* (strict scrutiny, intermediate scrutiny, rational basis), but rather a  
 28 judge-empowering “interest-balancing inquiry . . . .”) (emphasis added); *see also Binderup v.*

1 *Attorney Gen. United States of Am.*, 836 F.3d 336, 344-45 (3d Cir. 2016) (rejecting view that *Heller*  
 2 announced categorical rule); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 89 n.9 (2d Cir. 2012)  
 3 (same). The Ninth Circuit has not applied Plaintiffs’ theory in any precedential opinion. Of the two  
 4 panel opinions that recognized it, one was reheard—and effectively overruled—en banc; the other  
 5 awaits rehearing. *See Peruta v. Cty. of San Diego*, 742 F.3d 1144, 1170 (9th Cir. 2014), *on reh’g en*  
 6 *banc*, 824 F.3d 919 (9th Cir. 2016) (affirming summary judgment for counties that regulated  
 7 concealed carry of firearms); *Young v. Hawaii*, 896 F.3d 1044, 1071 (9th Cir. 2018), *reh’g en banc*  
 8 *granted*, 915 F.3d 681 (9th Cir. 2019).

9 Even if the rule exists, it finds no home here. Far from “destr[oying]... [the] fundamental,  
 10 individual right” to keep and bear arms, the Health Orders do not limit firearms possession or use at  
 11 all, and the indirect restrictions they do impose are temporary. Mot. at 14:18-20. Just as limited  
 12 geographical boundaries take *per se* rules off the table, the Health Orders’ temporal limits make any  
 13 categorical analysis inappropriate. *See GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Engineers*,  
 14 788 F.3d 1318, 1325-26 (11th Cir. 2015) (rejecting “swing-for-the-fences” argument that law was  
 15 *per se* unconstitutional under *Heller*; noting that, far from “totally banning” handguns, it only  
 16 prevented their possession in recreational area,” allowing plaintiffs to “freely exercise their right to  
 17 bear arms for self-defense elsewhere”). Plaintiffs’ fallback bid for “strict scrutiny,” which they base  
 18 on exactly the same assertion—that the Orders “completing [*sic*] destroy[] the right to keep and bear  
 19 arms . . . .”—fails for precisely the same reason. Mot. at 16:24-17:3. Even if the Orders impact the  
 20 right of “law-abiding...citizens to use arms in defense of hearth and home,” *Bauer*, 858 F.3d at  
 21 1222, they do so indirectly and modestly.

22 Two Ninth Circuit cases illustrate how the Orders’ burden should be weighed and why they  
 23 justify imposing nothing stricter than intermediate review. The first, *Silvester v. Harris*, 843 F.3d  
 24 816 (9th Cir. 2016), involved a challenge to California’s mandatory 10-day waiting period for  
 25 firearm purchases. *Id.* at 818. Weighing that burden, the Ninth Circuit emphasized that the law’s  
 26 temporal limitation did “not prevent, restrict, or place any conditions on how guns are stored or used  
 27 after a purchaser takes possession.” *Id.* at 827. They also did not disqualify any “individuals from  
 28 owning a firearm.” *Id.* For both reasons, and because “[t]here is . . . nothing new in having to wait”

1 for firearms —“delivery took time” in the 18th and 19th centuries—the burden was “very small” and  
 2 the appropriate level of scrutiny intermediate. *Id.*

3 In *Wilson v. Lynch*, 835 F.3d 1083 (9th Cir. 2016), the Ninth Circuit considered federal laws  
 4 and guidance from an enforcement agency that, together, barred dealers from selling firearms to  
 5 individuals, such as the plaintiff, to whom Nevada had issued state-law medical marijuana cards. *Id.*  
 6 at 1089. The court observed that the regulations prohibited “only the sale of firearms to [plaintiff]—  
 7 not her possession of firearms.” *Id.* at 1093. Thus, she “could have amassed legal firearms before  
 8 acquiring a registry card,” and nothing “impede[d] her right to keep her firearms or to use them to  
 9 protect herself and her home.” *Id.* Finally, she “could acquire firearms and exercise her right to  
 10 self-defense at any time by surrendering her registry card . . . .” *Id.* For all three reasons, the burden  
 11 was “not severe” and the court “appl[ied] intermediate scrutiny to determine whether the[] laws and  
 12 guidance pass constitutional muster.” *Id.*

13 Here, as in *Silvester*, the Health Orders do not limit who can bear arms, where, or when; what  
 14 types of weapons one may own; how one stores them at home; or whether one can carry them in  
 15 public. As in both *Silvester* and *Lynch*, they only limit arms-related commerce: the ability to acquire  
 16 new weapons, more ammunition, and to target-shoot at commercial facilities. And even the first two  
 17 of those restrictions are not absolute, as California law does not require dealer participation in all  
 18 transactions. *See* Cal. Penal Code § 27875 (permitting family transfers); *id.* § 27881 (loans at  
 19 lender’s residence); *id.* § 27885 (three-day loans); *id.* (loans within family). Most important, all of  
 20 the Orders’ burdens are *temporary*. The first Health Order issued March 16, 2020 and the second  
 21 expires May 3, 2020—a little over four weeks after Plaintiffs filed this lawsuit. Their limited  
 22 temporal scope is far closer to the 10-day wait *Silvester* characterized as imposing a “very small”  
 23 burden than the limitless ban *Heller* struck down. *See also United States v. Torres*, 911 F.3d 1253,  
 24 1263 (9th Cir. 2019) (finding burden of law barring firearms possession by undocumented  
 25 immigrants “tempered” by fact that it applied only so long as person’s status remained unlawful);  
 26 *Nat’l Rifle Ass’n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185,  
 27 207 (5th Cir. 2012) (holding that “the temporary nature” of burden imposed by law preventing 18-20  
 28 year-olds from purchasing handguns “reduces its severity” and emphasizing that everyone subject to

1 it “will soon grow up and out of its reach”).

2       The burden, moreover, is particularly insubstantial here. None of the individual Plaintiffs  
3 claims he or she did not already own guns and ammunition before the Health Orders issued, and  
4 none of their organizational counterparts claim their members are so situated either. Thus, there is  
5 no evidence that any of *these* Plaintiffs has been deprived—even temporarily—of the core Second  
6 Amendment right to self-defense. And “if there is no constitutional defect in the application of the  
7 statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to  
8 third parties in hypothetical situations.” *Cty. Court of Ulster Cty., N.Y. v. Allen*, 442 U.S. 140, 155  
9 (1979); *see also United States v. Salerno*, 481 U.S. 739, 745 (1987) (noting that, for facial challenge,  
10 plaintiff “must establish that no set of circumstances exists under which the Act would be valid”);  
11 *Wright v. Incline Vill. Gen. Improvement Dist.*, 665 F.3d 1128, 1134 (9th Cir. 2011) (“if we find that  
12 Ordinance 7 and Policy 136 are constitutional as applied to Wright, the facial challenge also fails”);  
13 *Kachalsky*, 701 F.3d at 101 (“In view of our determination that New York’s proper cause [firearm  
14 regulation] is constitutional under the Second Amendment as applied to Plaintiffs, we also reject  
15 their facial overbreadth challenge.”).

16       *Silvester* and *Lynch* are not outliers. They reflect the “near unanimity . . . that when  
17 considering regulations that fall within the scope of the Second Amendment, intermediate scrutiny is  
18 appropriate.” *Silvester*, 843 F.3d at 823. Defendants know of no post-*Heller* Ninth Circuit case  
19 (Plaintiffs certainly cite none) that strictly scrutinized a firearms regulation. *See Jackson*, 746 F.3d  
20 at 968 (applying intermediate scrutiny to ordinance regulating handgun storage and ammunition  
21 sales); *Fyock*, 779 F.3d at 999 (same, to ordinance restricting possession of large-capacity  
22 magazines); *Chovan*, 735 F.3d at 1137-38 (9th Cir. 2013) (same, to law preventing domestic  
23 violence misdemeanants from possessing firearms); *Torres*, 911 F.3d at 1262-63 (same, to law  
24 barring undocumented immigrants from possessing firearms); *Mai v. United States*, 952 F.3d 1106,  
25 1115 (9th Cir. 2020) (same, to law preventing firearms purchases by individuals involuntarily  
26 committed to mental health institutions); *Bauer v. Becerra*, 858 F.3d 1216, 1222 (9th Cir. 2017)  
27 (same, to state law imposing fees on firearms purchases); *Silvester*, 843 F.3d at 827 (same, to law  
28 establishing 10-day waiting period); *Lynch*, 835 F.3d at 1089 (same, to regulations preventing

1 firearms purchases by holders of marijuana cards). It makes no sense to apply greater scrutiny to  
 2 Orders that do not specifically regulate firearms.

3 Two district courts in California recently reached the same conclusion when considering  
 4 Second Amendment challenges to substantially similar orders. Request for Judicial Notice (“RJN”),  
 5 Ex. A at p. 5 (applying intermediate scrutiny to shelter-in-place orders that the City and County of  
 6 Los Angeles enacted from March 19, 2020 through April 19, 2020 that did not deem firearms  
 7 retailers essential, because they were “not as sweeping as the complete handgun ban at issue in”  
 8 *Heller*) (quoting *Fyock*, 779 F.3d at 999); *id.* Ex. B at p. 2 (same, as to public health order Ventura  
 9 County enacted from March 20, 2020 through April 19, 2020 unless extended). In the former case,  
 10 an individual plaintiff alleged that he “does not own or possess any ammunition.” *Id.*, Ex. C ¶ 65.  
 11 His burden, slight as it was, exceeded that of any Plaintiff here.

#### 12 **b. The Orders Satisfy Intermediate Scrutiny**

13 The Orders readily survive intermediate review. “The test is not a strict one.” *Silvester*, 843  
 14 F.3d at 827. It requires “only that the law be substantially related” to an “important government  
 15 interest.” *Id.* Fighting the greatest pandemic since 1918 satisfies the second requirement, as  
 16 Plaintiffs concede. *See* Mot. at 25:2-3 (recognizing the Defendants’ interests are “serious in  
 17 nature”). Regarding fit, “intermediate scrutiny does not require the least restrictive means of  
 18 furthering a given end.” *Id.* *Silvester* is instructive here as well. The 10-day waiting period there  
 19 served two purposes: It allowed authorities to run background checks confirming would-be buyers  
 20 were eligible to purchase firearms, and it provided a “cooling-off” period to deter impulsive acts of  
 21 self-harm and violence. *Id.* at 824. The plaintiffs had all purchased firearms previously. They  
 22 pointed out that their background checks often cleared before the full 10 days ran; at that point, the  
 23 only legislative interest possibly served by making them wait longer was to deter impulsive acts of  
 24 violence, which, as prior gun purchasers, they already had the means to commit. *Id.* at 828. Making  
 25 them wait therefore served no legislative purpose at all. The district court agreed and, following a  
 26 trial, entered judgment in their favor. *Id.*

27 The Ninth Circuit reversed. It reasoned that some serial purchasers may no longer have  
 28 operable firearms and that others may want weapons that “will do more damage when fired into a

crowd.” *Id.* at 828. In both cases, a cooling-off period served the Legislature’s purpose, satisfying intermediate scrutiny. That most serial firearms purchasers satisfied neither description—that, in other words, the law lacked a narrow means-end fit—did not matter. *Silvester’s* application of intermediate scrutiny is consistent with a large body of precedent. *See Jackson*, 746 F.3d at 960-61 (allowing city to require all owners store handguns in safe, mainly to protect children, even though many households had only adult habitants); *Torres*, 911 F.3d at 1262-63 (upholding law disqualifying all undocumented immigrants from buying firearms, even though most such individuals are non-violent); *Bauer* 858 F.3d at 1222 (deeming fees imposed on all firearm purchasers lawful even though they funded background investigations that ended up disqualifying only small subset of buyers); *Mai*, 952 F.3d at 1115 (holding that government may prevent all individuals previously committed to mental health institutions from obtaining firearms, even those who could demonstrate years-long freedom from illness); *Chovan*, 735 F.3d at 1137-38 (rejecting attack on law that prevented all domestic violence misdemeanants from possessing firearms, even the subset at low risk for recidivism).

The Orders’ means more closely fit their ends here. Plaintiffs fault the Orders for not allowing firearms retailers to operate even though they could follow the same social distancing requirements that Essential Businesses follow. Mot. at 19:23-20:22. But “best practices” reduce infection risks; they do not eliminate them. Thus, whereas most serial firearms purchasers in *Silvester* did not implicate that law’s aims, here, every individual Plaintiff *is* a potential vector for infection, so preventing them from transacting business, in person, *does* further the Orders’ objectives. To the extent Plaintiffs premise their argument on their subsidiary claim that the Orders, by exempting certain businesses but not firearms retailers, are “pierced with . . . inconsistencies” (Mot. at 19:15-16), it fails for reasons provided above. Defendants had sound epidemiological reasons to exempt the smallest possible number of businesses, and they reasonably focused on those that directly or indirectly meet basic needs. Many institutions—bookstores, houses of worship, libraries, schools, businesses that “present erotic dancing” to name a few—can claim some constitutional status. Defendants cannot exempt them all.

And, again, this Court comes to the question not as a matter of first or even second



1 impression. In the Los Angeles County case, Judge Birotte noted that COVID-19 “spreads where an  
 2 infected person coughs, sneezes, or otherwise expels aerosolized droplets containing the virus” and  
 3 thus held that “the closure of non-essential businesses, including firearms and ammunition retailers,  
 4 reasonably fits the City’s and County’s stated objectives of reducing the spread of this disease.”  
 5 RJN, Ex. A at pp. 5-6. Judge Marshall likewise held that the Ventura County plaintiffs were not  
 6 likely to succeed because “mitigation efforts” would be less effective “without the closure of non-  
 7 essential facilities.” *Id.*, Ex. B at p. 2. The same reasoning applies to the same degree here; it  
 8 defeats Plaintiffs’ Second Amendment claim.

### 9 **C. PLAINTIFFS’ DUE PROCESS CLAIM WILL NOT SUCCEED**

10 Plaintiffs’ second claim—that the Orders violate substantive due process—appears to assert  
 11 three predicates: “arbitrariness” (Mot. at 21:3), “separation of powers” (*id.* at 22:13), and  
 12 “vagueness” (*id.* at 21–23). None has merit.

13 The first merely recasts Plaintiffs’ failed Second Amendment claim. Plaintiffs argue the  
 14 Health Orders are “arbitrary” because the list of businesses they deem essential is over- and under-  
 15 inclusive. *See* Mot. at 21:3-15. But their Second Amendment claim rests on the same argument, and  
 16 “if a constitutional claim is covered by a specific constitutional provision . . . , the claim must be  
 17 analyzed under the standard appropriate to that specific provision, not under the rubric of substantive  
 18 due process.” *County of Sacramento v. Lewis*, 523 U.S. 833, 843 (1998). Thus, Plaintiffs’  
 19 substantive due process claim cannot succeed where its Second Amendment analogue fails. *See*,  
 20 *e.g.*, *Mahoney v. Holder*, 62 F. Supp. 3d 1215, 1223 (W.D. Wash. 2014) (rejecting due process claim  
 21 based on alleged Second Amendment deprivation). Moreover, even if Plaintiffs could allege a  
 22 freestanding substantive due process claim, they could not, as they must to support such a claim,  
 23 establish that the Health Orders shock the conscience or lack any arguably legitimate rationale. *See*,  
 24 *e.g.*, *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1060 (9th Cir. 2012) (rejecting substantive  
 25 due process claim based on allegedly arbitrary nature of building moratorium where it was “at least  
 26 fairly debatable” that moratorium furthered legitimate interest); *Kawaoka v. City of Arroyo Grande*,  
 27 17 F.3d 1227, 1234 (9th Cir. 1994) (same).  
 28

1 Plaintiffs offer their second theory—separation of powers—without a single supporting  
 2 authority or any explanation of how the Orders violate the doctrine they cite. They simply declare,  
 3 without elaboration, that the Orders “bypass[] the constitutionally authorized method for enacting  
 4 laws” because “[l]egislatures are supposed to enact laws” while “executive agencies are supposed to  
 5 enforce them.” Mot. 22:7-10. These are assertions, not arguments, and “[i]ssues raised in a brief  
 6 which are not supported by argument are deemed abandoned.” *Kohler v. Inter-Tel Techs.*, 244 F.3d  
 7 1167, 1182 (9th Cir. 2001). The claims are also incorrect. A state’s police power permits it to  
 8 “invest local bodies . . . with authority in some appropriate way to safeguard the public health;” the  
 9 “manner in which those results are to be accomplished is [also] within the discretion of the state.”  
 10 *Jacobson*, 197 U.S. at 25. Here, California Health and Safety Code sections 101040, 101085, and  
 11 120175 all delegate to “local health officer[s]” the power to take various preventative and responsive  
 12 measures to “prevent the spread of [] disease.” The County Health Officers appropriately relied on  
 13 these grants when issuing the Health Orders.

14 Plaintiffs do even less to develop their void-for-vagueness theory. The standard requires  
 15 them to establish the Health Orders are “so vague that [they] fail[] to give ordinary people fair notice  
 16 of the conduct [they] punish[], or [are] so standardless that [they] invite[] arbitrary enforcement.”  
 17 *Johnson v. United States*, 135 S. Ct. 2551, 2556 (2015). Plaintiffs identify this standard and assert  
 18 that the Orders “do not define critical terms, . . . permit and encourage arbitrary and erratic arrests,”  
 19 and exhibit similar flaws. Mot. at 22:16-27. But they do not identify any term that lacks clear  
 20 definition or otherwise explain what about the Orders makes them vague. Parroting a legal standard  
 21 and declaring it satisfied does not state a claim; it certainly cannot establish likely success on the  
 22 merits of that claim. The Health Orders, in any event, do define their terms, including “Essential  
 23 Businesses” in detail, with examples. And, elsewhere, Plaintiffs attack the Orders at length precisely  
 24 because they *do* understand the lines they draw. Judge Birotte rejected similar attacks against orders  
 25 worded similarly those here, finding them “clear and explicit” with “extensive[] defin[itions].” RJN,  
 26 Ex. A at 6. This Court should, too.

#### 27 **D. THE PUBLIC INTEREST DOES NOT FAVOR INJUNCTIVE RELIEF**

28 Plaintiffs devote just one substantive sentence to the third and fourth preliminary injunction



1 factors, declaring that if the Orders likely inflict constitutional harm, it follows automatically that  
 2 “both the public interest and the balance of the equities [also] favor a preliminary injunction.” Mot.  
 3 at 24:1-22. Not so. Plaintiffs, for the reasons set forth above, have not established any likely  
 4 constitutional injury. Even if they did, even if their injuries would be irreparable, and even if the  
 5 equities favored injunctive relief, the analysis would not end there. For it is *not* in the public’s  
 6 interest to enjoin every colorable constitutional violation. See *Winter*, 555 U.S. at 32 (“An  
 7 injunction is a matter of equitable discretion; it does not follow from success on the merits as a  
 8 matter of course.”). For example, in *Stormans, Inc. v. Selecky*, 586 F.3d 1109 (9th Cir. 2009), the  
 9 district court “clearly erred” by enjoining enforcement of Washington’s pharmacy statutes, in part  
 10 because it considered only the strength of the plaintiffs’ claims and its inability, should they prevail,  
 11 to repair their injuries. *Id.* at 1140. After noting that “simply raising a serious [First Amendment]  
 12 claim is not enough to tip the hardship scales,” the Ninth Circuit considered whether an injunction  
 13 would serve the public’s interests. *Id.* at 1138.

14 It emphasized two related considerations for remand. First, the district court’s obligation to  
 15 “give due weight to the serious consideration of the public interest . . . that has already been  
 16 undertaken by the responsible state officials in Washington, who unanimously passed the rules that  
 17 are the subject of this appeal.” *Id.* at 1140. Second, that the “general public has an interest in the  
 18 health of state residents.” *Id.* at 1139. A preliminary injunction, regardless of whether it applied  
 19 generally or solely to the named plaintiffs, implicated that concern by making prescriptions for  
 20 contraceptives and other medications more difficult to fill. *Id.* The court concluded by observing  
 21 that the case “may present a situation in which ‘otherwise avoidable human suffering’ results from  
 22 the issuance of the preliminary injunction.” *Id.* at 1140; see also *Abbott*, 954 F.3d at 791 (holding  
 23 that district court clearly erred by “rotely conclud[ing] that all injunctions vindicating constitutional  
 24 rights serve the public interest” and that, “at the very least,” the district court must “weigh the  
 25 potential injury to the public health when it considers enjoining state offices from enforcing  
 26 emergency public health laws”).

27 *Stormans* moves the public-interest factor squarely against Plaintiffs. First, they “bear the  
 28 initial burden of showing that the injunction is in the public interest.” *Stormans*, 586 F.3d at 1139.

1 They cannot carry that burden by asserting, incorrectly, that they do not need to. And yet that is all  
2 they have done; their brief offers no separate argument or evidence about the public’s stake in this  
3 case. Second, their request, like the one in *Stormans*, implicates public health and safety, and it does  
4 so to a greater degree. Whatever interests the public has in ensuring contraceptives remain readily  
5 available, it has a greater interest in staying alive. And whereas making contraceptives unavailable  
6 affects mainly the individuals who need them, spreading a contagious disease affects every member  
7 of society. It is thus difficult to imagine a clearer example of a case where “otherwise avoidable  
8 human suffering” would “result[] from .... [a] preliminary injunction.” *Id.* at 1140. Finally, many  
9 experts gave “serious consideration” to the Health Orders; the considered decisions of public health  
10 officials—about public health—“should be given due weight.” *Id.* at 1140; *see also Winter*, 555  
11 U.S. at 24 (emphasizing that case “involve[d] complex, subtle, and professional decisions” entitled  
12 to deference). Plaintiffs’ request must be denied.

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1 **IV. CONCLUSION**

2 Plaintiffs, attempting to prove they will likely succeed, have instead demonstrated they shall  
 3 certainly fail. For the Health Orders they challenge enact emergency measures that deserve great  
 4 deference; those Orders are drawn neutrally, apply generally, and burden Second Amendment rights  
 5 only temporarily; and they impose their modest, incidental burdens for the greatest good of all:  
 6 saving lives. Plaintiffs' desire to purchase or sell guns and practice target shooting must temporarily  
 7 yield to the public's interest in repelling a deadly disease. The Court should therefore deny  
 8 Plaintiffs' request for extraordinary injunctive relief.

9 I hereby attest that I have on file all holographic signatures corresponding to any signatures  
 10 indicated by a conformed signature /S/ within this and associated e-filed documents.

11  
 12 Respectfully submitted,

13 JAMES R. WILLIAMS  
 14 COUNTY COUNSEL

15 Dated: May 1, 2020

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 Deputy County Counsel

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2197295

## JANICE ALTMAN, et al,

V.

COUNTY OF SANTA CLARA, et al,

Defendants.

Case No. **No. 20-CV02180JST**

# DECLARATION OF LIEUTENANT ARMANDO ESPITIA

I, ARMANDO ESPITIA, declare as follows:

1. I am employed by the Mountain View Police Department as a police lieutenant.  
I have been a peace officer for 20 years.

2. Since the initial Santa Clara County Health Officer's Order for shelter-in-place was issued on March 16, 2020, my duties and responsibilities have included enforcement of the terms of the Order within the City of Mountain View. These duties and responsibilities include enforcement of the terms of the subsequent order issued on March 31, 2020.

3. I have reviewed the records of the Mountain View Police Department relating to calls for service for allegations of violations of the Health Officer's Orders. I also am personally

1 aware of numerous complaints from members of the public relating to allegations of violations  
2 of the Health Officer's Orders.

3 4. The numerous complaints received by the Mountain View Police Department  
4 include allegedly nonessential business operations violating the Health Officer's Orders. These  
5 complaints include a game store, a nail salon, a yoga studio, a gym, a beauty salon, a clothing  
6 store, a fabric store, an auto dealership, and a barber shop. These cases also include allegations  
7 that Eddy's Shooting Sports, a retail store selling guns, was operating in violation of the Health  
8 Officer's Orders.

9 5. These businesses subject to complaints, including Eddy's Shooting Sports, were  
10 investigated based on the contents of the Health Officer's Orders. When violations were found  
11 to exist, warnings were issued to the businesses. Eddy's Shooting Sports was one of the  
12 businesses receiving warnings.

13  
14 I declare under penalty of perjury under the laws of the United States of America that the  
15 foregoing is true and correct.

16  
17 Dated: April 21, 2020



ARMANDO ESPITIA

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 JANICE ALTMAN, et al.,

12 Plaintiff,

13 v.

14 COUNTY OF SANTA CLARA, et al.,

15 Defendant.  
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Case No. 20-cv-02180-JST

DECLARATION OF DEFENDANT  
POLICE CHIEF BRYAN HILL IN  
SUPPORT OF OPPOSITION TO  
PRELIMINARY INJUNCTION

Date: May 20, 2020

Time: 2:00 p.m.

Courtroom: 6

Action Filed: Mar. 31, 2020

Trial Date: Not set



DECLARATION OF BRYAN HILL

I, Bryan Hill, have personal knowledge of the facts set forth in this Declaration, and if called as a witness, could and would testify to those facts under oath.

1. I have worked in law enforcement for 28 years, with the last 15 to 16 years in administration, all in Contra Costa County. During that time, I have held virtually every rank in a police department. I was a lieutenant for seven years, was a captain for two to three years, and have been the Chief of Police of the City of Pleasant Hill for the last two years. I have a bachelor's degree in social science and a master's degree in organizational leadership. I also studied at the FBI National Academy.

2. I am familiar with the Contra Costa County Shelter-in-Place Orders, dated March 16, 2020, and March 31, 2020 (collectively "Orders"). As Chief of Police, I supervise enforcement of the Orders within the City of Pleasant Hill ("City").

3. The Pleasant Hill Police Department ("Department") is informed of potential violations of the Orders by citizen complaints made either to the Department dispatch desk or to City Hall. The Department does not proactively seek out possible violations. Initially, when it received a complaint, the Department would dispatch an officer to investigate. Currently, it forwards the complaints to the City Code Enforcement Department to investigate.

4. The complaints have covered a variety of businesses, including, bars, a smoke shop, a retail office supplies and shipping store, a retail flooring store, a

1 retail furniture store, a mobile dog care and grooming business, and a retail gun  
2 store. The complaints that are well founded have all been handled with a warning.  
3 None of the complaints led to a citation.

4  
5 I declare under penalty of perjury under the laws of the United States that the  
6 above is true and correct.

7  
8 Executed on April 27, 2020, in Pleasant Hill, California.

9  
10   
11 Bryan Hill

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11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 JANICE ALTMAN, et al.,

14 Plaintiffs,

15 v.

16 COUNTY OF SANTA CLARA, et al.,

17 Defendants.  
18

No. 20-CV-02180 (JST)

**DECLARATION OF CHRIS FARNITANO  
IN SUPPORT OF OPPOSITION TO  
PLAINTIFFS' REQUEST FOR  
TEMPORARY RESTRAINING ORDER**

19 I, CHRIS FARNITANO, declare as follows:

20 1. I have personal knowledge of the facts set forth in this declaration. If called as a  
21 witness, I could and would testify competently to the matters set forth herein. I am a defendant in  
22 this action in my official capacity.

23 2. I received my undergraduate degree and my Doctor of Medicine degree from Duke  
24 University. I was a National Association of Public Hospitals and Health Systems fellow in 2010-11.  
25 I completed my residency in Family Medicine at Merrithew Memorial Hospital in Martinez,  
26 California. I was the chair of the Family Medicine Department at Contra Costa Regional Medical  
27 Center ("CCRMC") as well as the Ambulatory Care Medical Director there.  
28

1           3. I am currently the Health Officer for Contra Costa County, as well as each of the 19  
2 cities located within Contra Costa County. I have held the Health Officer position since 2018. In  
3 that role, I provide leadership on public health issues for all of Contra Costa County. I was the  
4 Deputy Health Officer for the County from 2015-2018.

5           4. The mission of the Public Health division of the Health Services Department of  
6 Contra Costa County is to promote and protect the health and well-being of the individual, family,  
7 and community in Contra Costa County and its approximately 1.1 million residents. None of the 19  
8 cities in Contra Costa County has a health department; they rely on the Public Health division to  
9 perform essential public health functions for their cities and residents.

10           5. The novel coronavirus involved in the current global pandemic, or COVID-19, is  
11 present in Contra Costa County in significant numbers. The County recorded its first case of the  
12 virus on March 3, 2020. Community transmission is believed to be widespread throughout the  
13 County, and limited testing capacity means that case counts represent only a small portion of actual  
14 cases. Recent studies suggest that the COVID-19 infection rate is higher than previously thought.

15           6. On March 16, 2020, the County had confirmed 35 cases, with three deaths occurring  
16 in neighboring Bay Area jurisdictions. To slow virus transmission, protect the most vulnerable, and  
17 prevent the health care system from being overwhelmed, and after consideration of guidance from  
18 the Centers for Disease Control and Prevention, the California Department of Public Health, and  
19 other public health officials throughout the United States and around the world, on that date, I issued  
20 a shelter-in-place order directing all individuals living in the County to shelter at their place of  
21 residence, except to engage in certain essential activities. Other counties, including Santa Clara  
22 County, issued similar shelter-in-place orders.

23           7. The March 16, 2020 Order prohibited all public and private gatherings of any number  
24 of people occurring outside a household or living unit, except for the limited purposes of performing  
25 Essential Activities, such as obtaining food and medication, visiting a health care professional, or  
26 obtaining products needed to maintain safety and sanitation. The Order prohibited all travel, except  
27 Essential Travel. All businesses with a facility in the County, except Essential Businesses were  
28 required to cease all activities except certain Minimum Basic Operations. The Order provided



1 definitions of these key terms.

2 8. The number of confirmed cases in Contra Costa County increased from 32 to 205  
3 between March 15, 2020 and March 29, 2020. Contra Costa County reported its first COVID-19  
4 related death on March 20, 2020. By March 29, 2020, there were three deaths in the County  
5 attributable to the virus. While the prior shelter-in-place orders had been effective in reducing the  
6 rate of transmission of the virus, we needed to do more to slow down its continued spread.

7 9. On March 31, 2020, I issued an updated shelter-in-place order that superseded the  
8 March 16, 2020 Order. The March 31, 2020 Order was designed to increase social distancing to  
9 further slow transmission of COVID-19. That order extended the shelter-in-place requirements  
10 through May 3, 2020.

11 10. The March 31 shelter-in-place order clarified essential business and activities and  
12 is more restrictive in a number of ways, including: (1) mandating social distancing requirements; (2)  
13 requiring essential businesses to create and implement a social distancing protocol; (3) requiring  
14 essential businesses to maximize the number of employees who work from home; (4) requiring  
15 essential businesses to scale down operations to their essential component only; (5) finding that  
16 businesses that supply products needed for people to work from home are no longer essential  
17 businesses; (6) prohibiting the use of playgrounds, dog parks, public picnic areas, and similar  
18 recreational areas; (7) prohibiting the use of shared public recreational facilities; (8) prohibiting  
19 sports or activities that require use of shared equipment except involving members of the same  
20 household; and (9) prohibiting most construction -- residential and commercial. Other counties in  
21 the Bay Area issued substantially similar shelter-in-place orders, including Santa Clara County.

22 11. When I and the other Bay Area Health Officers issued shelter-in-place orders on March  
23 31, 2020, the public health emergency had substantially worsened since March 16, 2020. There was  
24 a significant escalation in the number of positive cases, hospitalizations, and deaths, and a  
25 corresponding increasing strain on health care resources. At the same time, evidence suggested that  
26 the restrictions imposed by the prior orders were slowing the rate of increase in community  
27 transmission and confirmed COVID-19 cases.

28 ///

1           12. Although the number of COVID-19 cases in our region has not peaked, the shelter-in-  
2 place orders have slowed the spread of the virus. When the March 16, 2020 Order was put in place,  
3 the number of new cases was growing rapidly. But after six weeks, the number of reported new  
4 cases has slowed.

5           13. The number of confirmed cases in Contra Costa County increased from 205 to 805  
6 between March 29, 2020 and April 24, 2020. By April 24, 2020, there were 25 deaths in the County  
7 attributable to the virus. While the prior shelter-in-place orders had been effective in reducing the  
8 rate of transmission of the virus, we needed to maintain those orders to sustain the progress we had  
9 made to slow down the spread of the virus,

10           14. In light of the continued increase in the number of new cases reported in the County and  
11 the relative lack of comprehensive testing, on April 29, 2020, I issued an order extending the March  
12 31, 2020 shelter-in-place order through May 31, 2020. However, the shelter-in-place order was  
13 modified to allow some low-risk activities to resume while maintaining social-distancing measures.  
14 The updated order did not allow the reopening of non-essential indoor businesses as those business  
15 involve a higher risk of transmission of the virus as it is more difficult to maintain social distancing  
16 at indoor businesses.

17           15. In making the decision to issue the shelter-in-place orders, we considered reports from  
18 other parts of the world, particularly China and Italy, regarding the course of the COVID-19  
19 pandemic, the speed at which infections multiplied, the impact of those infections on the health of  
20 the populace and on scarce health care resources, and the need to develop and implement strategies  
21 to limit the spread of the virus. We also considered recommendations from experts in the field of  
22 public health, including the World Health Organization, on best practices to interrupt the spread of  
23 the virus. We also worked in cooperation with health officers from other counties in the Bay Area in  
24 developing the shelter-in-place orders.

25           16. One of the most important indicators of a slowing of the spread of COVID-19 is the  
26 “doubling rate” of virus infections, i.e., how many days it takes for the number of cases to double. A  
27 lower doubling rate means the disease is spreading rapidly; while a higher doubling rate means it is  
28 taking longer for the number of cases to double, as the spread slows down. In mid-March, the



1 County's case numbers doubled approximately every 4-5 days. The current doubling rate is  
2 somewhere around every 23 days. This means that the rate of spread has slowed thanks to County  
3 residents complying with the shelter-in-place orders.

4 17. The shelter-in-place orders were issued based on evidence of continued significant  
5 community transmission of COVID-19 within the County and throughout the Bay Area; continued  
6 uncertainty regarding the degree of undetected asymptomatic transmission; scientific evidence and  
7 best practices regarding the most effective approaches to slow the transmission of communicable  
8 diseases generally and COVID-19 specifically; evidence that the age, condition, and health of a  
9 significant portion of the population of the County places it at risk for serious health complications,  
10 including death, from COVID-19; and further evidence that others, including younger and otherwise  
11 healthy people, are also at risk for serious outcomes.

12 18. Contra Costa County, the Bay Area, the United States, and the rest of the world have  
13 not seen a public health threat like this in more than 100 years. I -- along with health officials from  
14 all over the world -- have concluded that the best course of action is a shared commitment to  
15 adhering to preventative measures, including staying at home, social distancing, and hand washing.  
16 We do not take lightly asking people to stay home. We understand that people are suffering from  
17 real impacts on their lives and livelihoods. We each have a part in slowing the spread of this virus.  
18 Right now, the most important factor in reducing the spread of the virus is to reduce contact among  
19 people to prevent or inhibit community transmission.

20 I declare under penalty of perjury under the laws of the United States of America that the  
21 foregoing is true and correct. Executed at Martinez, California on April \_\_, 2020.

22  
23 Dated: 5/1/2020

24   
CHRIS FARNITANO, M.D.



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Attorneys for COUNTY OF ALAMEDA,  
GREGORY AHERN, and ERICA PAN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JANICE ALTMAN, et al.  
  
Plaintiffs,  
  
v.  
  
COUNTY OF SANTA CLARA, et al.  
  
Defendants.

Case No. 4:20-cv-02180-JST

**DECLARATION OF COLBY STAYSA IN  
SUPPORT OF DEFENDANTS'  
OPPOSITION TO APPLICATION FOR A  
PRELIMINARY INJUNCTION**

Date: May 20, 2020  
Time: 2:00 p.m.  
Judge: Jon S. Tigar  
Ctvm: 6

I, Colby Staysa, declare:

1. I am a Division Commander for the Alameda County Sheriff's Office (ACSO) and have been employed by the Sheriff's Office since January of 1998.

2. The matters set forth in this Declaration are within my personal knowledge and if called as a witness, I could and would testify to the following competently.

///

3. The matters stated in my Declaration support Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for a Preliminary Injunction in this lawsuit.

4. During my employment, I have been assigned to patrol, special operations, investigations, and administration. I have worked at the ACSO Eden Township Division in every rank from Deputy to Division Commander. I have been the Division Commander of the Eden Township Division since February of 2019.

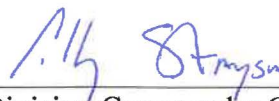
5. As the Division Commander located at the Eden Township headquarters, I manage ACSO's Youth and Family Services Bureau and Eden Township Substation. Collectively, the units operate patrol, investigations, traffic, crime prevention, and school resource officers. All Sheriff's Office law enforcement services provided to the unincorporated areas of Alameda County fall under my command.

6. As part of my responsibilities, I have been charged with enforcement of the public health Orders issued by Erica Pan, M.D., the Interim Public Health Officer for the County of Alameda. The public health Orders were issued on March 16 and then March 30, 2020. I am familiar with the Orders.

7. Deputy Sheriffs of the Alameda County Sheriff's Office have enforced the public health Orders against various non-essential businesses since the issuance of the initial public health Order. ACSO receives complaints about non-compliance with the public health Orders as well as through observation during their patrols. The Deputy Sheriffs issued warnings to non-essential businesses including but not limited to smoke shops, nail salons, barbershops, massage, floor stores, and martial arts studios. Warnings were given to two gun retail stores and they complied with the Orders. Altogether, 37 warnings were issued by ACSO and all of the businesses closed and complied. No businesses were cited.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 29<sup>TH</sup> day of April 2020, at San Leandro, California.

  
Division Commander Colby Staysa

Michelle Marchetta Kenyon (SBN 127969)  
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Attorneys for Defendants  
CITY OF PACIFICA;  
DAN STEIDLE, in his official capacity as  
Chief of Police for City of Pacifica

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JANICE ALTMAN, et al.,  
  
Plaintiffs,  
  
v.  
  
COUNTY OF SANTA CLARA  
COUNTY, et al.,  
  
Defendants.

Case No. 4:20-cv-02180-JST

**DECLARATION OF PACIFICA POLICE  
CHIEF DAN STEIDLE IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: TBD  
Time: TBD  
Judge: Jon S. Tigar

I, Dan Steidle, declare:

1. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I have been continuously employed by the City of Pacifica ("City") since 1993. I have been the City's Police Chief since October 2015.

3. My job duties as the City's Police Chief include managing the Pacifica Police Department, including without limitation supervising the City's sworn police officers (of which there are currently 33) and developing and overseeing implementation of Police Department policies.



1           4.       I am familiar with the March 31, 2020 order of Dr. Scott Morrow, Health Officer  
 2 for the County of San Mateo, which concerns the COVID-19 pandemic and which I refer to  
 3 herein as San Mateo County's "Shelter-in-Place Order." I am also familiar with San Mateo  
 4 County's original Shelter-in-Place Order, dated March 16, 2020, which was superseded by the  
 5 March 31, 2020 Order.

6           5.       San Mateo County's Shelter-in-Place Order provides that all businesses with  
 7 facilities in San Mateo County shall cease operations—through May 3, 2020, or until it is  
 8 extended, rescinded, superseded, or amended in writing by the Health Officer—except for  
 9 categories of essential business listed in the Order, which may continue operating, under certain  
 10 conditions. (See paragraphs 5, 13(f), and 16 of the Order.)

11          6.       San Mateo County's Shelter-in-Place Order does not list gun retailers (or gun  
 12 stores) as essential businesses (nor did the original Order, issued March 16, 2020).

13          7.       City police officers have informed several operators of businesses that are not  
 14 described as essential businesses in the Shelter-in-Place Order that they are required to cease  
 15 operations under the Order, including without limitation, the operators of two liquor stores, two  
 16 bars, a surfing shop, four tobacco shops, and the City's sole gun retailer, City Arms. To the best  
 17 of my current actual knowledge, each of these business operators complied, and none has been  
 18 cited by a City of Pacifica police officer for violating the Order.

19          8.       City Arms is the sole gun retailer with facilities in the City (and there is no  
 20 shooting range in the City). On March 23, 2020, City police officers informed the operators of  
 21 City Arms that the County of San Mateo had not listed gun retailers as essential businesses, and  
 22 therefore that City Arms was obligated to cease operations. However, the City's Police  
 23 Department strove to lawfully and reasonably accommodate sales that were in process (e.g., due  
 24 to background checks and waiting periods that had not yet been completed), informing the City  
 25 Arms operators that they could complete those transactions as long as they followed required and  
 26 appropriate safeguards and completed those transactions within two weeks.

27          9.       I personally communicated in early April 2020 with Dmitriy Danilevsky, whom I  
 28 am informed and believe is City Arms' owner. On or about April 8, Mr. Danilevsky contacted

me by email, asserting that City Arms was being improperly singled out as a non-essential business within the County. On April 10, at approximately 12:10 pm, I replied by email, in pertinent part as follows:

Under San Mateo County Order no. c19-5b, particularly paragraphs 5 and 13(f), gun retailers (stores) are not listed as essential businesses. Thus, the Order does not permit gun stores, for the time being, to operate. We appreciate your cooperation. By the way, as is commonly understood, the purpose of the Order is to limit person-to-person contact as much as feasible, to save lives, flatten the curve, ensure that health care providers can safely and effectively provide health care services, and better protect other essential workers as they do their jobs (e.g., police officers, transit employees, grocery store employees). We understand that this presents many challenges for many people. We appreciate the efforts of all in these challenging times, as we work together towards fulfillment of the Order's purposes.

10. Mr. Danilevsky replied that day, again asserting that the San Mateo County Shelter-in-Place Order was being improperly and selectively enforced within the County. I responded that afternoon as follows:

Answering your concern, the City is applying the Order equally throughout the city. We have given the same direction to all businesses that are not deemed essential, as is the case with City Arms. Please understand, we are not in control of what other jurisdictions do or how they apply the order. We are responsible only for how we carry out the intent of the Order.

Your business as well as all businesses that have closed in Pacifica as a result of this Order are important to the City. We look forward to a point in the future, hopefully sooner than later, where the Order will be lifted and we can all get back to business. [Emphasis in original.]

11. A true and correct copy of this April 8 and 10, 2020 email-exchange between Mr. Danilevsky and me is attached hereto as **Exhibit A**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on the 27<sup>th</sup> day of April 2020, at Pacifica, California.

  
DAN STEIDLE

# EXHIBIT "A"

## EXHIBIT "A"

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**From:** Steidle, Daniel <steidled@pacificapolice.org>  
**Sent:** Friday, April 10, 2020 1:25 PM  
**To:** 'City Arms, LLC'  
**Subject:** RE: Gun stores classification as non essential

Hi Mr. Danilevsky,

Answering your concern, the City is applying the Order equally throughout the city. We have given the same direction to all businesses that are not deemed essential, as is the case with City Arms. Please understand, we are not in control of what other jurisdictions do or how they apply the order. We are responsible only for how we carry out the intent of the Order.

Your business as well as all businesses that have closed in Pacifica as a result of this Order are important to the City. We look forward to a point in the future, hopefully sooner than later, where the Order will be lifted and we can all get back to business.

Best Regards,

**Daniel Steidle**  
**Chief of Police**

Pacifica Police Department  
2075 Coast Highway  
Pacifica, CA 94044  
650-738-7314

[steidled@pacificapolice.org](mailto:steidled@pacificapolice.org)



-It is the mission of the men and women of the Pacifica Police Department to protect and serve the members of our community with the highest level of commitment, ethics and professionalism

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**From:** City Arms, LLC [mailto:cityarms@mail.com]  
**Sent:** Friday, April 10, 2020 12:53 PM  
**To:** Steidle, Daniel  
**Cc:** Vladimir Chaban; Roman Kaplan; yantraytel0203@gmail.com; John Dillon  
**Subject:** Re: Gun stores classification as non essential

**[CAUTION: External Email]**



Hello Chief Steidle,

Thank you for your reply.

However, my main issue is the fact that the above-mentioned county order has only been selectively applied and enforced in the city of Pacifica against our store, whereas other municipalities within the San Mateo County allow gun stores to operate on “by appointment” or “limited accessibility” basis.

At this point, it seems that our business has been singled out and restricted for some unknown or known reasons by the city of Pacifica.

Please advise.

Sincerely,

D. Danilevsky

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On Fri, Apr 10, 2020 at 12:19 PM -0700, "Steidle, Daniel" <[steidled@pacificapolice.org](mailto:steidled@pacificapolice.org)> wrote:

Dear Mr. Danilevsky,

Thank you for your patience as I know you have been waiting for a response to your email. Your concerns have been reviewed by City staff and the City Attorney, and the position of the City has not changed.

Under San Mateo County Order no. c19-5b, particularly paragraphs 5 and 13(f), gun retailers (stores) are not listed as essential businesses. Thus, the Order does not permit gun stores, for the time being, to operate. We appreciate your cooperation. By the way, as is commonly understood, the purpose of the Order is to limit person-to-person contact as much as feasible, to save lives, flatten the curve, ensure that health care providers can safely and effectively provide health care services, and better protect other essential workers as they do their jobs (e.g., police officers, transit employees, grocery store employees). We understand that this presents many challenges for many people. We appreciate the efforts of all in these challenging times, as we work together towards fulfillment of the Order’s purposes.

Very Best Regards,

**Daniel Steidle**  
**Chief of Police**

Pacifica Police Department  
2075 Coast Highway  
Pacifica, CA 94044  
650-738-7314

[steidled@pacificapolice.org](mailto:steidled@pacificapolice.org)



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---

**From:** City Arms, LLC [mailto:cityarms@mail.com]

**Sent:** Wednesday, April 8, 2020 5:59 PM

**To:** Steidle, Daniel

**Subject:** Gun stores classification as non essential

**[CAUTION: External Email]**

Hello,

San Mateo county removed their explicit declaration of gun stores as non essential businesses. All gun stores, except for City Arms, in San Mateo county are open (Peninsula tactical, Imbert and Smithers, Coyote Point armory). Is there a specific reason City Arms is singled out and still prohibited from conducting a business?



smcgov.org



COUNTY OF SAN MATEO  
ALL OF CALIFORNIA IN ONE  
COUNTY

Menu

## ARE GUN STORES DEFINED AS AN ESSENTIAL BUSINESS IN THE COUNTY'S ORDER?

The Order does not reference gun stores at all and, accordingly, does not specifically define them as an essential business.

[Back to Top](#)

Thank you for your time.

Dmitriy Danilevsky.

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GREGORY AHERN, and ERICA PAN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JANICE ALTMAN, et al.

Plaintiffs,

v.

COUNTY OF SANTA CLARA, et al.

Defendants.

Case No. 4:20-cv-02180-JST

**DECLARATION OF DR. ERICA PAN IN  
SUPPORT OF DEFENDANTS'  
OPPOSITION TO APPLICATION FOR A  
PRELIMINARY INJUNCTION**

Date: May 20, 2020  
Time: 2:00 p.m.  
Judge: Jon S. Tigar  
Ctm: 6

I, Erica Pan, M.D., declare:

1. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently as to the matters set forth herein.

2. I graduated from Stanford University with a degree in Human Biology. I attended Tufts University Medical School where I received my Doctor of Medicine. I was a pediatric resident at UCSF - Center for Health Professions and then Chief Resident and was a Pediatric ID

1 Fellowship at UCSF. I was then a Postdoctoral Fellow and trainee in AIDS Prevention at UCSF  
2 Center for AIDS Prevention Studies.

3 3. Following my Postdoctoral Fellowship, I was Director of the Bioterrorism &  
4 Infectious Disease Emergencies Unit for San Francisco Department of Public Health. I held that  
5 position from April 2004 until February 2011. I then became a Deputy Health Officer and  
6 Director of Public Health Emergency Preparedness and Response Section for the San Francisco  
7 Department of Public Health from February 2011 until October 2011. From November 2011  
8 until January 2020, I was Director of the Division of Communicable Disease Control and  
9 Prevention and Deputy Health Officer for the Alameda County Public Health Department. Since  
10 July 2018, I have been the Interim Health Officer for the Alameda County Public Health  
11 Department. Since November 2012, I have also been an attending physician in pediatric  
12 infectious diseases at UCSF Benioff Children's Hospital in Oakland, California as well as a  
13 clinical professor in pediatric infectious diseases at the University of California, San Francisco.

14 4. I am currently the Interim Health Officer for the Alameda County Public Health  
15 Department. In this role, I provide leadership on public health issues for Alameda County and  
16 our Public Health Department with approximately 600 employees who provide multiple services  
17 to safeguard and promote the health of the community.

18 5. The mission of the Public Health Department is focused on communicable  
19 diseases and prevention, community health services, family health services, public health nursing,  
20 and health equity policy and planning. The prevention of communicable diseases such as the  
21 coronavirus is critical to the health of the entire community in Alameda County.

22 6. The novel coronavirus referred to as COVID-19 first appeared in December 2019  
23 and has since spread to most countries in the world, including the United States. The United  
24 States reported its first case on January 21, 2020, with the first death occurring on February 6,  
25 2020 in Santa Clara, California. The disease has since spread exponentially throughout the  
26 country. As of April 28, 2020, public health authorities had confirmed more than one million  
27 cases in the United States. More than 58,000 people have died from the coronavirus. Experts  
28 consider this outbreak the worst public health epidemic since the influenza outbreak of 1918.

1           7.       The World Health Organization has deemed COVID-19 a pandemic. There is  
2 currently no vaccine for the novel coronavirus and no specific treatment or cure for COVID-19.

3           8.       Coronaviruses spread through the air by coughing or sneezing and close personal  
4 contact, or by touching contaminated objects or surfaces and then touching your mouth, nose, or  
5 eyes. While people are still thought to be most contagious when they are most symptomatic (i.e.,  
6 the sickest), several studies have documented the spread of COVID-19 from people who are  
7 asymptomatic, for up to 48 hours before onset of symptoms. Some people who are infected  
8 remain asymptomatic and spread the virus. Therefore, a person may be at risk for COVID-19 if  
9 they were in close contact (within six feet for a prolonged period of time) with a person  
10 confirmed to have COVID-19, for up to 48 hours before the onset of symptoms, or in contact with  
11 an asymptomatic carrier of the virus. Compliance with social distancing guidelines is critical  
12 because people without symptoms could be contagious.

13           9.       COVID-19 is widespread in Alameda County. Alameda County recorded its first  
14 case of COVID-19 on March 1, 2020, at which time I declared a local public health emergency.  
15 Community transmission is believed to be widespread throughout the County, and limited testing  
16 capacity means that case counts represent only a small portion of actual cases. Regardless of the  
17 number of confirmed cases, we must behave as if the virus is everywhere, because it is.

18           10.      To slow virus transmission as much as possible, to protect the most vulnerable,  
19 and to prevent the health care system from being overwhelmed, and after consideration of  
20 guidance from the Centers for Disease Control and Prevention, the California Department of  
21 Public Health, and other public health officials throughout the United States and around the  
22 world, on March 16, 2020, I issued a shelter-in-place order directing all individuals living in the  
23 County to shelter at their place of residence, except to engage in certain essential activities.  
24 Attached as **Exhibit A** is a true and correct copy of my March 16, 2020 Order. Health Officers  
25 from Counties of Santa Clara, Contra Costa, Marin, the City and County of San Francisco; and  
26 the City of Berkeley issued virtually identical shelter-in-place orders on March 16, 2020 to best  
27 protect our respective communities.

28           11.      Sheltering in place is more rigorous than social distancing. It means that people



1 stay at their homes; leave only for “essential activities,” to work for “essential businesses,” to  
2 perform “minimum basic operations” for their employers, or for “essential travel,” as those terms  
3 are defined in the shelter-in-place orders. People cannot host or attend gatherings; and must  
4 maintain at least six feet of separation from other people who are not in their household.

5 12. The goal of sheltering in place is to lower the number of total people who become  
6 sick and to save lives by slowing the spread of the coronavirus in order to ensure that  
7 communities have enough space and resources in their hospitals for people who develop severe  
8 illness. Sheltering in place is proven to slow the spread of the virus if everyone decreases the  
9 number of people with whom they come in contact because it decreases the number who might  
10 get sick from someone who is infected.

11 13. The March 16, 2020 Order prohibited all public and private gatherings of any  
12 number of people occurring outside a household or living unit, except for the limited purposes of  
13 performing Essential Activities, such as obtaining food and medication, visiting a health care  
14 professional, or obtaining products needed to maintain safety and sanitation. The Order  
15 prohibited all travel, except Essential Travel, such as to access Essential Activities. All  
16 businesses with a facility in the County, except Essential Businesses, as defined in the Order,  
17 were required to cease all activities except certain Minimum Basic Operations, such as the  
18 minimum necessary activities to maintain and protect the value of inventory; ensure security,  
19 safety, and sanitation; process payroll; and facilitate working remotely. The Order provided  
20 definitions of these key terms.

21 14. The shelter-in-place order was based on evidence of the rapidly increasing case  
22 rate of COVID-19 within Alameda County and surrounding Bay Area counties and scientific  
23 evidence and best practices regarding the most effective approaches to slow the transmission of  
24 COVID-19. A proven way to slow virus transmission is to limit interactions among people to the  
25 greatest extent practicable. Allowing exceptions other than essential activities, essential  
26 businesses, and essential travel – even with social distancing – would result in more interactions  
27 among people, resulting in more infections and more deaths. Limiting the number of interactions  
28 among people will reduce the rate of transmission of the COVID-19 disease and will allow our

1 community to “flatten the curve” more quickly than if we did not shelter in place.

2 15. While the March 16, 2020 proved effective in reducing the rate of transmission of  
3 COVID-19, I, in concert with the other Bay Area health officers, determined that further  
4 restrictions were necessary to slow down the rapid spread of the virus. Consequently, On March  
5 31, 2020, I issued an updated shelter-in-place order that superseded the March 16, 2020 Order, to  
6 increase social distancing and reduce person-to-person contact to further slow transmission of  
7 COVID-19. The March 31 order extended the shelter-in-place requirements through May 3,  
8 2020. Attached as **Exhibit B** is a true and correct copy of my March 31, 2020 Order. Again, the  
9 County of Alameda and the same six other Bay Area jurisdictions listed above issued similar  
10 shelter-in-place orders on March 31, 2020. The public health emergency had substantially  
11 worsened since Alameda County issued the initial Order, with a significant escalation in the  
12 number of positive cases, hospitalizations, and deaths, and increasing strain on health care  
13 resources.

14 16. The March 31, 2020 shelter-in-place order clarifies the scope of essential  
15 businesses and activities and is more restrictive. It is more restrictive, in part, in the following  
16 ways: (1) social distancing requirements are mandatory; (2) by April 3, 2020, essential businesses  
17 that continued to operate facilities in the County were required to complete, post, and implement  
18 a social distancing protocol for each facility that remains open; (3) essential businesses must  
19 maximize the number of employees who work from home, excepting only those employees who  
20 cannot perform their job duties from home; (4) essential businesses that continue to operate  
21 facilities in the County must scale down operations to their essential component only; (5)  
22 businesses that supply products needed for people to work from home are no longer essential  
23 businesses and must cease operations; (6) use of playgrounds, dog parks, public picnic areas, and  
24 similar recreational areas is prohibited; (7) use of shared public recreational facilities such as golf  
25 courses, tennis and basketball courts, pools, and rock walls is prohibited; (8) sports or activities  
26 that require use of shared equipment may only be engaged in by members of the same household;  
27 and (9) most construction – residential and commercial – is prohibited.

28 17. The need for the March 31 orders could not be starker. When I and the other Bay

1 Area health officers issued shelter-in-place orders on March 31, 2020, the public health  
2 emergency had substantially worsened since our March 16, 2020 shelter-in-place orders, with a  
3 significant escalation in the number of positive cases, hospitalizations, and deaths, and a  
4 corresponding increasing strain on health care resources. At the same time, evidence suggested  
5 that the restrictions on mobility and social distancing requirements imposed by the prior orders  
6 were slowing the rate of increase in community transmission and confirmed cases by limiting  
7 interactions among people, consistent with scientific evidence of the efficacy of similar measures  
8 in other parts of the country and world.

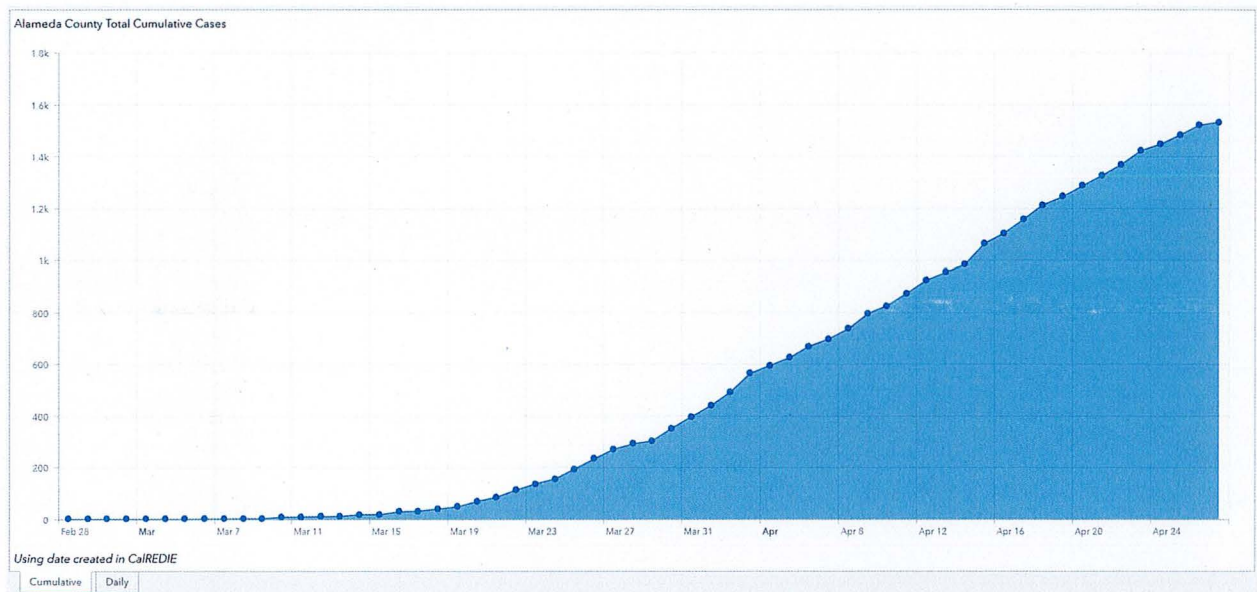
9 18. One of the most important indicators of a slowing of the spread of COVID-19 is  
10 the “doubling rate,” which is how many days it takes for the number of cases to double. A lower  
11 doubling rate means that the disease is spreading rapidly; while a higher doubling rate means it is  
12 taking longer for the number of cases to double, as the spread slows down. On March 15, 2020,  
13 the County’s case numbers doubled approximately every four to five days. On March 31, 2020,  
14 the doubling rate was somewhere around 5 days. One of the reasons I issued another Order on  
15 March 31, 2020, was the doubling rate was not increasing, meaning that further efforts were  
16 necessary to mitigate community spread of the disease.

17 19. As of April 28, 2020, there were 1,568 confirmed cases of COVID-19 in Alameda  
18 County, up from 19 cases on March 15, 2020, just before the first shelter-in-place order. As of  
19 April 28, the number of confirmed deaths in Alameda County was 57. Other Bay Area counties  
20 similarly had an increase in confirmed cases and deaths. In the seven Bay Area jurisdictions  
21 jointly issuing this Order, there have been at least 7,273 confirmed cases (up from 258 confirmed  
22 cases on March 15, 2020) and at least 266 deaths (up from three deaths on March 15, 2020).

23 20. Despite the increases in cases and deaths, as of April 29, 2020, the County’s  
24 doubling rate was 19 days. This means that the rate of spread has slowed thanks to County  
25 residents complying with the shelter-in-place orders. Accordingly, on April 29, 2020, I and the  
26 other Bay Area health officers issued another shelter-in-place order. The new order extends the  
27 shelter-in-place requirements through May 31, 2020. Attached as **Exhibit C** is a true and correct  
28 copy of my April 29, 2020 Order. The Order continues to restrict most activity, travel and

governmental and business functions. But in light of progress achieved in slowing the spread of the coronavirus, the Order allows a limited number of additional Essential Businesses and certain lower risk Outdoor Businesses to resume operating. Specifically, childcare establishments and summer camps for essential workers are allowed to the extent their operations comply with certain specified conditions. Outdoor businesses such as wholesale and retail plant nurseries, agricultural operations, and garden centers are allowed to operate so long as they strictly adhere to Social Distancing Requirements as outlined in the Order.

21. Below is a graph of Alameda County Total Cumulative Cases of COVID-19 which was updated on April 28, 2020 with data through the end of April 27, 2020:



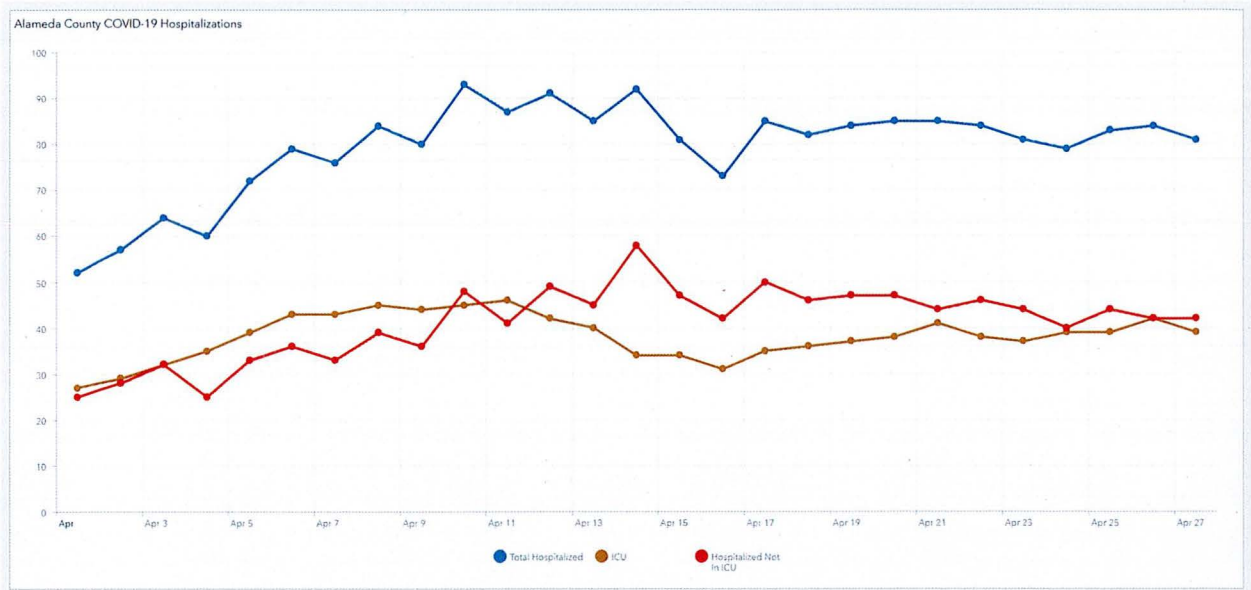
22. Had a shelter-in-place order not been put in place on March 16, 2020, and extended on March 31, 2020, we expect we would have had a far greater number of COVID-19 cases in Alameda County by May 1, 2020. We believe we are now in the very early stages of the “flattening of the curve” the orders were designed to achieve.

23. Looking forward in time, the model estimates that by May 1, 2020, our case counts are likely to be far lower than they would have been without the shelter-in-place orders. Many factors can change future outcomes, including our continued ability to maintain shelter in place.

24. Below is a graph of Alameda County COVID-19 Hospitalizations for April 2020



which was updated on April 28, 2020 with data through the end of April 27, 2020:



25. The graph of hospitalizations due to COVID-19 likewise shows the impact of the shelter-in-place orders. The blue line in the graph above shows the total number of people hospitalized due to the coronavirus. The brown line indicates the total number of people hospitalized in intensive care units (ICU). Finally, the red line shows the total number of people hospitalized but not placed in ICU. The graph indicates total number of hospitalizations, those in ICU, and those hospitalized but not in ICU are leveling off and not spiking. This is significant so that the hospitals are not overwhelmed with COVID-19 patients and have adequate hospital bed capacity for incoming patients. Because sheltering-in-place slowed transmission of the coronavirus, I hope Alameda County will have sufficient capacity to treat all COVID-19 patients. This “flattening of the curve” gives our community much needed additional time to increase our surge capacity.

26. The data in other Bay Area counties – including Contra Costa, San Mateo, and Santa Clara Counties – similarly shows that the shelter-in-place orders are increasing the doubling rate, slowing the spread of the virus, and have not overwhelmed our hospital surge capacity. This will save many lives in our community.

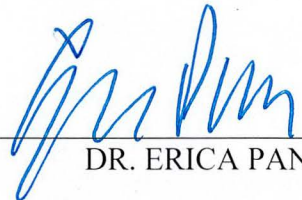
27. As Interim Public Health Officer for the County of Alameda, I have concluded that the best course of action to respond to the coronavirus is a shared commitment to adhering to preventative measures, including staying at home with few exceptions for essential activities or

1 functions, social distancing, washing your hands and not touching your face. It is difficult to  
2 order people to shelter-in-place. It is more difficult not to make such an Order. We each need to  
3 reduce the number of people with whom each of us comes in contact. Sheltering-in-place is  
4 saving lives and will continue to save lives.

5 28. We are working together and in coordination with the California Department of  
6 Public Health to monitor indicators of progress to assess our ability to slowly and safely loosen  
7 these shelter-in-place restrictions.

8 I declare under penalty of perjury under the laws of the State of California and the United  
9 States of America that the foregoing is true and correct. Executed at Oakland, California on April  
10 29, 2020.

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DR. ERICA PAN

# **EXHIBIT A**



**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF ALAMEDA 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 ALAMEDA (“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 the County of Alameda (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

Order of the County Health Officer  
to Shelter in Place

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 healthcare capacity in the County.

7. This Order also is issued in light of the existence of 15 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 Declarations of Local Health Emergency issued by the Health Officer on March 1 and 5, the March 10, 2020 Resolution of the Board of Supervisors of the County of Alameda Ratifying the Declarations of Local Health Emergency, and Governor Newsom's March 12, 2020 Executive Order N-25-20.
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.

Order of the County Health Officer  
to Shelter in Place

- 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.

Order of the County Health Officer  
to Shelter in Place

- 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.

Order of the County Health Officer  
to Shelter in Place



- 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 Administration Building at 1225 Oak Street, Oakland, California 94612; (2) posted on the County Public Health Department’s website (acphd.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:**



Erica Pan, MD, MPH, FAAP

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Dr. Erica Pan  
Interim Health Officer of the County of Alameda

Dated: March 16, 2020

Order of the County Health Officer  
to Shelter in Place

# **EXHIBIT B**

**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF ALAMEDA 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  
No. 20-04**

**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))**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF ALAMEDA (“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 Alameda (“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.

Order of the Alameda County Health Officer  
to Shelter in Place No. 20-04

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 254 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 Declarations of Local Health Emergency issued by the Health Officer on March 1 and 5, the March 10, 2020 Resolution of the Board of Supervisors of the County of Alameda

Order of the Alameda County Health Officer  
to Shelter in Place No. 20-04

Ratifying the Declarations of Local Health Emergency, and the March 17, 2020 Resolution of the Board of Supervisors Ratifying the Declaration of 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 or Essential Governmental Functions to work as permitted. 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 Administration Building at 1221 Oak Street, Oakland, California 94612; (2) posted on the County Public Health Department's website (acphd.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 reminder 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:**



Dr. Erica Pan  
Interim Health Officer of the County of Alameda

Dated: March 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.**

**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.

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

☐ Hand sanitizer effective against COVID-19 is available to all employees at the following location(s): Click or tap here to enter text.

☐ Soap and water are available to all employees at the following location(s): Click or tap here to enter text.

☐ Copies of this Protocol have been distributed to all employees.

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

**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: Click or tap here to enter text.

**Appendix A: Social Distancing Protocol**

☐ Optional—Describe other measures: [Click or tap here to enter text.](#)

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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: [Click or tap here to enter text.](#)

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**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: [Click or tap here to enter text.](#)

☐ Optional—Describe other measures (e.g. providing senior-only hours): [Click or tap here to enter text.](#)

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**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 C**





## **ORDER OF THE HEALTH OFFICER NO. 20-10**

**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF ALAMEDA 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))**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF ALAMEDA ("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 Alameda (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

Order of the County Health Officer  
to Shelter in Place (April 29, 2020)



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 must wear Face Coverings as provided in Health Officer Order No. 20-08 (the "Face Covering Order").
5. All businesses with a facility in the County, except Essential Businesses and Outdoor Businesses, as defined in Section 16, are required to have ceased 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 required by the Face Covering Order. 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,

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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 1,483 confirmed cases of COVID-19 in the County (up from 19 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 case and hospitalization trends and adequate current hospital 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 16.1. 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 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:

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- 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, 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 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 Declarations of Local Health Emergency issued by the Health Officer on March 1 and 5, the March 10, 2020 Resolution of the Board of Supervisors of the County of Alameda Ratifying the Declarations of Local Health Emergency, and the March 17, 2020 Resolution of the Board of Supervisors Ratifying the Declaration of 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.

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- 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.
    4. Use of shared outdoor facilities for recreational activities that may occur outside of residences consistent with the restrictions set forth

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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 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

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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.

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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:

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- 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 one's elbow; 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 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 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 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.

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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 Administration Building at 1221 Oak Street, Oakland, California 94612; (2) posted on the County Public Health Department's website (acphd.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:**

A handwritten signature in blue ink, appearing to read "Erica Pan".

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Dr. Erica Pan  
Interim Health Officer of the County of Alameda

Dated: April 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: 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 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 (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): Click or tap here to enter text.

☐ Hand sanitizer effective against COVID-19 is available to all employees at the following location(s): Click or tap here to enter text.

☐ Soap and water are available to all employees at the following location(s): Click or tap here to enter text.

☐ 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., 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: [Click or tap here to enter text.](#)

☐ Optional—Describe other measures: [Click or tap here to enter text.](#)

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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: [Click or tap here to enter text.](#)

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**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: [Click or tap here to enter text.](#)

☐ Optional—Describe other measures (e.g. providing senior-only hours): [Click or tap here to enter text.](#)

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**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: [Click or tap here to enter text.](#)

\* 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:** [Click or tap here to enter text.](#)

**Phone number:** [Click or tap here to enter text.](#)



## **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.
- 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 Section 5 of the Health Officer's Order No. 20-08, dated April 17, 2020, or any subsequently issued or amended order.
- 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.

## **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 Section 5 of the Health Officer Order No. 20-08, dated April 17, 2020, or any subsequently issued or amended order.
  - 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.
  - f. Implement social distancing requirements including, at minimum:

## Appendix B-2

- 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.
- 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.

**Appendix B-2**

- 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.
    - 6. Emergency protocols in the event of an exposure or suspected exposure to COVID-19.



**Appendix B-2**

- 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 sanitized at the beginning and at the end of workdays. Every effort must be taken to

## **Appendix B-2**

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.

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
(Oakland Division)

JANICE ALTMAN, et al.,

Plaintiffs,

v.

COUNTY OF SANTA CLARA, et al.,

Defendants.

No. 20CV02180JST

**DECLARATION OF GEORGE W.  
RUTHERFORD, M.D., IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR  
PRELIMINARY INJUNCTION**

Date: May 20, 2020

Time: 2:00 p.m.

Judge: Honorable Jon S. Tigar

I, GEORGE W. RUTHERFORD, M.D., declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth herein.

2. I graduated from Stanford University, where I received Bachelor's Degrees in Classics and Chemistry and a Master's Degree in History. I received my Doctor of Medicine from Duke University School of Medicine. I completed a residency in Pediatrics at the University of California, San Diego and the Hospital for Sick Children in Toronto, Ontario, Canada. Following training in epidemiology in the Centers for Disease Control's Epidemic Intelligence Service, I spent the first ten years of my professional career in public health practice and subsequently teaching and conducting research in public health, with a primary emphasis on the epidemiology and control of communicable diseases.

3. I currently serve as a Professor in the Department of Epidemiology and Biostatistics at the University of California, San Francisco School of Medicine. I am the Salvatore Pablo Lucia Professor of Epidemiology, Preventive Medicine, Pediatrics, and History. I am also the Head of the Division of Infectious Disease and Global Epidemiology in the Department of Epidemiology and Biostatistics. Additionally, I am a Professor in the Department of Pediatrics, the Department of Family and Community Medicine, and the Department of Anthropology, History, and Social Medicine. I am an Adjunct Professor in the University of California, Berkeley School of Public Health. Further, I am the Director of the Prevention and Public Health Group and the Director of Global Strategic Information Group at the Institute for Global Health Sciences. I am Board Certified in Pediatrics and in General Preventive Medicine and Public Health.

4. My primary research interest is in the epidemiology and control of infectious diseases, with a particular emphasis on HIV/AIDS in low- and middle-income countries; the prevention of coccidioidomycosis (Valley Fever); sexually transmitted disease control in California; pediatric vaccination policy; the role of public health in managed care; evidence-based public health practice; the epidemiology and control of tuberculosis in California; and emerging infectious diseases.

5. The current novel coronavirus pandemic requires extraordinary measures to protect the population because the virus (SARS CoV-2) is extremely easy to transmit, can be transmitted by infected people who show no symptoms, has no cure, and the population has not developed herd immunity. The disease that is caused by the novel coronavirus, COVID-19, is fatal to up to eighty percent of patients who go into intensive care units in hospitals. Information about the pandemic is still limited and constantly evolving, therefore, I may need to revise my opinions as new information comes to light.

6. Right now, shelter-at-home orders are being used worldwide to minimize the potential for people infected with the novel coronavirus to spread it. When restrictions are lifted and normal activities resume, extensive contact tracing (described below) will be needed to prevent new outbreaks. At the request of the San Francisco Department of Public Health, I am currently leading a project to conduct contact tracing in the City and County of San Francisco. Contact tracing involves first interviewing people who are infected with COVID-19, then tracking down everyone

1 who has been near them, and then making decisions to test them and, if they are tested, to isolate (if  
2 they test positive) or quarantine (if they test negative). Isolation separates sick people with COVID-  
3 19 from people who do not have the disease. Quarantine separates and restricts the movement of  
4 people who were exposed to COVID-19 in case they become sick at which point they go into  
5 isolation; they may have the disease but show no symptoms. Contact tracing such as the project I  
6 am leading in San Francisco would have been insufficient without the narrow shelter-in-place orders  
7 as a first step. Contact tracing becomes significantly more complex and difficult when there are  
8 increased numbers of in-person interactions, as the tracing process is labor intensive and time  
9 consuming.

10 7. According to the World Health Organization, worldwide, as of April 29, 2020, there are  
11 more 3,024,059 confirmed COVID-19 cases and 208,112 deaths, though the actual numbers are  
12 likely higher due to limited testing and incomplete diagnosis, owing to a substantial proportion of  
13 infected individuals being asymptomatic or mildly symptomatic.

14 8. The last time our country faced a pandemic of this scale was the influenza pandemic in  
15 1918, during which millions of people were infected worldwide. There were about 50 million deaths  
16 worldwide, with 675,000 deaths in the United States, when the population of the country at that time  
17 was only 103 million. There were clear lessons from the 1918 pandemic that guide public health  
18 experts in their response to the current COVID-19 pandemic. One of them is the need to take quick  
19 and aggressive action to slow the spread of the virus. The cities that acted quickly and aggressively  
20 to contain the spread of the virus fared better than those that took longer. For example, when the  
21 virus first spread in St. Louis, health officials responded by closing schools, shuttering movie  
22 theaters and pool halls, and banning all public gatherings, including a parade to promote war bonds  
23 for World War I. The health officials' actions enabled St. Louis to contain the spread of the virus, or  
24 to "flatten the curve." Philadelphia, however, proceeded with its war bond parade even as infection  
25 rates were climbing. Days later, Philadelphia's hospitals were overwhelmed. According to a 2007  
26 analysis of influenza death records, the peak mortality rate in St. Louis was only one-eighth of  
27 Philadelphia's death rate at its worst. Critically, however, St. Louis suffered another wave of  
28 influenza cases after it loosened its restrictions, resulting in a rebound of influenza-related deaths.

9. There are similar examples from the current COVID-19 pandemic where later initiation of shelter-in-place orders resulted in more confirmed cases of infection. The province of Lodi, southeast of Milan, Italy was at the center of that country's coronavirus outbreak when the first locally transmitted case was confirmed on February 21, 2020. Lodi was immediately put under lockdown. The province of Bergamo, northeast of Milan, had its first confirmed case on February 23, 2020, but did not go into lockdown until March 8, 2020. Lodi had one-fifth the number of cases of Bergamo, which is attributable to Lodi's quick and aggressive shelter-in-place order. The stark contrast between the number of cases in Lodi compared to the number of cases in Bergamo provides empirical evidence as shown in the graph below, that shelter in place is highly effective at reducing the number of COVID-19 cases.

## Empirical evidence that social distancing works

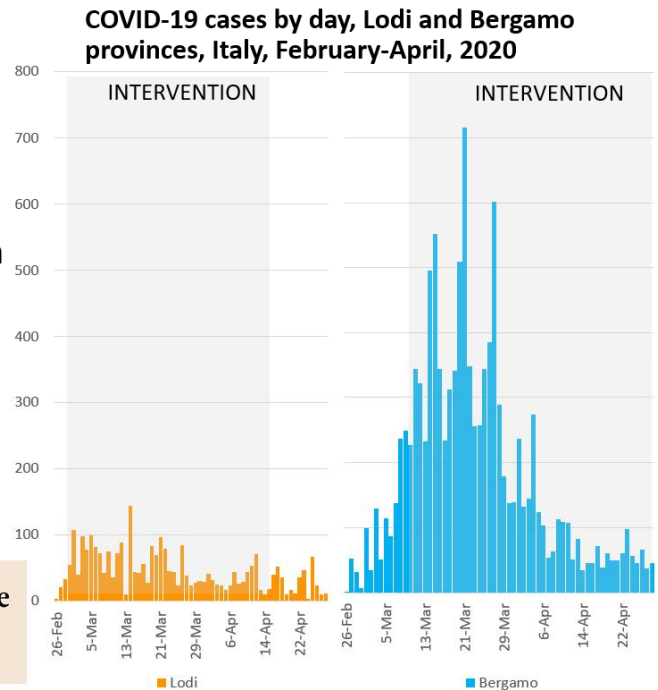
- Two adjacent Italian provinces in Lombardy region
- One (Lodi) began shelter-in-place on 26 February
- Other (Bergamo) began shelter-in-place on 9 March
- Empirical evidence that shelter in place orders can blunt transmission and new disease

STATISTICHE SUL CORONAVIRUS

### Coronavirus, i dati di Lodi lo dimostrano: le misure di «lockdown» rallentano il contagio

Negli ultimi tre giorni, in particolare dal 6 al 9 marzo, in provincia di Lodi il tasso di diffusione del contagio ha rallentato la sua corsa rispetto alle settimane precedenti

<https://www.ilsole24ore.com/art/coronavirus-dati-lodi-dimostrano-misure-lockdown-rallentano-contagio-ADo675B>



10. Effective containment of the virus requires limiting people's contact with each other because of the way that the virus is transmitted. The goal of sheltering in place is to reduce the transmission rate enough for a sustained period of time to mitigate the number of people who become sick and ensure that hospitals do not become overwhelmed with patients, as has happened in Italy, Spain, and now the northeastern United States.

///



1           11. The effectiveness of containment measures depends not only on how soon they are  
2 enacted but how strict they are. Effective sheltering in place requires limiting activities and business  
3 as much as possible. Exceptions must be narrowly defined because each exception increases the  
4 risks of community transmission. The narrow definition of what is essential, accordingly, should  
5 reach only activities and businesses that directly and indirectly meet the basic need of residents, such  
6 as to provide food, medicine, and hygiene; and to effectively shelter in place. Thus, businesses such  
7 as grocery stores, pharmacies, laundromats/dry cleaners, and hardware stores are deemed essential  
8 because they provide for the basic needs of residents for food, medicine, hygiene, and shelter. If  
9 people have no opportunity to wash their clothes, they can get fleas and ticks, which can spread  
10 other infectious diseases, such as flea-borne (murine) typhus and trench fever. Among homeless  
11 people in Los Angeles, there was a recent outbreak of flea-borne (murine) typhus, which is caused  
12 by *Rickettsia typhi* and transmitted by infected fleas. Among homeless people in Seattle, there was a  
13 previous outbreak of trench fever, which was caused by *Bartonella quintana* and transmitted by body  
14 lice. And hardware stores provide supplies needed to maintain shelter, such as heat, indoor  
15 plumbing, and refrigeration, that will require maintenance and repair to keep them working.

16           12. Implementing social distancing protocols for non-essential activities and businesses  
17 lowers but does not eliminate the increased transmission risks those activities and businesses create.  
18 Even with those protocols, people need to leave their houses to engage in these activities, some of  
19 which take place in environments (e.g., retail stores) that occur indoors, where the risk of  
20 transmission is higher and involve high-touch surfaces such as door handles and countertops. When  
21 individuals are in those environments, it is impossible to ensure perfect compliance with social  
22 distancing protocols. In order of efficacy, the best way to stop transmission is to shelter in place,  
23 then isolation when sick, then quarantine when exposed, then social distancing, then masks, then  
24 washing hands frequently, then covering coughs and sneezes.

25           13. Despite shelter-in-place orders, the number of cases has not fallen dramatically in the  
26 Bay Area but rather is slowly declining. There are multiple reasons for this. First, much of the late  
27 transmission is among people who live in large households (e.g., rooming houses) with multiple  
28 generations of spread within residences, much like on cruise ships. Second, essential workers (e.g.,

1 health care providers, public transportation drivers, grocery store clerks, etc.) are acquiring infection  
2 at their work sites, despite extensive precautions, and can bring the infection home to their families.  
3 Third, people are getting infected or spreading the virus when they go out of their homes for  
4 essential services (e.g., grocery shopping). Fourth, people who do not adhere to shelter in place and  
5 congregate socially—there were multiple examples of this over Easter weekend—have caused the  
6 virus to spread. Fifth, visitors from outside the Bay Area bring the disease with them. That being  
7 said, we would have seen significantly more cases if the shelter-in-place orders had not been issued,  
8 if they had been issued later than they were, or if they defined essential businesses and activities  
9 more broadly than they do.

10 14. On March 4, 2020, California led the nation with 53 laboratory-confirmed COVID-19  
11 cases. The San Francisco Bay Area jurisdictions took quick and aggressive action to respond to the  
12 public health threat by being the first jurisdictions in the country to issue shelter-in-place orders on  
13 March 16, 2020. It was no accident that these orders occurred the day before St. Patrick's Day,  
14 which is a huge social-mixing holiday. The lessons from St. Louis and Philadelphia in 1918 taught  
15 public health experts that allowing large celebrations to proceed would result in more infections, an  
16 overwhelmed health care system, and ultimately more deaths.

17 15. In contrast, New Orleans, Louisiana, proceeded with Mardi Gras celebrations on  
18 February 25, 2020. It did not issue a shelter-in-place order until March 23, 2020. New Orleans now  
19 has one of the highest incidences of COVID-19 cases per capita in the country.

20 16. Because the Bay Area jurisdictions implemented the shelter-in-place orders closer in  
21 time to the introduction of the virus in the community—eight days after what was at that time  
22 believed to be the first death identified in Santa Clara County<sup>1</sup>—there were not as many generations  
23 of transmission, resulting in fewer cases per capita in the population.

24 ///

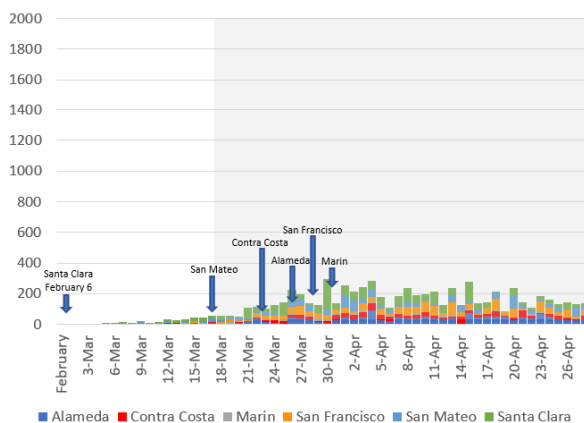
25  
26  
27 <sup>1</sup> On April 21, 2020, the County of Santa Clara Medical Examiner-Coroner identified three individuals who died with  
28 COVID-19 in Santa Clara County before March 9, 2020, originally thought to be the date of the first death associated  
with COVID-19 in the county. The new data showed that there were two COVID-19-related deaths on February 6, 2020,  
and one on February 17, 2020.

17. The difference in number of cases in the Bay Area and Southern California demonstrates that even a few days can make a difference in the number of cases. There were not shelter-in-place orders in Southern California until the statewide order went into effect three days after the Bay Area's order. SARS CoV-2 had probably been circulating in both the Bay Area and Southern California since early-February. The best explanation for the differences in the number of cases between the Bay Area and Southern California is the order to shelter in place three days earlier. If you look at the shape of the curves in the graph below, Southern California's cases by day rise for about 10 days before starting to level off, and the Bay Area's by about nine days. The fact that the virus was allowed to circulate another three days (and actually more like six or seven given lax enforcement of the order in Southern California the first weekend) led to one to two more generations of spread, which equates to about 4 to 16 times more infected people ( $R_0$  of 4.0).

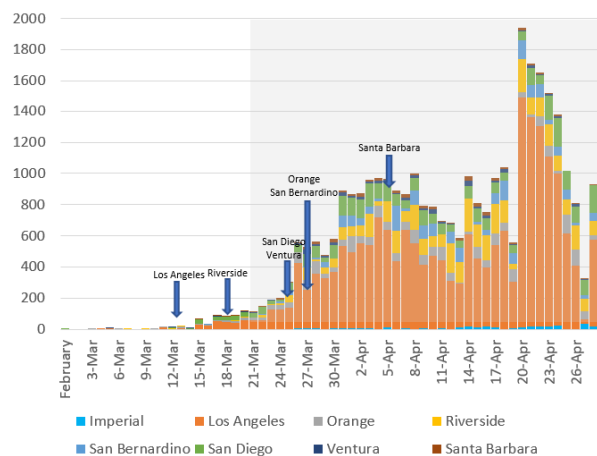
## Is social distancing working in the Bay Area?

### COVID-19 cases by day, Bay Area and Southern California, March-April 2020

#### Bay Area



#### Southern California

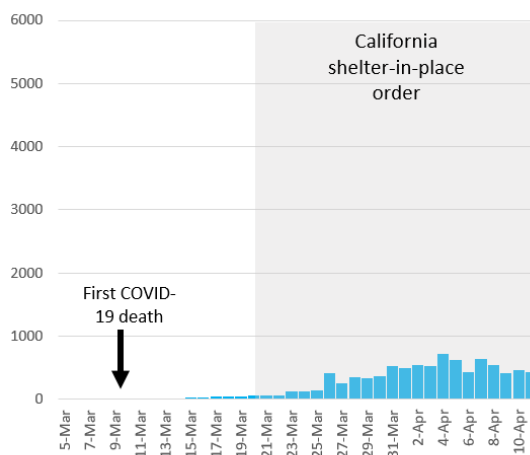


18. An early and aggressive response is one of the reasons why there have been fewer cases, and more lives saved, here in California than in New York. California's statewide order went into effect on March 19, 2020; New York's order—known as Policies Assure Uniform Safety for Everyone or "PAUSE"—did not go into effect until March 22, 2020. As explained in the previous paragraph, even a few days can make a significant difference. There is another reason why there

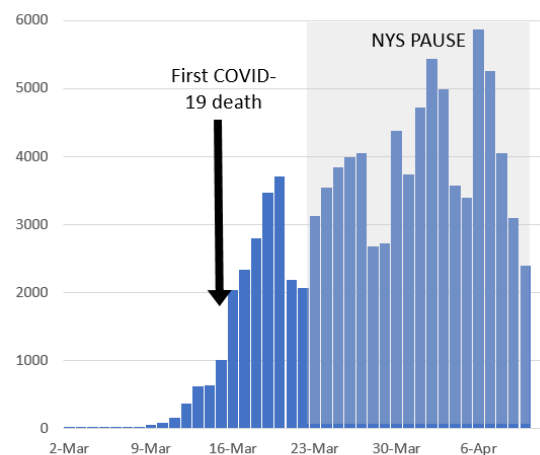
have been fewer cases in California than New York. As shown in the graph below, compared to Los Angeles, New York City already had several thousand diagnosed cases by the time PAUSE was instituted. These early high numbers can be explained in part by many more importations from Europe than in California as well as an early super-spreader who infected 113 people. More importations mean significantly more chains of transmission and thus many more thousands of people infected by the time shelter in place was ordered in New York. In other words, New York instituted shelter in place later both in time and chains of transmission. Both factors account for New York's higher numbers of confirmed cases and deaths: By April 8, 2020, California had more than 17,000 cases of COVID-19 and 452 deaths; New York, in contrast, had more than 140,000 cases and more than 5,000 deaths.

## COVID-19 cases, Los Angeles and New York City, March-April 2020

COVID-19 cases by date of report, Los Angeles, 2020



COVID-19 cases by date of report, New York City, 2020



19. Data shows that the Bay Area jurisdictions' shelter-in-place orders are working to reduce transmission of the virus, thus reducing the number of cases and saving lives. Bay Area hospitals have not been strained beyond capacity. And the curve in the region is flattening. This is the result of sheltering in place. The Bay Area jurisdictions' decision to be the first in the nation to issue shelter-in-place orders and to draft some of the strictest versions of those orders has effectively

1 reduced transmission of the novel coronavirus and saved between approximately 34,000 and 44,000  
2 lives.

3 20. This is not, however, the time, to back away from the measures that are working.  
4 Lifting these measures too early could become a direct lesson from the 1918 influenza epidemic.

5 I declare under penalty of perjury under the laws of the Unites States of America that the  
6 foregoing is true and correct. Executed at Piedmont, California on April 30, 2020.

7  
8 Dated: April 30, 2020

Respectfully submitted,

9  
10 /S/ George W. Rutherford

11 GEORGE W. RUTHERFORD, M.D.  
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6

7 Attorneys for Defendants,  
COUNTY OF SAN MATEO, CARLOS BOLANOS  
8 And SCOTT MORROW

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION  
12

13 JANICE ALTMAN, et. al.,

14 Plaintiffs,

15 v.

16 SANTA CLARA COUNTY, et.al,

17 Defendants  
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Case No. 20-cv-02180-JST

**DECLARATION OF JENNA MCALPIN IN  
SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR A PRELIMINARY INJUNCTION**

Date: May 20, 2020  
Time: 2:00 p.m.  
Dept: Courtroom 6 – 2nd Floor  
1301 Clay Street, Oakland, CA 94612  
Before: Honorable Jon S. Tigar



1 I, Jenna B. McAlpin, declare as follows:

2 1. I am a Criminal Records Manager for the Sheriff's Office of the County of San Mateo and  
3 have held that position since 2014. The following matters set forth in this declaration are within my  
4 personal knowledge (unless otherwise indicated), and if called as a witness, I could and would testify  
5 competently thereto.

6 2. I make this declaration in support of Defendants' Opposition to Plaintiffs' Motion for a  
7 Preliminary Injunction in the above-captioned action.

8 3. As a Criminal Records Manager, I am responsible for managing and coordinating  
9 operations for multiple functional areas relating to the Sheriff's Office's Records Unit. This unit manages  
10 the repository for the County of San Mateo's criminal records, and through the Criminal Records Bureau,  
11 is the official criminal record keeper for the County. Among other things, the unit maintains the County's  
12 records of written warnings and criminal citations issued by San Mateo County Sheriff's Deputies in  
13 connection with law enforcement. I am familiar with the maintenance system for such records, including  
14 records relating to enforcement of the shelter-in-place orders by the County Health Officer dated March  
15 16, and 31, 2020 (the "Orders"), which I have reviewed in connection with providing this declaration.

16 4. The County has issued written warning citations related to the Orders and citations for  
17 violations. Warnings have been issued to individuals engaged in non-essential travel or other non-essential  
18 activity, such as at parks or beaches. Warnings have been issued to businesses or business representatives  
19 largely related to non-essential construction activities. None of the written warnings or citations have been  
20 issued to nor concerned the operation of a firearms or ammunition retailer.

21 I declare under penalty of perjury under the laws of the United States of America that the foregoing  
22 is true and correct. Executed this 21<sup>st</sup> day of April, at Redwood City, California.

23  
24   
25 Jenna B. McAlpin

JAMES R. WILLIAMS, County Counsel (S.B. #271253)  
MELISSA R. KINIYALOCIS, Lead Deputy County Counsel (S.B. #215814)  
JASON M. BUSSEY, Deputy County Counsel (S.B. #227185)  
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Attorneys for Defendants  
COUNTY OF SANTA CLARA, LAURIE SMITH,  
JEFFREY ROSEN, and SARA CODY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JANICE ALTMAN, et al.,

Plaintiffs,

v.

COUNTY OF SANTA CLARA, et al.,

Defendants.

No. 20-CV-02180 (JST)

**DECLARATION OF NEIL VALENZUELA  
IN OPPOSITION TO PLAINTIFFS'  
APPLICATION FOR PRELIMINARY  
INJUNCTION**

Date: May 20, 2020

Time: 2:00 p.m.

Judge: Hon. Jon S. Tigar

I, Lieutenant Neil Valenzuela, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth herein.
2. I am Assistant Division Commander for the West Valley Patrol Division at the Santa Clara County Sheriff's Office.
3. The Health Officer of the County of Santa Clara issued an initial Shelter in Place Order on March 17, 2020 and a second such order on March 31, 2020 (SIP Orders). The Sheriff's Office has been responsible for enforcing the SIP Orders in unincorporated areas of the County and in the cities of Saratoga, Cupertino, and Los Altos Hills.
4. In my position as the Assistant Division Commander, I have been directly involved in enforcing the SIP Orders. Among other things, I have explained the SIP Orders to and

1 enforced them against businesses and individuals in the field, and I have supervised my  
 2 patrol team supervisors, who have similar duties. I am also familiar with records the  
 3 Sheriff's Office regularly generates and maintains in response to service calls and have  
 4 reviewed such records for SIP-related calls.

- 5 5. The Sheriff's Office has enforced the SIP Orders only in response to complaints  
 6 referred from the District Attorney's Office or made directly by residents; it has not  
 7 proactively enforced those orders.
- 8 6. Since March 17, 2020, the Sheriff's Office has received roughly 250 reports of  
 9 violations by individuals and businesses.
- 10 7. In all but four of the cases, Officers issued warnings rather than citations. All four of  
 11 the citations were issued to individuals rather than businesses. None of those  
 12 individuals was cited for buying or selling firearms or engaging in target practice in  
 13 violation of the SIP.
- 14 8. Officers have issued warnings to many different types of businesses. Construction  
 15 companies and landscapers/gardeners have elicited the most complaints and, thus,  
 16 received the greatest number of warnings. However, officers have also given warnings  
 17 to a beauty salon, a nail salon, a craft store, nurseries, a realty business, a tea shop, an  
 18 apartment leasing office, and a bagel shop.
- 19 9. There are no firearms retailers or commercial shooting ranges in the Sheriff Office's  
 20 jurisdiction (other than a range operated by the County, which has been closed since the  
 21 first SIP Order issued on March 17, 2020); thus, it has not issued any warnings or  
 22 citations to any such businesses.

23 I declare under penalty of perjury under the laws of the United States of America that the  
 24 foregoing is true and correct. Executed at San José, California on April 27, 2020.

25 Dated: Apr. 27, 2020

Respectfully submitted,

26  #1841  
 27 Lt. Neil Valenzuela  
 28

RICHARD DOYLE, City Attorney (88625)  
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Attorneys for CITY OF SAN JOSE; SAM LICCARDO  
and EDGARDO GARCIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

JANICE ALTMAN, an individual;  
RYAN GOODRICH, an individual;  
ALBERT LEE SWANN, an individual;  
ROMAN KAPLAN, an individual;  
YAN TRAYTEL, an individual; DMITRIY  
DANILEVSKY, an individual; GREG  
DAVID, an individual; SCOTT  
CHALMERS, an individual; CITY ARMS  
EAST LLC; CITY ARMS LLC; CUCKOO  
COLLECTIBLES LLC d.b.a. EDDY'S  
SHOOTING SPORTS; SECOND  
AMENDMENT FOUNDATION;  
CALIFORNIA GUN RIGHTS  
FOUNDATION; NATIONAL RIFLE  
ASSOCIATION OF AMERICA;  
CALIFORNIA ASSOCIATION OF  
FEDERAL FIREARMS LICENSEES,  
INC.; and FIREARMS POLICY  
COALITION, INC.,

Plaintiff(s),

v.

COUNTY OF SANTA CLARA,  
CALIFORNIA; LAURIE SMITH, in her  
capacity as Sheriff of the County of Santa  
Clara; JEFFREY ROSEN, in his official  
capacity as Santa Clara County District

Case Number: 4:20-cv-02180-JST

**DECLARATION OF LIEUTENANT  
ROBERT IMOBERSTEG IN  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION**

Date: May 13, 2020

Time: 2:00 p.m.

Location: CourtCall

Judge: Hon. Jon S. Tigar

Attorney; SARA CODY, in her official capacity as Santa Clara County Health Officer; CITY OF SAN JOSE, CALIFORNIA; SAM LICCARDO, in his official capacity as Mayor of San Jose; EDGARDO GARCIA, in his official capacity as Chief of Police for the City of San Jose; CITY OF MOUNTAIN VIEW, CALIFORNIA; MAX BOSEL, in his official capacity as the Chief of Police for the City of Mountain View; COUNTY OF ALAMEDA, CALIFORNIA; GREGORY AHERN, in his capacity as Sheriff of the County of Alameda; ERICA PAN, in her capacity as Health Officer of the County of Alameda; COUNTY OF SAN MATEO, CALIFORNIA; CARLOS BOLANOS, in his capacity as Sheriff of the County of San Mateo; SCOTT MORROW in his capacity as San Mateo County Health Officer; CITY OF PACIFICA, CALIFORNIA; DAN STEIDLE, in his official capacity as the Chief of Police for the City of Pacifica; COUNTY OF CONTRA COSTA, CALIFORNIA; DAVID LIVINGSTON, in his capacity as Sheriff of the County of Contra Costa; CHRIS FARNITANO, in his capacity as Health Officer of Contra Costa County; CITY OF PLEASANT HILL, CALIFORNIA; BRYAN HILL in his official capacity as Chief of Police for the City of Pleasant Hill,

Defendant(s).

I, ROBERT IMOBERSTEG, declare:

1. I am a Lieutenant with the San Jose Police Department, Bureau of Field Operations, Administrative Unit. I have personal knowledge of each of the facts set forth in this declaration, and can testify competently thereto.

2. I have been employed by the San Jose Police Department since 1993, and have been in my current position since 2018. My duties include overseeing and managing the deployment of Officers in the Bureau of Field Operations. I am also in charge of



1 enforcement in the City of San Jose the March 16, 2020, and the March 31, 2020, shelter-  
2 in-place orders issued by the Public Health Officer for the County of Santa Clara.

3         3. San Jose Police Department has patrol Officers dedicated to enforcement of  
4 these orders. San Jose Police Department receives referrals of complaints of potential  
5 violations of these orders from the Santa Clara District Attorney's Office. The Department  
6 also receives such complaints from 911 and 311 calls. My Unit refers those complaints to  
7 the patrol Officers for enforcement. The patrol Officers also perform "on-view"  
8 enforcement.

9         4. Between March 17, 2020, and today, San Jose Police Officers contacted  
10 over 1,800 locations, both businesses and individuals, in connection with the Public Health  
11 Officer's shelter-in-place orders. My Unit maintains a record of those contacts.

12         5. Nearly all of those contacts were handled from an informational standpoint,  
13 i.e. the Officers explained the Public Health Officer's order and provided a copy to the  
14 responsible person, and advised the person whether or not a violation of the Order  
15 occurred.

16         6. The Officers contacted a broad cross-section of locations, such as  
17 automobile sellers, bars, cafes, churches, construction sites, grocery stores, parks,  
18 residences, schools, spas, barber shops, salons, vape/cigarette shops, and other  
19 miscellaneous businesses.

20         7. The Department forwarded one citation, against a café, to the Office of the  
21 District Attorney for prosecution.

22         8. The Department contacted one firearms retailer on March 30, 2020, and  
23 provided the responsible person with information regarding the shelter-in-place order,  
24 treating it as a courtesy service. The Department has not had any contacts at shooting  
25 ranges related to the Public Health Officer's Order. I do not know of any public shooting  
26 ranges in the City of San Jose.

27 ///

28 ///



1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct, and that this declaration was executed on April 21, 2020,  
3 at San Jose, California.

4  #3054  
5 LT. ROBERT IMOBERSTEG (#3054)  
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JAMES R. WILLIAMS, County Counsel (S.B. #271253)  
MELISSA R. KINIYALOGTS, Lead Deputy County Counsel (S.B. #215814)  
JASON M. BUSSEY, Deputy County Counsel (S.B. #227185)  
HANNAH KIESCHNICK, Legal Fellow (S.B. #319011)  
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Attorneys for Defendants  
COUNTY OF SANTA CLARA, LAURIE SMITH,  
JEFFREY ROSEN, and SARA CODY

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
(Oakland Division)

JANICE ALTMAN, et al.,

Plaintiffs,

v.

COUNTY OF SANTA CLARA, et al.,

Defendants.

No. 20CV02180JST

**DECLARATION OF SARA H. CODY, M.D.,  
IN OPPOSITION TO PLAINTIFFS'  
APPLICATION FOR PRELIMINARY  
INJUNCTION**

Date: May 20, 2020

Time: 2:00 p.m.

Judge: Honorable Jon S. Tigar

I, SARA H. CODY, M.D., declare as follows:

1. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth herein.

2. I graduated from Stanford University, where I received a degree in Human Biology. I received my Doctor of Medicine from Yale University School of Medicine. Following an Internship and Residency in Internal Medicine at Stanford University Hospital, I completed a two-year fellowship in Epidemiology and Public Health, as an Epidemic Intelligence Service (EIS) Officer with the Centers for Disease Control and Prevention.

3. I am currently the Director of the County of Santa Clara's Public Health Department, as well as the Health Officer for the County and each of the 15 cities located within Santa Clara County. I have held the Health Officer position since 2013. In these roles, I provide leadership on

1 public health issues for all of Santa Clara County and oversee approximately 450 Public Health  
2 Department employees who provide a wide array of services to safeguard and promote the health of  
3 the community.

4 4. Before becoming the Health Officer for the County and each of its cities, I was  
5 employed for 15 years as a Deputy Health Officer/Communicable Disease Controller at the County's  
6 Public Health Department, where I oversaw surveillance and investigation of individual cases of  
7 communicable diseases, investigated disease outbreaks, participated in planning for public health  
8 emergencies, and responded to Severe Acute Respiratory Syndrome (SARS), influenza A virus  
9 subtype H1N1 (also known as "swine flu" or H1N1), and other public health emergencies.

10 5. The mission of the Public Health Department is to promote and protect the health of  
11 Santa Clara County's entire population of approximately 1.9 million people. None of Santa Clara  
12 County's 15 cities has a health department. All 15 cities, and all Santa Clara County residents, rely  
13 on the Public Health Department to perform essential public health functions. The work of the  
14 Public Health Department is focused on three main areas: (1) infectious disease and emergency  
15 response; (2) maternal, child, and family health; and (3) healthy communities. The Public Health  
16 Department's work is guided by core public health principles of equity, collaboration and inclusion,  
17 and harm prevention. This work—in particular, infectious disease control and emergency  
18 response—is critical to the health of the entire community countywide.

19 6. There has been a pandemic from a novel coronavirus that was first identified in  
20 December 2019 and has since spread to most countries in the world, including the United States.  
21 Worldwide, as of April 29, 2020, authorities have confirmed at least 3,090,445 cases, and 217,769  
22 deaths. The United States reported its first case on January 21, 2020. The disease has since spread  
23 rapidly throughout the country. As of April 29, 2020, public health authorities had confirmed at  
24 least 1,005,147 cases in the United States, and 57,505 deaths. Experts consider this outbreak the  
25 worst public health epidemic since the influenza outbreak of 1918.

26 7. Coronaviruses are a large family of viruses that can cause illness ranging from the  
27 common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS-CoV) and  
28 Severe Acute Respiratory Syndrome (SARS-CoV). A novel coronavirus (nCoV) is a new strain that

1 has not been previously identified in humans. SARS-CoV-2 refers to the novel coronavirus  
2 currently spreading throughout the world, and Coronavirus Disease-19 (COVID-19) is the disease  
3 caused by SARS-CoV-2. The World Health Organization has deemed COVID-19 a pandemic.  
4 There is currently no vaccine for the novel coronavirus and no specific treatment or cure for  
5 COVID-19. In mild cases, COVID-19 causes fever, fatigue, cough, and shortness of breath. In  
6 severe cases, it causes pneumonia, multi-organ system failure, and death.

7       8. The COVID-19 virus is known to be highly contagious, spreading easily between  
8 individuals. The basic reproduction number for COVID-19—referred to as  $R_0$ —has been estimated  
9 to fall between 2.0 and 5.7, meaning that every person infected with COVID-19 will spread it, on  
10 average, to between 2.0 and 5.7 other individuals.

11       9. Coronaviruses are known to spread primarily through the air by coughing or sneezing  
12 and close personal contact, and to a lesser extent by touching objects or surfaces that have been  
13 contaminated with coronaviruses and then touching one's mouth, nose, or eyes. While we have  
14 known that people who have symptomatic SARS-CoV-2 infection are contagious and can spread  
15 infection to others, we now also know that people with SARS-CoV-2 infection can spread infection  
16 before symptoms develop and for some period of time after symptoms abate. We also now know  
17 that people can have SARS-CoV-2 infection, never develop symptoms (asymptomatic infection),  
18 and spread infection. The proportion of people who have asymptomatic infection has been estimated  
19 to be anywhere from 25% to 75%. These findings underscore the importance of following social  
20 distancing because even people without any symptoms can be contagious. Furthermore, coronavirus  
21 can survive for several hours to several days on surfaces (hard, and particularly metal, surfaces are  
22 conducive to longer survival periods) and thereby be indirectly transmitted between individuals. It is  
23 therefore necessary to maximize the extent to which individuals stay in their homes in order to  
24 reduce their chance of coming into contact with other people, and to a lesser extent, to reduce their  
25 contact with surfaces that could be touched by others outside of their household—particularly high-  
26 touch surfaces like door handles, retail show cases, retail products, and payment systems.

27       10. COVID-19 remains widespread in Santa Clara County; the County recorded the first  
28 death from COVID-19 in the entire United States (February 7, 2020) in a person who had not

1 traveled or had contact with a known case. The County also announced two of the earliest cases of  
2 travel-associated COVID-19 in the United States on January 31 and February 2. Community  
3 transmission is believed to be widespread throughout the County, and limited testing capacity means  
4 that confirmed case counts represent only a small portion of actual cases. As of April 29, 2020,  
5 7.76% of all persons tested for COVID-19 in Santa Clara County tested positive.

6 11. As of March 5, the County had confirmed only 31 cases and no known deaths from  
7 COVID-19 in the County (the February 7 death was retrospectively confirmed on April 21). Ten  
8 days later, as of March 15, 2020, the County had confirmed 123 cases and at the time two known  
9 deaths from COVID-19 in the County and 52 hospitalizations in County hospitals.<sup>1</sup> At the time,  
10 there were only 339 available staffed ICU beds across all County hospitals, and a further 390 beds  
11 that could be added to ICU capacity if staffing could be obtained. According to models of  
12 transmission and hospitalization rates and experience with the rapid escalation of the confirmed case  
13 count in the County, available hospital capacity and resources would quickly be overwhelmed  
14 without immediate and strict intervention.

15 12. To slow virus transmission as much as possible to protect the most vulnerable, to  
16 prevent deaths, and to prevent the health care system from being overwhelmed; and after  
17 consideration of epidemiologic trends in countries with active COVID-19 epidemics, recognition of  
18 the potential for exponential growth in the setting of a non-immune population, and guidance from  
19 public health officials throughout the United States, on March 16, 2020, I issued a shelter-in-place  
20 order directing all individuals living in the County to shelter at their place of residence, except to  
21 engage in certain essential activities. Attached as Exhibit A is a true and correct copy of my March  
22 16, 2020 Order. Health Officers from the six largest county jurisdictions in the San Francisco Bay  
23 Area—including, in addition to Santa Clara, the Counties of Alameda, Contra Costa, San Mateo,  
24 Marin, and San Francisco (along with the City of Berkeley, which has its own Health Officer)—  
25 issued similar shelter-in-place orders at the same time to protect their respective communities.

26 \_\_\_\_\_  
27 <sup>1</sup> The Public Health Department has since changed its data reporting to reflect the date of specimen  
28 collection, so the numbers on its dashboard are slightly different based on that reporting difference.

1           13. The goal of sheltering in place is to lower the number of total people who become  
2 infected, and to slow the spread of infection in order to ensure that communities have enough  
3 capacity and resources in their hospitals to care for people who develop severe illness, and  
4 ultimately, to save lives. Sheltering in place is proven to slow the spread of the infection because it  
5 decreases the number of people who are in contact with one another, thus decreasing the probability  
6 that a person who is infectious might spread the infection to another person. Absent a vaccine,  
7 social distancing is the single-most effective tool in slowing the spread of the virus in a population  
8 with no natural immunity. My decision to issue the County Shelter-in-Place Order was informed by  
9 the experiences of jurisdictions in other parts of the world which had instituted similar interventions  
10 to slow the spread of the virus, by basic infectious disease models showing exponential growth in a  
11 population with no natural immunity, and by a small surveillance study of influenza-like illness in  
12 patients from a subset of our County clinics which showed that 11% were SARS-CoV-2 positive.<sup>2</sup>

13           14. The March 16, 2020 Order prohibited all individuals from leaving their place of  
14 residence, except for the limited purposes of performing listed Essential Activities, such as visiting a  
15 health care professional, performing essential work, or obtaining essential products. The Order  
16 prohibited all travel, except Essential Travel, such as to carry out Essential Activities. All businesses  
17 with a facility in the County, except essential businesses, as defined in the Order, were required to  
18 cease all activities at those facilities except certain Minimum Basic Operations, which include the  
19 minimum necessary activities to maintain and protect the value of inventory; ensure the security of  
20 the facility; process payroll; and facilitate working remotely. The Order provided definitions of  
21 these key terms. The Order also prohibited all public and private gatherings of any number, except  
22 with members of individuals' own households.

23           15. The intent of the Order was to maximize the number of people isolating in their places  
24 of residence while sustaining the provision of, and access to, the basic necessities of life during the  
25 shelter-in place period. The list of essential businesses that could continue on-site operations during  
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28 <sup>2</sup> [https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e3.htm?s\\_cid=mm6914e3\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e3.htm?s_cid=mm6914e3_w)



1 this period was developed based on the immediacy of the need for the services and supplies the  
2 businesses provide. Business types were identified as essential because they provide food, shelter,  
3 medicine, healthcare services and supplies, personal hygiene products, and products and services  
4 that enable people to isolate in their places of residences. Other business types were identified as  
5 essential because they are necessary to the continuity of essential infrastructure and the basic  
6 functions of society such as financial transactions (e.g. banks), access to critical information (e.g.  
7 newspapers), and essential travel (e.g. gas stations and private transportation providers).

8 16. The Order did not restrict work or other activities that individuals perform at their  
9 places of residences or their use or possession of personal property at their residences. It also  
10 allowed people to continue purchasing and obtaining non-essential goods through remote  
11 transactions and direct delivery to residences or by purchasing them at essential retail businesses in  
12 the course of obtaining essential supplies.

13 17. The Order was based on evidence of the exponential growth of COVID-19 within the  
14 County and scientific evidence and best practices regarding the most effective approaches to slow  
15 the transmission of COVID-19. A proven way to decrease the probability of the virus being spread  
16 from person to person is to limit interactions among people to the greatest extent practicable.  
17 Allowing exceptions other than essential activities, essential businesses, and essential travel—even  
18 with social distancing—would result in more interactions among people as well as more indirect  
19 interactions as people come into shared contact with surfaces, resulting in more infections and more  
20 deaths. Limiting the number, duration, and proximity of contacts between people is critical in  
21 reducing the probability that the virus will spread from one person to another. Ensuring that every  
22 person shelters in place to the maximum extent feasible therefore reduces the rate of transmission of  
23 the SARS-CoV-2 infection (i.e. “flattens the curve”) more quickly than if we did not shelter in place.  
24 This is especially true in a population with no immunity to the virus.

25 18. The number of confirmed cases in Santa Clara County increased almost seven-fold  
26 from 123 to 848 between March 15, 2020 and March 29, 2020. In the larger region of six Bay Area  
27 counties, the number of confirmed cases increased more than eight-fold from 258 to 2,092 in this  
28 same period, and the number of confirmed deaths rose from 3 to 51. Case numbers for the Bay Area

1 counties provides total case counts by date of reporting. While evidence showed that the shelter-in-  
2 place orders issued in the County and in neighboring jurisdictions had been effective in reducing  
3 activity and reducing the rate of transmission of the SARS-CoV-2 infection, we needed to do more  
4 to slow down the spread. In particular, I determined that it was necessary to narrow the list of  
5 Essential Businesses to further limit the number of people working or purchasing goods and services  
6 outside their places of residence and to impose measures to further limit person-to-person interaction  
7 when people need to be outside their places of residence.

8 19. On March 31, 2020, I issued an updated shelter-in-place order that superseded the  
9 March 16, 2020 Order, to improve social distancing (including adding a Social Distancing Protocol),  
10 and to further reduce the total volume of person-to-person contact occurring in the County. The  
11 March 31 order extends the shelter-in-place requirements through May 3, 2020. Attached as Exhibit  
12 B is a true and correct copy of my March 31, 2020 Order. Again, I consulted with Health Officers  
13 from the same six Bay Area jurisdictions listed above in designing the new shelter-in-place order,  
14 and similar orders were simultaneously issued by these jurisdictions on March 31, 2020.

15 20. When I and the other Bay Area Health Officers issued shelter-in-place orders on March  
16 31, 2020, the public health emergency had substantially worsened since our March 16, 2020 shelter-  
17 in-place orders, with a significant escalation in the number of positive cases, hospitalizations, and  
18 deaths, and a corresponding increasing strain on health care resources. At the same time, evidence  
19 suggested that the restrictions on mobility and social distancing requirements imposed by the prior  
20 orders were slowing the rate of increase in new cases and confirmed cases, consistent with models of  
21 infectious disease transmission in a non-immune population.

22 21. The March 31 Order is more restrictive in a number of ways, including the following:  
23 (1) social distancing requirements are mandatory; (2) by April 3, 2020, essential businesses that  
24 continued to operate facilities in the County were required to complete, post, and implement a social  
25 distancing protocol for each facility that remains open; (3) essential businesses must maximize the  
26 number of employees who work from home, excepting only those employees who cannot perform  
27 their job duties from home; (4) essential businesses that continue to operate facilities in the County  
28 must scale down operations to their essential component only; (5) businesses that supply products

1 needed for people to work from home are no longer essential businesses and must cease operations;  
2 (6) use of playgrounds, dog parks, public picnic areas, and similar recreational areas is prohibited;  
3 (7) use of shared public recreational facilities such as golf courses, tennis and basketball courts,  
4 pools, and rock walls is prohibited; (8) sports or activities that require use of shared equipment may  
5 only be engaged in by members of the same household; and (9) most residential and commercial  
6 construction is prohibited.

7       22. The additional restrictions on the list of essential businesses were imposed based on my  
8 and the other Bay Area Health Officers' judgment that we needed to further limit business activities  
9 by more narrowly defining the goods and services that provide for the basic necessities of life and  
10 functioning of society. Thus, we eliminated all housing construction except for that necessary to  
11 provide affordable housing, which is critical to reducing COVID-19 transmission among vulnerable  
12 populations. We also limited construction of healthcare operations to facilities directly related to the  
13 COVID-19 response and narrowed allowances for public works construction to those projects  
14 designated as essential by the lead governmental agency. We likewise eliminated the allowance for  
15 businesses providing supplies necessary for people to work from home based on my judgment that  
16 certain businesses were exploiting this category to continue operation of non-essential businesses.

17       23. Although evidence indicates that the number of COVID-19 cases in our region does not  
18 appear to have peaked, the shelter-in-place orders have slowed the spread of the virus. When the  
19 March 16, 2020 Order was put in place, the number of new cases was growing rapidly. As discussed  
20 below, at that time, the total confirmed case count in the County was doubling approximately every  
21 5 days. But since then, the rate of doubling has slowed considerably to approximately 60 days.  
22 Flattening the curve of confirmed cases has not only prevented morbidity and mortality—it has also  
23 provided time for the County to significantly increase hospital capacity and healthcare resources to  
24 ensure that we can provide care for patients with severe disease, to provide and obtain shelter for  
25 homeless individuals and other vulnerable persons at high risk of infection, to increase testing  
26 capacity across the County, and to take other critical measures to further slow the rate of spread and  
27 prevent the healthcare system from becoming overwhelmed. However, the County and the Bay Area  
28 are still facing the risk of escalating hospitalization and mortality if community transmission

1 becomes more widespread, and keeping restrictive shelter-in-place orders in place remains critical to  
2 our ability to prevent a surge of COVID-19.

3       24. I have collaborated with Public Health Department epidemiologists and infectious  
4 disease modeling experts at Stanford University's School of Medicine to prepare model estimates of  
5 cases and hospitalizations in Santa Clara County. These models were developed using data from our  
6 County, including current case counts, current cases hospitalized, and information that we know  
7 about the clinical course of cases here and elsewhere. They provide a projection of possible  
8 outcomes and a range of uncertainty around those outcomes, their timing, and magnitude. While  
9 there is a significant degree of uncertainty around these projections—and all others being prepared  
10 by experts around the world—these estimates inform our planning, preparedness, and our  
11 understanding of the impact of public health interventions. These projections should also be  
12 interpreted knowing we still have limited testing capacity and therefore are not identifying all cases.  
13 But our models strongly suggest that the shelter-in-place orders have had a significant impact on  
14 what would have been more significant exponential growth in cases.

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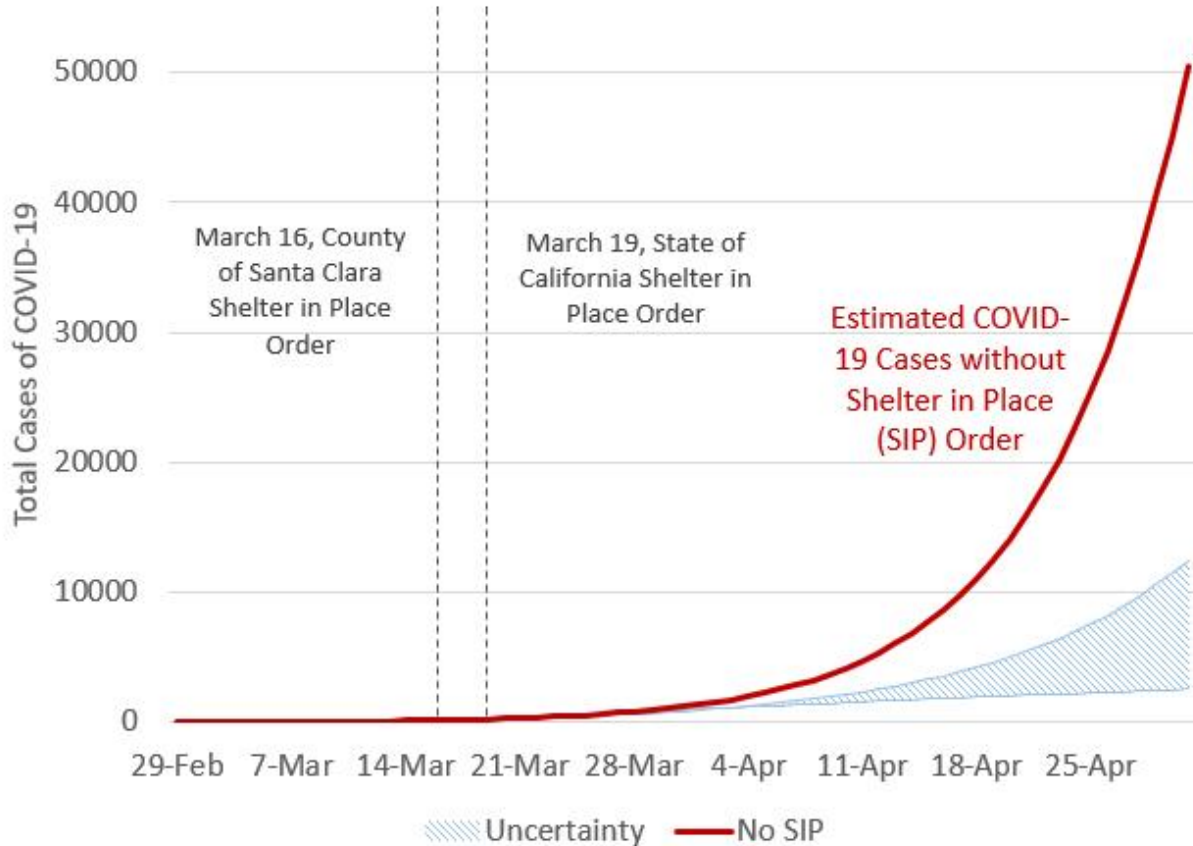
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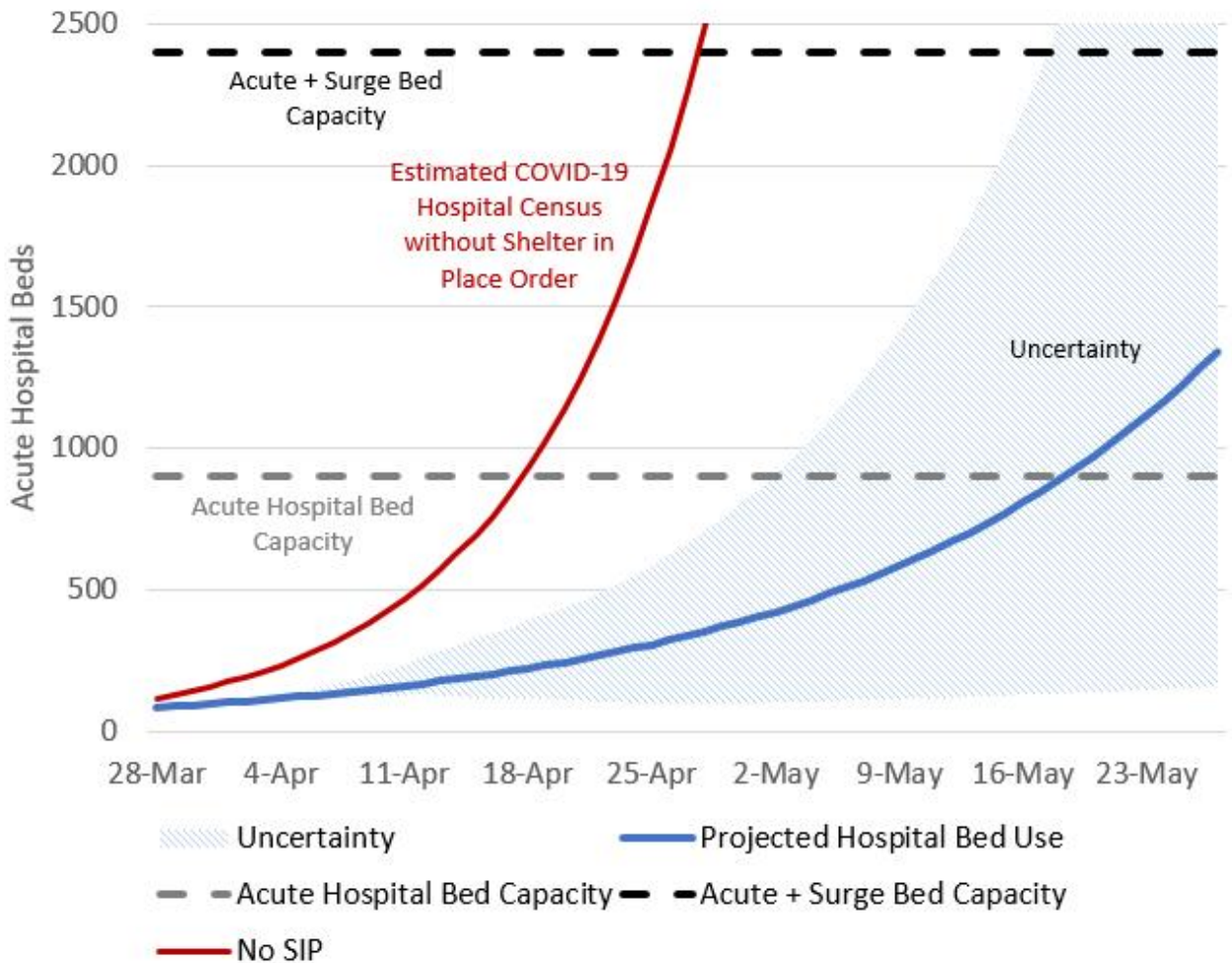
25. Below is a model of COVID-19 projected cases in Santa Clara County:



26. Had a shelter-in-place order not been put in place on March 16, 2020, and extended on March 31, 2020, we expect we would have had approximately 50,000 cases of COVID-19 in Santa Clara County by May 1, 2020. The red line above reflects the number of cases we expect we would have had absent the shelter-in-place orders, while the shaded area reflects the range of uncertainty in the actual number of cases. As this model indicates, because of the orders, our confirmed cases as of April 29, 2020 (approximately 2,163) are already more than an order of magnitude lower than the projected number of cases we expect we would have had absent a shelter-in-place orders (approximately 40,000). We believe we are now in the early stages of the “flattening of the curve” the orders were designed to achieve.

27. Looking forward in time, the model estimates that by May 1, 2020, our case counts are likely to be far lower than they would have been without the shelter-in-place orders. Many factors can change future outcomes, including our continued ability to maintain appropriate shelter-in-place restrictions.

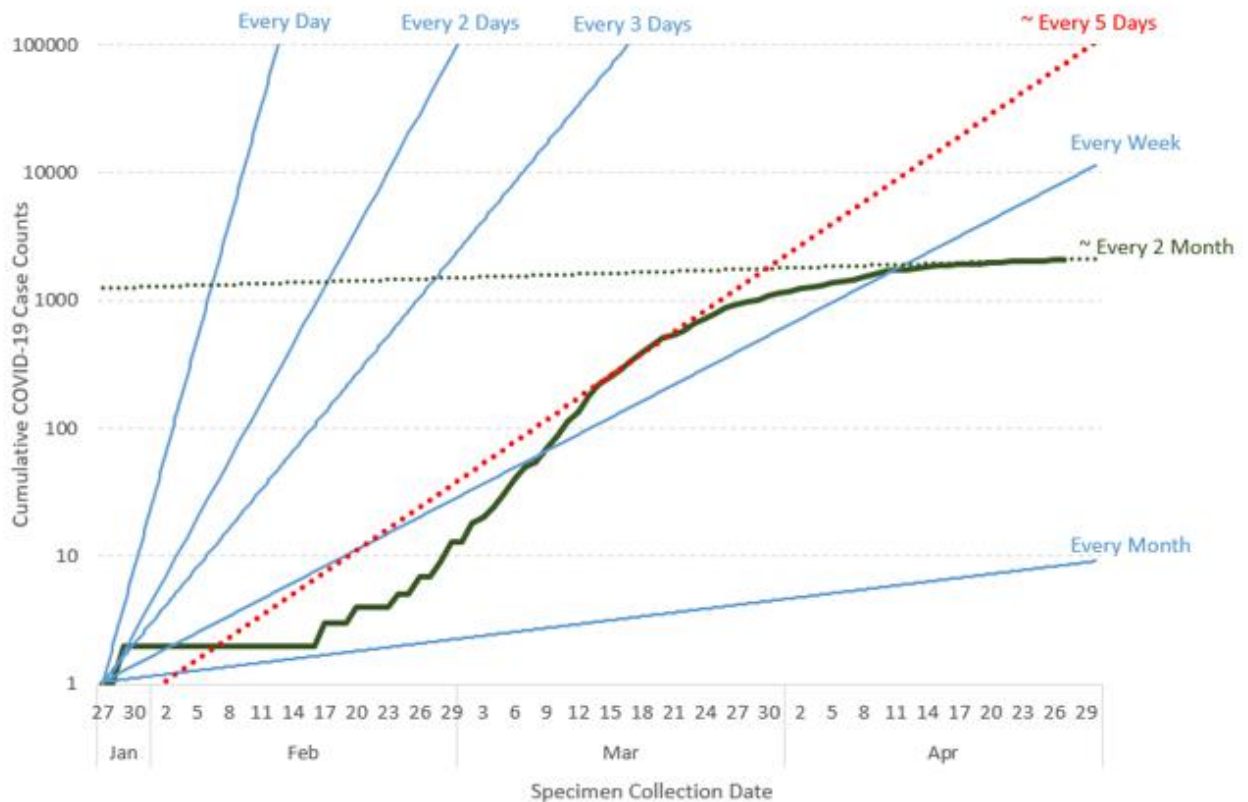
28. Below is a model of projected acute hospital demand in the County to May 27, 2020:



29. Our models regarding hospitalizations due to COVID-19 likewise show the impact of the shelter-in-place orders. The red line in the graph above shows what we expect the number of hospitalized persons with COVID-19 would have been without the orders, and the blue line shows what we expect the number of hospitalized patients will be given the orders. The red line shows that without the orders, the County's acute hospital bed capacity would likely have been exceeded by mid-April; and by the end of April the County's increased hospital surge bed capacity would likely have been exceeded as well. Because sheltering-in-place slowed transmission, we hope to have sufficient capacity to treat all COVID-19 patients through at least mid-May, which is as far out as our and other models can reasonably provide projections. This "flattening of the curve" continues to give the County and our healthcare services community much needed additional time to increase our surge capacity.



30. Below is a model of doubling time of COVID-19 cases in the County:



31. One of the most important indicators of a slowing of the spread of COVID-19 is what we call the “doubling rate;” i.e., how many days it takes for the number of cases to double. A lower doubling rate means that the disease is spreading rapidly; while a higher doubling rate means it is taking longer for the number of cases to double, as the spread slows down. On March 16, when the first shelter-in-place order was issued, the case count was doubling approximately every 5 days. The current doubling rate is somewhere around 60 days. This means that the rate of spread has slowed significantly thanks to County residents complying with the shelter-in-place orders.

32. The data in other Bay Area counties—including Alameda, Contra Costa, and San Mateo Counties—similarly show that the shelter-in-place orders are increasing the doubling rate, slowing the spread of the virus, and allowing for time to increase hospital surge capacity. This will save many lives in our community.

33. Santa Clara County, the Bay Area, the United States, and the rest of the world have not seen a public health threat like this in more than 100 years. I—along with health officials from all

1 over the world—have concluded that the best course of action is a shared commitment to adhering to  
2 preventative measures, including staying at home, social distancing, and washing your hands. We  
3 do not take lightly asking people to stay home. We understand that people are suffering from real  
4 impacts on their lives and livelihoods. We each have a part in slowing the spread of this virus.  
5 Right now, we all need to reduce the number of people with whom each of us comes in contact. It  
6 will save lives.

7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct. Executed at San José, California on May 1, 2020.

9  
10 Dated: May 1, 2020

Respectfully submitted,

11 /S/ Sara H. Cody

12 SARA H. CODY, M.D.  
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# **EXHIBIT A**

**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

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.

Order of the County Health Officer  
to Shelter in Place



- 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,

Order of the County Health Officer  
to Shelter in Place

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 B**

**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

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 reminder 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.

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7 Attorneys for Defendants  
COUNTY OF SAN MATEO, CARLOS BOLANOS  
8 and SCOTT MORROW

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION  
13

14 JANICE ALTMAN, et al.

15 Plaintiffs,

16 v.

17 COUNTY OF SANTA CLARA, et al.,

18 Defendants.  
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21  
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Case No. 20-cv-02180-JST

**DECLARATION OF DR. SCOTT  
MORROW IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

**Hearing**

Date: May 20, 2020

Time: 2:00 p.m.

Dep't: Oakland Courthouse, Courtroom 6

THE HONORABLE JON S. TIGAR

1 I, SCOTT MORROW, M.D., M.P.H., M.B.A, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration. If called as a  
3 witness, I could and would testify competently to the matters set forth herein.

4 2. I earned my Doctor of Medicine and Master of Public Health from Loma Linda  
5 University School of Medicine. I also earned an M.B.A. from the University of California,  
6 Riverside.

7 3. I have 35 years of experience as a physician. I am a practicing physician in the  
8 Innovative Care Clinic at the San Mateo Medical Center. I am board certified in preventative  
9 medicine and public health and am a fellow of the American College of Preventative Medicine. I  
10 also serve on the boards of the Medical Association of San Mateo County, the Hospital Consortium  
11 of San Mateo County, the California Conference of Local Health Officers, and the Health Officer's  
12 Association of California.

13 4. I am currently the San Mateo County Health Officer. I have held the Health Officer  
14 position since 1992. In this role, I am responsible for guiding San Mateo County Health's response  
15 to disease outbreak, promoting disease prevention, enforcing public health laws and regulations,  
16 coordinating local medical and health resources during a disaster, and advising elected officials on  
17 health policy.

18 5. San Mateo County has approximately 770,000 residents and includes 20 incorporated  
19 cities or towns. None of San Mateo County's incorporated areas has a separate health department or  
20 health officer.

21 6. The novel coronavirus (COVID-19) is a potentially fatal respiratory disease that has  
22 caused a lethal global pandemic. This virus appears to be wildly transmissible within congregate  
23 settings. Individuals may be infected and contagious with no symptoms (meaning they are  
24 asymptomatic) or may be infected and contagious before developing symptoms (meaning they are  
25 presymptomatic). Asymptomatic or presymptomatic individuals can unintentionally infect others.

26 7. Current scientific evidence indicates that the primary way to slow the spread of the  
27 virus is to hinder airborne transmission by minimizing personal interactions and maximizing

28 //

1 physical social distancing. There are no presently available vaccines or anti-viral treatments for  
2 COVID-19, and none are anticipated to be available in the short or medium term.

3 8. Even before COVID-19 was detected within San Mateo County, I feared that the  
4 virus could cause a severe local pandemic. I focused County health efforts on community mitigation,  
5 including reviewing the steps that could most effectively diminish disease transmission within our  
6 communities.

7 9. On March 3, 2020, I declared a local health emergency due to COVID-19. This  
8 declaration was ratified by the San Mateo County Board of Supervisors on March 10, 2020.

9 10. On March 4, 2020, COVID-19 was first detected in San Mateo County. The virus  
10 rapidly spread. By March 10, 2020, I had evidence of widespread community transmission of  
11 COVID-19 in San Mateo County.

12 11. By March 15, 2020, testing confirmed that COVID-19 had infected at least 41  
13 individuals in San Mateo County, killing at least 1 person. Due to limited testing, these numbers  
14 reflected only a fraction of true cases.

15 12. On March 16, I directed the entire County to shelter in place at their homes unless  
16 they need to patronize or work at an “Essential Business” or conduct “Essential Activities,” like  
17 obtaining medical care. All non-Essential Businesses were limited to “Minimum Basic Operations.”  
18 Attached as **Exhibit A** is a true and correct copy of my March 16 Order.

19 13. I adopted this Order jointly with the neighboring Bay Area counties of Santa Clara,  
20 Alameda, Contra Costa, and Marin; the City and County of San Francisco; and the City of Berkeley.  
21 Because our communities are so intertwined, with many individuals working in one county but  
22 residing in another, it was important that we adopt a cohesive approach so that San Mateo County’s  
23 efforts were not undermined by actions of residents or businesses in neighboring counties.

24 14. The goal of this shelter-in-place Order was to limit interpersonal contacts to inhibit  
25 transmission of COVID-19, thus curbing the number of people who become sick from the virus and  
26 preserving the County’s finite medical resources. I implemented these measures in light of the  
27 increasing detection of the virus within the County in order to prevent the collapse of our healthcare  
28 system and to reduce death due to COVID-19.

1           15.     The “Essential Business” operations and other “Essential Activities” allowed under  
2 my Order were deliberately narrowly defined. Each of these exceptions creates an opportunity for  
3 further community transmission of the virus, even if social distancing measures are attempted. I  
4 knew that this Order would cause hardship and frustration for many residents of San Mateo County.  
5 However, time was of the essence and the lives of many of our residents were on the line.

6           16.     The number of confirmed cases in Santa Mateo County increased from 41 to 309  
7 between March 15 and March 30, 2020, with at least 6 known deaths. Again, due to limited testing,  
8 these numbers reflected only a fraction of true cases. This data showed that while the prior shelter-  
9 in-place order had likely reduced transmission of the COVID-19 disease, the County needed to do  
10 more to slow down the rapid spread of the virus.

11           17.     On March 31, 2020, again in conjunction with the other Bay Area counties, I issued  
12 an order extending the duration of the shelter in place in San Mateo County until May 3, 2020.  
13 Attached as **Exhibit B** is a true and correct copy of my March 31, 2020 Order. This March 31 Order  
14 superseded my prior March 16 Order. It also clarified or strengthened the requirements for effective  
15 sheltering in place, including but not limited to requiring essential businesses to implement a social  
16 distancing protocol, maximize employees working from home, and scale down in-person business to  
17 essential operations only. Because of these mandatory requirements, the March 31 Order is more  
18 restrictive than the prior order.

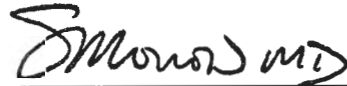
19           18.     As of April 28, 2020, COVID-19 has infected at least 1,136 individuals in San Mateo  
20 County, with at least 48 known deaths. Again, due to limited testing, these numbers reflect only a  
21 fraction of true cases. As of April 27, 2020, there are currently 80 known patients with COVID-19  
22 hospitalized in the County, 20 of whom are being treated in intensive care units (ICUs).

23           19.     Broad community-wide compliance with the shelter-in-place orders appears to be the  
24 major reason for lowering the rate of new COVID-19 infections in San Mateo County and keeping  
25 current exposure to a manageable, stable level. To date, we have not experienced the type of  
26 catastrophically high transmission rates that have occurred in other jurisdictions, including parts of  
27 New York and Italy. In other words, the County presently appears to have “flattened the curve.”

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1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed at San Mateo, California on April 30, 2020.

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4 Respectfully submitted,

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SCOTT MORROW, M.D.



## **Exhibit A**



SAN MATEO COUNTY HEALTH

**PUBLIC HEALTH,  
POLICY & PLANNING**

Dr. Scott Morrow, Health Officer  
Cassius Lockett, PhD, Director

Public Health, Policy & Planning  
225 37th Avenue  
San Mateo, CA 94403  
smchealth.org

**ORDER OF THE HEALTH OFFICER  
OF THE COUNTY OF SAN MATEO 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 SAN MATEO (“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 San Mateo 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





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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 healthcare capacity in the County.
7. This Order also is issued in light of the existence of 41 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



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necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.

8. This Order revokes and replaces Order Number C19-2b (revised), originally issued on March 14, 2020. That order is no longer in effect as of the effective date and time of this Order. 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 March 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the March 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the March 10, 2020 Resolution of the Board of Supervisors of the County of San Mateo Ratifying and Extending the Declaration of a Local Health Emergency, the March 11, 2020 and March Order of the Health Officer No. C19-1 restricting visitors to skilled nursing facilities, the March 12, 2020 State of California Executive Order N-25-20, and the March 13, 2020 Order of the Health Officer No. C19-3 imposing a School Operations Modification Order.
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.
    - 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.



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- 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,



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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.





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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.



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13. Copies of this Order shall promptly be: (1) made available at the County Government Center at 400 County Center, Redwood City, CA 94063; (2) posted on the County Public Health Department website (available at [www.smchealth.org](http://www.smchealth.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 reminder 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:**

\_\_\_\_\_/signed/  
Scott Morrow MD, MPH  
Health Officer of the County of San Mateo

Dated: March 16, 2020

## **Exhibit B**



SAN MATEO COUNTY HEALTH  
**PUBLIC HEALTH,  
POLICY & PLANNING**

Dr. Scott Morrow, Health Officer  
Cassius Lockett, PhD, Director

Public Health, Policy & Planning  
225 37th Avenue  
San Mateo, CA 94403  
smchealth.org

**ORDER No. c19-5b (REVISED) OF THE HEALTH OFFICER  
OF THE COUNTY OF SAN MATEO 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; LIMITING TRAVEL FOR OUTDOOR RECREATION  
ACTIVITIES AND 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).**

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SAN MATEO ("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 San Mateo ("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.







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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 Travel, Essential Governmental Functions, 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





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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 309 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 3 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 March 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the March 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the March 10, 2020 Resolution of the Board of Supervisors of the County of San Mateo Ratifying and Extending the Declaration of a Local Health Emergency, the March 11, 2020 and March Order of the Health Officer No. C19-1 restricting visitors to skilled nursing facilities, the March 12, 2020 State of California Executive Order N-25-20, and the March 13, 2020 Order of the Health Officer No. C19-3 imposing a School Operations Modification Order.
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





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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,





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- 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 must take place within 5 miles of the individual's residence;
    - 2. 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;
    - 3. 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;
    - 4. 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
    - 5. 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.





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“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;





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- 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





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- 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 or 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.





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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>).





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- 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



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sanitizer or hand washing stations. 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 400 County Center, Redwood City, CA 94063; (2) posted on the County Public Health Department website ([www.smchealth.org](http://www.smchealth.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:**

A handwritten signature in black ink, appearing to read "Scott Morrow MD", written over a horizontal line.

Scott Morrow MD, MPH  
Health Officer of the County of San Mateo

Dated: March 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.**

**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.

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

☐ Hand sanitizer effective against COVID-19 is available to all employees at the following location(s): Click or tap here to enter text.

☐ Soap and water are available to all employees at the following location(s): Click or tap here to enter text.

☐ Copies of this Protocol have been distributed to all employees.

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

**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: Click or tap here to enter text.

**Appendix A: Social Distancing Protocol**

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

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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: Click or tap here to enter text.

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**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: Click or tap here to enter text.
- ☐ Optional—Describe other measures (e.g. providing senior-only hours): Click or tap here to enter text.

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**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.