

**STATE OF MICHIGAN  
IN THE COURT OF CLAIMS**

STEPHEN CARRA and ROBERT CUSHMAN  
*Plaintiffs*

v.

JOCELYN BENSON, in her official capacity as  
Secretary of State for the State of Michigan and  
JONATHAN BRATER, in his official capacity as  
Director of the Michigan Bureau of Elections  
*Defendants*

Case No. \_\_\_\_\_

Hon. \_\_\_\_\_

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**EMERGENCY MOTION FOR ISSUANCE OF A TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

On an emergency basis, and for the reasons described in the brief that follows, the plaintiffs move this Court for issuance of a temporary restraining order and preliminary injunction. To ensure the rights of both candidates and election challengers who perform a vital role in ensuring open, fair, and transparent elections, relief must be granted sufficiently in advance of the general election on November 3, 2020 to allow the issuance of corrected directives to local election officials from the defendants.

### **BRIEF IN SUPPORT**

This case calls upon the Court to protect the rights of a specialized team of professionals known as election challengers so that they can perform their vital role in ensuring fair, lawful, and transparent elections. The role of election challengers is created by statute. MCL 168.730. Political parties and other organized groups with an interest in the "purity of elections" and guarding against abuses are authorized to appoint election challengers to closely monitor both the voting process and the counting of ballots. *Id.* Once duly appointed and qualified, these credentialed persons are given a wide range of authority by the Michigan Election Law to closely monitor the election process. These rights and duties include:

A. Challengers shall be provided a space within a polling place where they can observe the election procedure and each person applying to vote. MCL 168.733(1).

B. The opportunity to inspect poll books as ballots are issued to electors and witness the electors' names being entered in the poll book. MCL 168.733(1)(a).

C. Be allowed to observe the manner in which the duties of the election inspectors are being performed. MCL 168.733(1)(b).

D. Challenge the voting rights of a person who the challenger has good reason to believe is not a registered elector. MCL 168.733(1)(c).

E. Challenge an election procedure that is not being properly performed. MCL 168.733(1)(d).

F. Bring to an election inspector's attention any of the following: (1) improper handling of a ballot by an elector or election inspector; (2) a violation of a regulation made by the board of election inspectors with regard to the time in which an elector may remain in the polling place; (3) campaigning and fundraising being performed by an election inspector or other person covered by MCL 168.744; and/or (4) any other violation of election law or other prescribed election procedure. MCL 168.733(1)(e).

G. An election challenger may remain present during the canvass of votes and until the statement of returns is duly signed and made. MCL 168.733(1)(f).

H. An election challenger may examine without handling each ballot as it is being counted. MCL 168.733(1)(g).

I. Keep records of votes cast and other election procedures as the challenger desires. MCL 168.733(1)(h).

J. Observe the recording of absent voter ballots on voting machines. MCL 168.733(1)(i).

Because election challengers play such a vital role in our democracy, our Legislature has even made it a felony to threaten, intimidate, or impede the work of an election challenger. MCL 168.734; MCL 168.733(4). In fact, there are only two reasons given by statute to support the expulsion of a challenger from a polling place: (1) if there is evidence that the election challenger is drinking alcoholic beverages; or (2) is engaging in disorderly conduct. MCL 168.733(3).

Defendant Benson is the “chief election officer of the state” and has “supervisory control over local election officials in the performance of their duties under the provisions of the [Michigan Election Law].” MCL 168.21. In that role, it is her mandatory duty to "advise and direct local election officials as to the proper methods of conducting elections" so that the entirety of the provisions contained in the Michigan Election Law, MCL 168.1 et seq, are followed. Defendant Brater is Benson's subordinate and has been appointed Director of the Michigan Bureau of Elections. In that role, Brater has been tasked by Benson, under her supervision, to in fact supervise and administer the election law.

On October 16, 2020, the defendants issued a written directive to local election officials outlining procedures for the upcoming November 3, 2020 general election (hereinafter the “2020 General Election Directives”). A copy of that document is attached as Exhibit A. In relevant part, they have directed - or at the very least permitted - local election officials to condition the presence of election challengers upon wearing a face mask. And then even while wearing a mask, a local election official may mandate and expressly command that election challengers remain socially distanced from election workers. The directive adopts the definition of "social distancing" promulgated by Robert Gordon, Director of the Michigan Department of Health and Human Services, in his October 9, 2020 order. Social distancing therefore means that an election challenger must maintain at least 6 feet of distance from another person including a poll worker. A copy of Director Gordon's October 9, 2020 order is attached as Exhibit B.

These directives render it impossible for an election challenger to fully execute their duties and exercise their rights under Michigan Election Law. As a threshold matter, and as described above, an election challenger can only be denied his or her right to inspect and challenge if he or she is consuming alcohol or acting disorderly. MCL 168.733(3). The statute does not provide for expulsion or impediment based on any other factor. But this case does not merely advance a technical challenge to the defendants' directive. More critically, an election challenger is not able to discharge his or her critical duty and right from a distance of six feet.

Plaintiff Cushman is a duly appointed election challenger who intends to serve in that role during the November 3, 2020 general election. Additionally, Plaintiff Cushman served in that role during the August 2020 primary election. As described in the verified complaint,<sup>1</sup> Plaintiff Cushman states that it was and will be very difficult to impossible to exercise his full rights from a distance of at least six feet. By way of specific example, from his own personal experience he states:

- A. It was very hard to impossible to read names in the poll books.
- B. It was impossible to tell whether the high-speed tabulator operator cleared the results before re-running the stack of ballots because of a jam of one ballot.
- C. It was hard to see and hear the adjudication process.
- D. It was very hard to impossible to observe computer screens which contain election data.
- E. It was very hard to impossible to observe the checking of each ballot for seal and to observe whether envelopes were signed and dated.

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<sup>1</sup> A temporary restraining order may be granted based on facts shown by "a verified complaint." MCR 3.310(B)(1)(a).

And it is not just election challengers who recognize that they can't perform their statutory duties while socially distanced; local election officials know it too. Based on the defendants' directives, a local election official in the City of Detroit who was training poll workers rather gleefully describes how election challengers are to be impeded:

Election Official: They have to wear a mask and they have to stay six feet. That's important because they can come behind your table, but if you don't have six feet, they can't come back there. They cannot wear anything that signifies who they work for. It has to be on the card. So, they can't walk in with a party, or anything on, just like you can't on your mask, they can't either. Any questions?

Poll Worker: So if they're six feet back, they can't actually see.

Election Official: Exactly, unless they got really good vision or they brought their binoculars.

[Laughter]

Election Official: Six feet. That's the rule, right? And you are entitled to your six feet!

This training session was recorded and a complete copy is attached as Exhibit C. The quoted portion begins around 1:36:30. For ease of timely review, this recording is also accessible online at <https://youtu.be/kPFMOxdd3Bs> [this uploaded YouTube video is designated as unlisted and is only accessible by this direct link during the pendency of this case].

A court may, without advance written or oral notice to the defendants, issue a temporary restraining order. MCR 3.310(B).<sup>2</sup> It should do so when it clearly appears

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<sup>2</sup> Upon filing, a copy of the verified complaint and motion will be provided by email to Defendants Benson ([secretary@michigan.gov](mailto:secretary@michigan.gov)) and Brater ([BraterJ@michigan.gov](mailto:BraterJ@michigan.gov)) at their listed official email address at the State of Michigan Contact Directory, see <http://www.state.mi.us/dit/Default.aspx>.

from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant from the delay required to effect notice. MCR 3.310(B)(1)(a). TROs, as the name implies, are indeed temporary and can only remain effective 14 days absent good cause shown. MCR 3.310(B)(3). Upon issuance, the court must set either a hearing on the earliest possible date or order the parties to show cause why the TRO should not become a preliminary injunction. A party seeking issuance of a TRO must also describe the efforts made to give notice of the request. MCR 3.310(B)(1)(b). By signature upon this document, the undersigned counsel does certify that every effort will be made to serve a copy of the complaint and this motion upon the defendants immediately upon filing. Upon service, proof will be promptly filed.

Preliminary injunctions are, in essence, a longer-term TRO that remain in effect throughout the pendency of a case (or until further order). They are authorized by MCR 3.310. Unlike TROs, a preliminary injunction may not be issued until either after hearing or following an order to show cause why a preliminary injunction should indeed not issue. While injunctive relief is indeed an extraordinary remedy to be ordered only when justice so requires, it is appropriate when there is no adequate remedy at law and there is a real and imminent danger of irreparable injury. See *In re Esquire Products International, Inc*, 136 Mich App 492, 495; 357 NW2d 77 (1984). When considering a request for a preliminary injunction, a court should evaluate the following four factors:

1. the likelihood that the party seeking the injunction will prevail on the merits;

2. the danger that the party seeking the injunction will suffer irreparable injury if the injunction is not issued;
3. the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief; and
4. the harm to the public interest if the injunction is issued.

*Alliance for Mentally Ill v Department of Community Health*, 231 Mich App 647; 588 NW2d 133 (1998).

Applying this test, a preliminary injunction is both warranted and required. First, the plaintiffs have a strong if not certain chance of success on the merits. The 2020 General Election Directives as it applies to election challengers interferes with the duties and rights of said challengers as outlined in MCL 168.733. The Election Bureau Director and the Secretary “must apply the statute as written,” *Mich Ass’n of Home Builders v City of Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019), not what these defendants believe the statute “ought to” provide for, *Terrien v Zwit*, 467 Mich 56, 66; 648 NW2d 602 (2002).

Second, the plaintiffs and all those interested in maintaining transparent and fair elections will be irreparably harmed absent the issuance of an injunction. There is no remedy at law and no means to correct the election law violations prior to or after the election. See *Treasurer of the Comm. to Elect Gerald D. Lostracco v Fox*, 150 Mich App 617; 389 NW2d 446 (1986).

Third, it cannot be properly said that the defendants will be harmed by the issuance of an injunction. Defendant Benson and her designee Defendant Brater have

the statutorily imposed duty of ensuring that local election officials conduct the November 3, 2020 election in conformity with Michigan Election Law. As discussed, their current 2020 General Election Directives is violative of that law. Correcting that error while there is still time to do so - even if they are adverse to voluntarily doing so – is not harmful to them in any proper sense of the word.

Fourth, the real harm to the public is in not granting an injunction. The people of a democracy have no greater interest than ensuring that their elections are open, fair, transparent, and checked for accuracy. By denying them the services of election challengers, they are being robbed of a critical check on the system.

### **REQUEST FOR RELIEF**


Plaintiffs CARRA and CUSHMAN respectfully request that this Court grant their motion and order the following relief:

- A. enter a temporary restraining order requiring the defendants to both 1.) withdraw their violative 2020 General Election Directives (and any similar written and oral directive) with respect to the portions permitting local election official to prevent fulfillment of the duties and responsibilities of election challengers by and through the imposition of physical distancing requirements rendering such activities very difficult to impossible, and 2.) withdraw any further similar direction to local election officials.
  
- B. Order the defendants to show cause why a preliminary and/or permanent injunction should not issue containing the terms outlined in the preceding paragraph in addition to a command that the defendants issue a timely revised

directive(s) to local election officials in compliance with MCL 168.733 and MCL 168.734.

C. Order any other relief necessary to protect the rights of election challengers so as to allow them to assist in assuring the integrity of our election.

Date: October 22, 2020

  
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Plaintiffs' Attorneys

# EXHIBIT A



Michigan Department of State  
Bureau of Elections

November 3, 2020 Election  
Polling Place Safety and Accessibility

## Guidelines for Operating Safe and Accessible Polling Locations

The Michigan Bureau of Elections appreciates the efforts election officials are taking to operate polling places to ensure elections can continue during the ongoing COVID-19 pandemic. Elections procedures must be designed to maximize the safety of election workers and voters alike, while maintaining accessibility of the voting process. To help prepare election workers, local clerks, and voters to safely navigate election day, the Bureau has compiled this reference guide for conducting safe and accessible in-person elections. This guide is based on recommendations from the Center for Disease Control (CDC) and State of Michigan Directives related to COVID-19. **This manual will be updated as new guidance and requirements are issued by federal and state authorities. The Bureau of Elections is not a public health authority. Local election officials should regularly consult local and county health authorities in addition to directives from State of Michigan health authorities and the CDC.**

Please consider that your local jurisdiction may have different circumstances, but polling locations across the State should be providing a consistent election service that observes all basic health and safety guidelines outlined within this document. In the management of precinct operations, Michigan Election Law extends election workers full authority to maintain peace, regularity and order in the polling place. (MCL 168.678)

This guide will cover:

1. General Safety and Hygiene Guidelines for Voting Locations
2. Proper Use of PPE and Protective Supplies
3. Precinct Set-up and Planning
4. How to Manage Voters
5. FAQ for Election Workers
6. Appendix
  - a. Health Screening Questions for Election Workers
  - b. CDC Facemasks Poster
  - c. CDC Social Distancing Poster
  - d. CDC Symptoms of COVID-19 Poster
  - e. Sample Script for Election Workers on Masks and Social Distancing
  - f. Sign on Masks and Social Distancing
  - g. Accessibility Checklist
  - h. Vendor Equipment

## General Safety and Hygiene Guidelines for Voting Locations

### COVID-19

*The following description of COVID-19 is based on documents from public health authorities. The Bureau of Elections is not a public health authority.*

- COVID-19 is a respiratory illness caused by a novel coronavirus. It is easily spread from person to person and thought to be spread in various ways:
  - From person to person
  - Through close contact with one-another (within 6 feet)
  - During prolonged face to face interactions (longer than a few minutes)
  - Via respiratory droplets from infected persons
- It is thought to be most contagious when most symptomatic, though may be spread without symptoms.
- The World Health Organization officially declared a global Pandemic as of March 11, 2020.
- Vulnerable populations include older people and people with pre-existing medical conditions.

*Below are a set of election best practices for safety and hygiene. These are based primarily on recommendations from the Centers for Disease Control and Prevention (CDC). This list will be updated periodically:*

- All workers should stay at home if they exhibit any of the following conditions: fever, respiratory symptoms, or sickness.
- Wash hands often with soap and water for at least 20 seconds. If soap and water are not readily available, use an alcohol-based hand sanitizer that contains at least 60% alcohol.
- Research shows that masks can greatly reduce the chance of spreading COVID-19, especially given that approximately 40% of those who have COVID-19 may be asymptomatic.
- Practice routine cleaning of frequently touched surfaces: including tables, doorknobs, light switches, handles, desks, toilets, faucets, sinks, etc.
- Disinfect surfaces that may be contaminated with germs after cleaning. Follow the election manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, use of personal protective equipment).
- Follow manufacture guidance on cleaning voting equipment. If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to clean voting machine buttons.
- Ensure bathrooms at the polling station are supplied adequately with soap/water. It is advised to close restrooms to public use and for election worker use only, unless of emergency.

- Provide an alcohol-based hand sanitizer with at least 60% alcohol for use before or after using the voting machine or the final step in the voting process.
- Provide hygiene and safety equipment to workers.
- Observe social distancing – keep a distance of 6 feet or more whenever possible.

## Proper Use of Personal Protective Equipment (PPE) and Protective Supplies

These guidelines have been established according to the latest Recommendations for Election Polling Locations established by the U.S. Center for Disease Control (CDC) issued June 22, 2020, as well as information provided by the CDC to the National Association of Election Directors (NAED) on May 12, 2020.

Personal protective equipment is most effective when the wearer knows how to properly put on and remove the equipment. Clerks are encouraged to provide resources to election inspectors on how to properly utilize this equipment. Consult the links provided below for CDC guidelines, or state and county health department resources where available.

- How to wear masks: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-wear-cloth-face-coverings.html>
- When to wear gloves: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/gloves.html>
- Proper donning and removal of PPE (video, includes removal of medical PPE but also useful for removal of gloves and cloth face coverings) <https://www.cdc.gov/coronavirus/2019-ncov/hcp/using-ppe.html>

**Election Workers:** All workers are required to wear masks under [Michigan Department of Health and Human Services Emergency Order](#) of October 9, 2020 (and any subsequent orders replacing it), (hereafter “MDHHS Order”, unless they cannot medically tolerate a face covering or meet one of the other exceptions in the order. Depending on local employment requirements and guidance, workers may be required or encouraged to wear other equipment such as gloves when performing all or some of their duties. If workers wear gloves, they should wash their hands after removing their gloves. Each precinct will receive hand sanitizer, fifty (50) masks, one (1) box of gloves, and five (5) face shields.

**Voters:** Under MDHHS Order, voters are strongly encouraged to wear face coverings in the polling place, but they are not required to wear one if they are at a polling place for purposes of voting in an election. If possible, have disposable masks available for voters who do not have one, but are willing to use one. Alternative procedures to consider for voters refusing to use face coverings is provided in subsequent pages.

**Thermometers:** Thermometers, if available, may be used to check the temperature of election workers, but not voters. Do not screen voters for temperature or any other symptoms.

**Gloves:** Depending on local employment requirement and guidance, election workers may utilize gloves made available by the BOE throughout the day.

**Face Shields:** The use of face shields is an appropriate augmentation to cloth face coverings. It may also be used as an alternative if an individual is medically unable to tolerate a cloth face covering. The use of face shields may help further mitigate the exposure to any airborne particulate. If it is necessary to remove a mask to communicate with a voter with a disability (for example, a deaf voter), a face shield should be used.

**Tabletop protective shields / Sneeze guards:** Primarily used to provide separation between election workers and voters being processed.

**Disinfectant/Sanitizer:** Ensure you have disinfectant and hand sanitizer to properly clean and disinfect surfaces and provide hand sanitation throughout the day. Consult CDC and vendor guidelines on properly cleaning and disinfecting surfaces.

**Cleaning staff or volunteers:** Staff or volunteers do NOT need to be election inspectors to be in the polling place and assist in cleaning the polling place. Consult with local government counterparts, civic organizations, and others to obtain assistance in cleaning and sanitizing the polling place. BOE is exploring additional resources that may be available on the state level.

## Precinct Set-up / Operation

Proper precinct set-up will be vital in helping to improve the ability for voters and election workers to maintain safe distances and observe proper health and safety measures.

Please consider the following recommendations when operating your precinct:

**Disinfect Surfaces:** Keep all surfaces cleared of unnecessary clutter and clean/disinfect them regularly. Utilize anti-viral disinfectant to clean surfaces after use by each voter, including voting booths and all voter processing tables.

**Clean and Disinfect Voting Equipment:** Consult your equipment vendor or county clerk's offices for proper guidance on how to clean and disinfect all voting equipment. It is recommended that all equipment is cleaned and disinfected after use by each voter. If no vendor recommendations are available, utilize lightly wetted wipes of a disinfectant solution or solution of at least 70% alcohol. It is not advised to make equipment wet to the touch when disinfecting.

**Social Distancing:** You will have to plan your precinct layouts to accommodate for recommended social distancing. Where possible, ensure that all voter processing stations are spaced 6 feet apart, all voting booths allow for 6 feet of space between them, voters are organized 6 feet apart in line, and all workers are spaced a minimum of 6 feet apart. We realize some voting areas may not allow for this in all instances, but always use best judgement in trying to come as close as possible to keeping these distances. (See diagrams below for visuals and more details)

**Limit/Disinfect Shared Objects:** Limit shared items as much as possible (i.e. pens, ballot markings devices) and attempt to disinfect all items that are required to be shared.

**Ventilation and Space:** Allow for as much space between voting booths and processing tables. Ensure that rooms have proper ventilation, and that all ventilation systems are operational and functioning if available.

**Provide Regular Breaks to Workers:** It is important to limit worker's exposure as much as possible and allow time to wash and disinfect hands. Provide regular breaks and stagger shifts when possible to ensure workers have time away from crowds.

**Physical Barriers:** Utilize physical barriers, such as plexiglass dividers and plastic shields, to keep distances and separation between voters and election workers. Where available, provide for these barriers between voters at voting booths, or around tabulation equipment.

**Consider your Location:** You may share a polling location between multiple precincts, or your precinct may be located within a school or nursing home facility. Be mindful of your space when planning your precinct operations. Ensure that lines of voters do not disrupt or expose those within the location and ensure that voters do not exit the facility in ways that endanger possible at-risk populations.

**Consider Alternative Voting Options:** If possible, voters who are at higher risk, have difficulty waiting in long lines, are symptomatic, or not masked should be accommodated by any of the following options: drive through voting; curbside voting; additional voting locations outside the polling place; isolated or distant poll booths within the polling place. It may be feasible to place a sign outside of the precinct,

near the parking facilities, directing voters that meet these conditions have the option to call the local clerk to setup curbside voting accommodations.

- If curbside voting service is requested, two election workers of differing political parties will facilitate the following:
  - Bring Application to Vote to voter for completion and checking of photo ID or completion of Affidavit of Voter Not in Possession of Photo ID.
  - Return with completed Application to Vote to precinct and issue ballot through Electronic Pollbook using “Assisted Voter” button.
  - Return to voter with proper ballot concealed within secrecy sleeve.
  - Allow voter to complete the ballot.
  - Return with completed ballot in secrecy sleeve to the tabulator station.
  - Once tabulator accepts ballot as cast they will then return to the voter with confirmation of cast ballot (referencing public counter number) and “I Voted” sticker.
  - If the ballot is returned for any reason it must be returned to the voter in secrecy sleeve (without exposing votes) and advise voter of returned ballot and options to remedy or ballot reissuance.

**Challengers / Poll Watchers:** While challengers’ and poll watchers’ have their rights and responsibilities established under law, election workers can strictly enforce requirements that they observe proper social distancing. Challengers and poll watchers are subject to the requirement in MDDHS Order, to use face coverings in enclosed spaces (unless exempt due to health reasons).

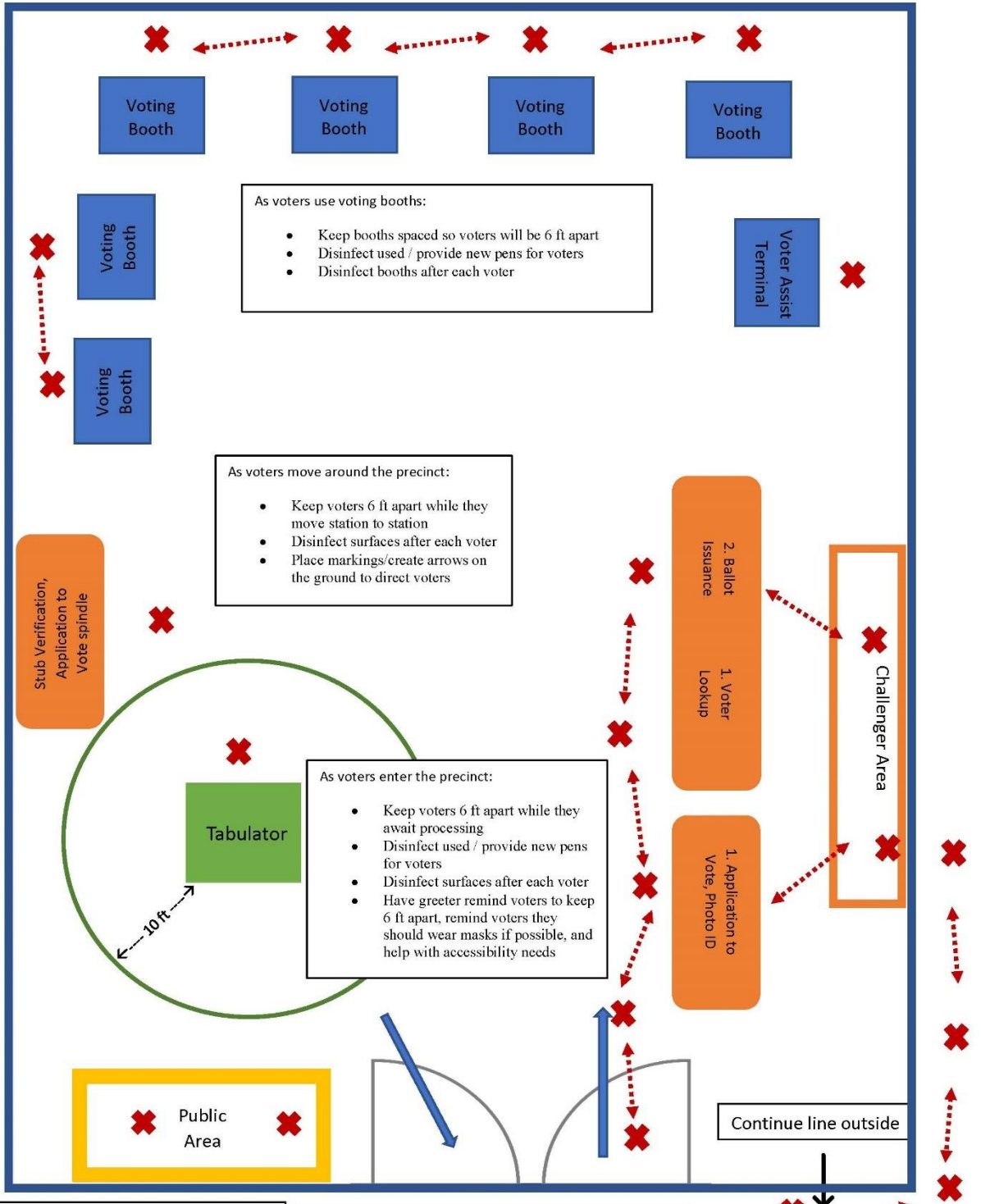
**Application to Vote/pens:** If possible, each voter should receive a pen to complete their application to vote. Pens can then be disposed of in a clearly marked receptacle (Used/Sanitized) and sanitized in preparation for use by the next voter.

**Secrecy sleeves:** Issue the voter a sanitized secrecy sleeve with their ballot. After they have tabulated their ballot, have an election worker sanitize and prepare the secrecy sleeve for use by the next voter. If using a paper-based secrecy sleeve, attempt to attach contact paper or laminate to provide for easy wiping.

See the diagrams below for recommended Precinct and Absentee Counting Board set-up orientations:

**Safe Precinct Setup** [Use with safety/accessibility guidelines]

Updated 7/6/2020  
MI Bureau of Elections



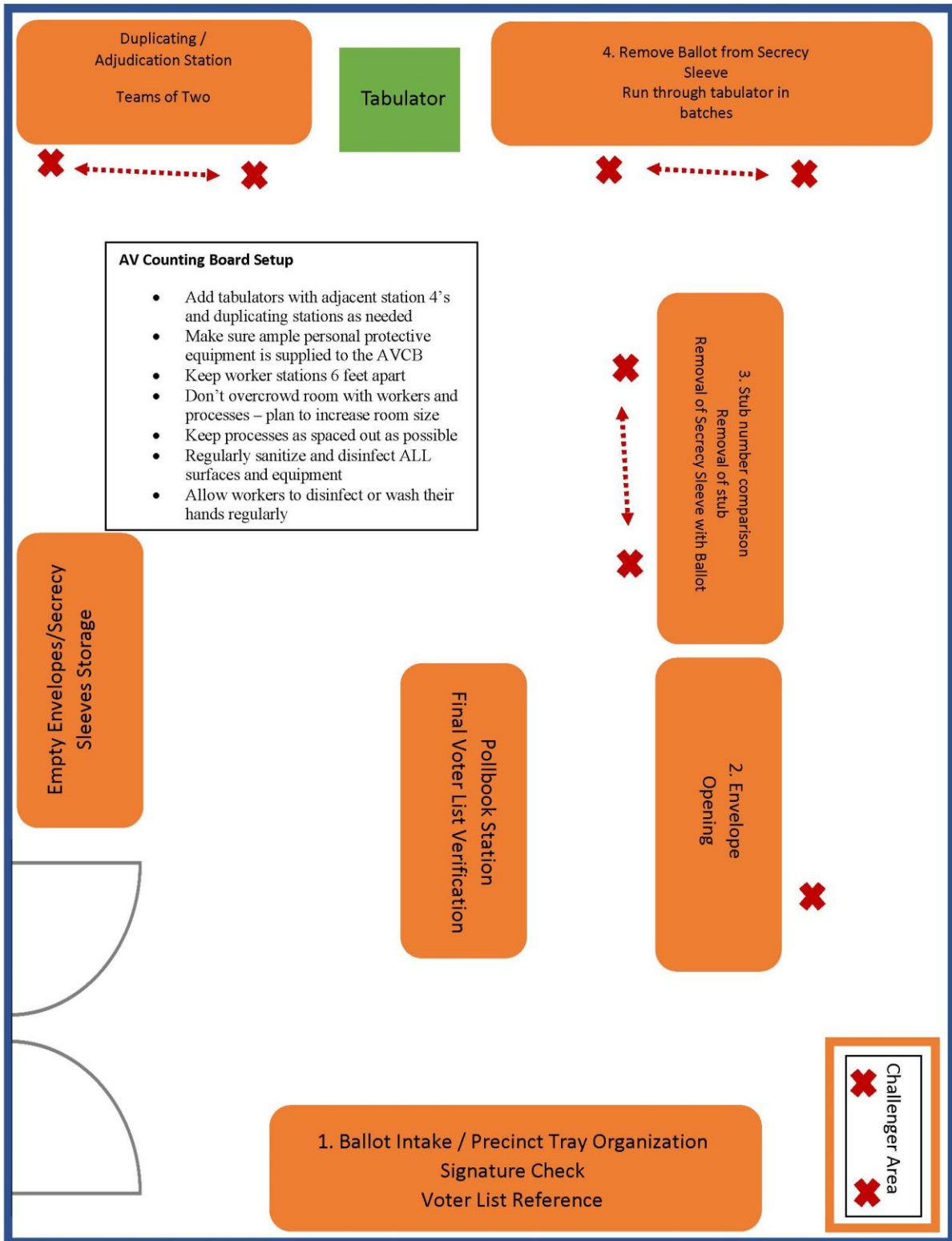
**\*\*Remember** – ensure that each station has sanitation equipment and supplies and hand sanitizer is available for public use at Stations 1 and 2.

✗ Mark spaces on the ground 6ft apart to allow for proper social distancing  
 ↔ Ensure that all stations/processes 6ft apart

*Arrange space and staff to minimize people in one area.*

Updated 7/6/2020  
MI Bureau of Elections


**Safe AVCB Setup [Use with safety guidelines]**




- AV Counting Board Setup**
- Add tabulators with adjacent station 4's and duplicating stations as needed
  - Make sure ample personal protective equipment is supplied to the AVCB
  - Keep worker stations 6 feet apart
  - Don't overcrowd room with workers and processes – plan to increase room size
  - Keep processes as spaced out as possible
  - Regularly sanitize and disinfect ALL surfaces and equipment
  - Allow workers to disinfect or wash their hands regularly

**\*\*Remember** – ensure that each station has sanitation equipment and supplies. All workers should maintain distance and utilize PPE

*Arrange space and staff to minimize number of people in one area.*

 Mark spaces on the ground 6ft apart to allow for proper social distancing

 Ensure that all stations and processes are placed 6ft apart

## How to Manage Voters

Properly preparing your precinct will help when managing your voters as they circulate through the polling location and cast their ballot. While we anticipate that the increase in absentee voters will reduce the number of voters arriving in person, you should still plan to manage lines and easing the process for voters.

See the recommendations below for managing the flow of voters:

### Manage Voter Flow into Voting Locations:

- Keep individuals, VATs, voting booths, and work stations at least 6 feet apart.
- Limit nonessential visitors to only those required or with a legal right to be on premises.
- Remind voters upon arrival to try to leave space between themselves and others.
- Limit number of voters inside voting location at same time as much as possible. Utilize outdoor line structuring if possible.
- Always limit contact between staff and voters to a few election workers if possible. Work behind sneeze guard/protective barrier. When assisting voters with VAT, maintain 6-foot distance.

**Advertise Wait Times and Provide Updates:** Lines will *appear* longer due to social distancing. It may be important to regularly update voters, both in line and who haven't arrived at the polls yet, on wait times and line status. Use municipal websites, official social media accounts, local media and news reporting to update voters on the status of the polling location and to remind them of social distancing and encouraged face covering guidance.

**Use a Greeter / Election Assistant:** The use of a Greeter or Election Assistant can help inform voters of suggested health and safety guidelines, encourage social distancing, remind voters of the suggested use of face coverings, and help ensure voters are in the correct place.

- Greeters / Line Assistants do not need to undergo election worker certification training, though it is advised that they are put under oath on file with the clerk's office acknowledging their involvement in official election work. (MCL 168.29)
- The use of the BOE Greeter App is recommended as a tool to look voters up and check their registration status / jurisdiction eligibility.
- These individuals can also be utilized in sanitizing surfaces after use by voters.

**Use of Floor Demarcations:** Minimize lines as much as possible, especially tightly spaced queues in small indoor spaces. Use floor decals and signs to remind voters to maintain social distancing while in line.

- Use markings to space voters out in line and indicate where voters should stand while waiting to be called to different voter processing stations.
- Mark where voters should stand while at the voting booth to ensure they maintain 6 feet of distance from others.
- Mark around the tabulator to ensure voters stay 6 feet apart.
- If you don't have signs or floor decals, using painter's tape to make X's is sufficient to mark off spaces.

**Share Information on Masks:** Under MDDHS Order, voters are strongly encouraged, but not required, to wear masks in the polling place. Unless an individual is voting or subject to one of the other exceptions,

MDDHS Order requires an individual to wear a face covering over his or her nose and mouth – such as a homemade mask, scarf, bandana, or handkerchief- when in any enclosed public space, unless the individual is unable medically to tolerate a face covering. The order also provides that it does not abridge protections guaranteed by the state or federal constitution.

Voters should be strongly encouraged to wear masks but cannot be denied the ability to vote because they are not wearing a mask. We recommend that polling places have extra masks available for voters who arrive without a mask. Each precinct is being provided with 50 masks by the Bureau of Elections; surplus masks can be offered to voters. If voters are not wearing masks, poll workers can encourage them to use curbside voting or direct them to voting areas that are at a greater distance from other locations within the polling place. However, voters cannot be denied the ability to vote because they are not wearing a mask. If a voter refuses to wear a mask and refuses voting alternatives such as curbside voting, election workers should facilitate the voter's ability to cast a ballot while preserving social distancing, rather than attempting to confront the voter. For example, the voter can be discretely directed to the voting station that is most isolated from other areas on the polling place

**Handling the Checking of Voter Photo ID:** Voters are required by state law to show photo ID if the voter has it, or to sign an affidavit if they do not. To prevent congestion at the EPB, this task should be completed as the application to vote is inspected. To complete this task, have a worker with a face shield take the photo ID or have the voter hold their photo ID up to the sneeze guard/plastic screen. A voter may be asked to briefly lower their masks during the ID check, but in most instances this will not be necessary.

**Checking in Voters at the EPB:** If the voter provides a driver's license as their photo ID, it can be utilized to locate them within the EPB - though this is not required. Consider using a hand scanner to scan the back of the ID through the sneeze guard to eliminate the handling shared items.

## Ensuring Accessible Voting in the Polling Place

Election workers should ensure that that polling place is accessible, that accessible entrances are clearly marked, and that Voter Assist Terminals (VATs) are properly set up. Prior to the start of voting, the polling place accessibility checklist in the appendix to this document should be completed

### How to set up the Voter Assist Terminal

The way you set up the VAT depends on which election equipment vendor your county uses.

*Placement of Equipment on Table.* The VAT should be placed on a table, with a chair, so that the equipment is accessible to voters with disabilities. Some VAT equipment comes with a vendor-provided table. If you don't have that, you can use an old AutoMARK table if you have one. If you don't have either, try to find a suitable table at an appropriate height that allows the voter to comfortably use the equipment while seated in a chair or wheelchair.

*Placement of equipment in accessible and private location.* Remember to place the VAT in an accessible location that provides privacy to the voter.

*Printer Setup.* Follow the specific printer setup instructions for your vendor equipment.

- ES&S Express Vote is single piece of equipment.
- Hart and Dominion have external printers that need to be connected.
- Make sure printers are connected to the device.
- The Hart Touch Writer requires a specific USB cord to be used to connect the device.

*Cleaning equipment.* The equipment should be cleaned after each use – including the screen, handheld controller, headphones, and any other devices used. Follow vendor-specific instructions for cleaning equipment.

### How to use the Voter Assist Terminal

Specific instructions for using the Voter Assist Terminal are available on the Michigan Secretary of State Website.

- [Dominion Voter Assist Terminal](#)
- [ES&S Voter Assist Terminal](#)
- [Hart Voter Assist Terminal](#)

All three vendor VATs are ballot marking devices that have accessible functionality that can assist the voters marking ballots which can then be printed and placed in absent voter envelopes or tabulators. These include the following features:

- Touch screen
- Headphones and hand-held accessible controllers
- Ability to zoom text and control volume

- An accessibility port that allows for other devices like Jelly-Switches and Sip-Puff to be used with the VAT
- If a visually impaired voter is using the VAT, the screen can be blacked out so others cannot see what is on the screen

Any voter who asks to use the VAT equipment can use it. A voter does not have to have a disability to use the VAT. Never deny or restrict access to the VAT.

## FAQ for Election Workers

Many election workers may have some common questions as we get closer to the elections; reference the below Frequently Asked Questions for some quick answers to common questions and concerns:

**Q: Do voters have to wear masks to be allowed to vote?**

A: No. MDDHS Order requires wearing masks in enclosed spaces unless the individual is unable medically to tolerate a face covering, but voters may not be denied the ability to cast ballots because they are not wearing a mask. You can strongly encourage the use of face coverings, remind voters of this recommendation as they wait in line, and offer alternative voting options such as curbside voting for voters not wearing masks.

**Q: Can we check voters' temperature?**

A: No, you cannot require voters to take a temperature check in order to vote. If permitted or mandated by your local employment policies, workers can be screened prior to or as they begin their shift.

**Q: Can we prohibit voters from entering the polling location if they refuse to use PPE or are displaying symptoms?**

A: No, voters cannot be turned away or prohibited from casting a ballot for any reason other than those explicitly explained in law (i.e., purposefully exposing their ballot, malicious disruption of the voting process). We encourage clerks to have procedures in place to accommodate voters who may not wish to comply with established health and safety standards, such as curbside voting and separate voting booths that may be thoroughly disinfected.

**Q: Can we use donated one-time-use pens from businesses?**

A: While disposable/one-time use pens are encouraged, utilizing private business provided pens may be perceived as advertising in the polling place and should be avoided if there is any written material on the pen.

**Q: Can we utilize curb-side voting?**

A: Yes. Refer to guidance provided within the Polling Place Safety and Accessibility document.

**Q: Can we utilize drive-through voting?**

A: Yes, as long as other voting options are available. Drive-through voting could potentially be an option if conducted appropriately, however the voting process must still be accessible for individuals without a vehicle and be a completely transparent process still accessible to challengers and poll watches.

**Q: Can we post notices in the polling locations, regarding masks and social distancing?**

A: Yes. Approved language will be supplied by BOE that can be utilized as extra instruction for voters.

**Q: Can we require voters to call-in to gain access to the polling location?**

A: No. The polling location needs to be open, barrier free, for all voters to access. Voters can be encouraged to call the clerk to receive curbside voting service.

**Q: Can we have security/local law enforcement onsite for voters not willing to comply with health and safety guidelines?**

A: No. While local law enforcement may be called upon to enforce certain election law offenses, they should not maintain a constant presence. Election workers maintain authority to maintain peace, regularity and order in the polling place. (MCL 168.678) You may contact law enforcement at your discretion if necessary to maintain peace, regularity and order in the polling place but police should not be stationed on site.

**Q: Can voters still bring their children into the polling place?**

A: Yes. Voters are still allowed to bring children and minors into the polling location, and they are allowed to accompany them into the voting booth. These individuals should still observe social distancing recommendations.

## **APPENDIX**

Please use the below forms and images to help provide guidance and implement new procedures on election day.

## **Examples of Acceptable Election Worker Screening Questions**

*Below are examples of questions that could be asked to screen election workers if permitted or required by local employment policies to potentially screen out election workers based on symptoms. These questions are not recommended or required to be asked by the Bureau of Elections. Consult your local health and legal authorities on employee screening policies.*

1. Have you come in contact with a person known or suspected to have COVID-19?
2. Have you had a fever in the last 24 hours?
3. Have you had a cough in the last 24 hours?
4. Have you had any difficulty breathing in the last 24 hours?
5. Have you had any unexplained body aches in the last 24 hours?
6. Have you taken any medications that would reduce a fever? (Tylenol, Ibuprofen, Acetaminophen)

# Facemask Do's and Don'ts

## For Healthcare Personnel

### When putting on a facemask

Clean your hands and put on your facemask so it fully covers your mouth and nose.



DO secure the elastic bands around your ears.



DO secure the ties at the middle of your head and the base of your head.

### When wearing a facemask, don't do the following:



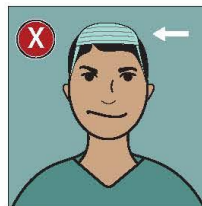
DON'T wear your facemask under your nose or mouth.



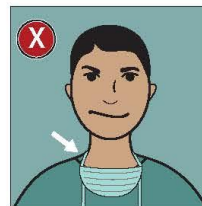
DON'T allow a strap to hang down. DON'T cross the straps.



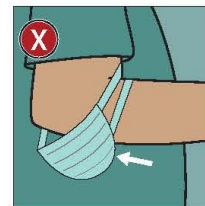
DON'T touch or adjust your facemask without cleaning your hands before and after.



DON'T wear your facemask on your head.



DON'T wear your facemask around your neck.



DON'T wear your facemask around your arm.

### When removing a facemask

Clean your hands and remove your facemask touching only the straps or ties.



DO leave the patient care area, then clean your hands with alcohol-based hand sanitizer or soap and water.



DO remove your facemask touching ONLY the straps or ties, throw it away\*, and clean your hands again.

\*If implementing limited-reuse: Facemasks should be carefully folded so that the outer surface is held inward and against itself to reduce contact with the outer surface during storage. Folded facemasks can be stored between uses in a clean, sealable paper bag or breathable container.



Additional information is available about how to safely put on and remove personal protective equipment, including facemasks:

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/using-ppe.html>.

[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

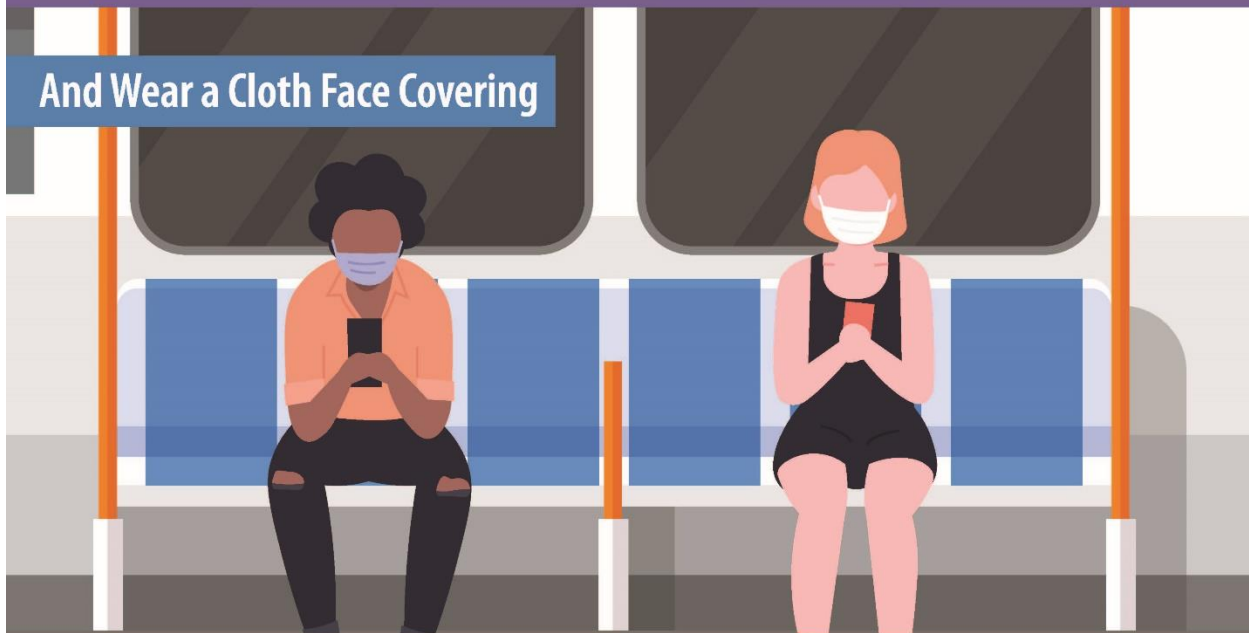
# Help Protect Yourself and Others from COVID-19

## Practice Social Distancing



Stay 6 feet (2 arm's lengths) from other people.

## And Wear a Cloth Face Covering



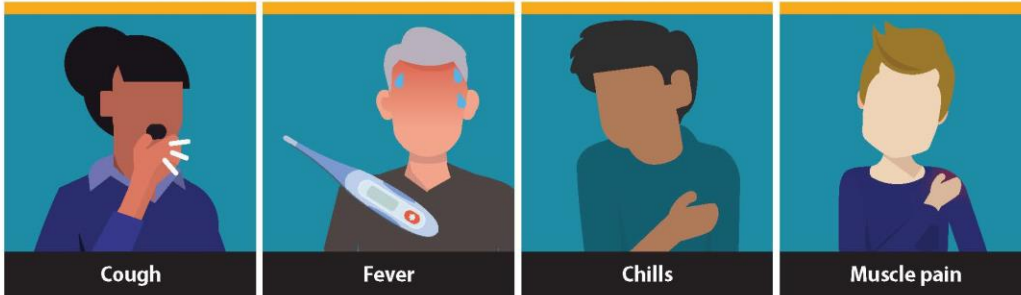
Be sure it covers your nose and mouth to help protect others.  
You could be infected and not have symptoms.



[cdc.gov/coronavirus](https://cdc.gov/coronavirus)

# Symptoms of Coronavirus (COVID-19)

Know the symptoms of COVID-19, which can include the following:



**Symptoms can range from mild to severe illness, and appear 2-14 days after you are exposed to the virus that causes COVID-19.**

**\*Seek medical care immediately if someone has emergency warning signs of COVID-19.**

- Trouble breathing
- Persistent pain or pressure in the chest
- New confusion
- Inability to wake or stay awake
- Bluish lips or face

This list is not all possible symptoms. Please call your medical provider for any other symptoms that are severe or concerning to you.



[cdc.gov/coronavirus](https://cdc.gov/coronavirus)

### **Sample Script for Election Workers Talking to Voters About Masks**

Please keep a distance of at least 6 feet from other people whenever possible. You have the right to vote whether or not you're wearing a mask, but you are strongly encouraged to wear a mask. Wearing a mask helps protect election workers and voters from the potential spread of COVID-19. If you don't have a mask but would like one, we may have extra masks available. If you are not wearing a mask or are experiencing flu-like symptoms, please consider voting outside the polling place using curbside voting.



**Voters are strongly encouraged to wear a mask or cloth face covering.** You have the right to vote if you are not wearing a mask. If you don't have a mask but would like one, please ask a poll worker. Extra masks may be available.

**Please stay at least 6 feet apart while waiting in line and within the polling place.** Follow poll worker instructions and marked signs to help maintain social distance. Please wash your hands or use hand sanitizer before and after voting.

**Curbside voting is available.** Please consider using curbside voting if you're not wearing a mask or have flu-like symptoms. Ask a poll worker about how to vote outside the polling place.

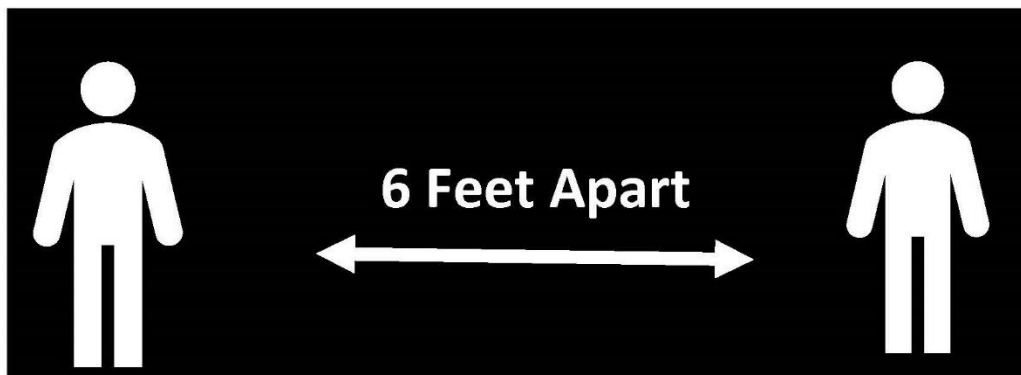


**Voters are strongly encouraged to wear a mask or cloth face covering.** You have the right to vote if you are not wearing a mask. If you don't have a mask but would like one, please ask a poll worker. Extra masks may be available.





**Please stay at least 6 feet apart while waiting in line and within the polling place.** Follow poll worker instructions and marked signs to help maintain social distance. Please wash your hands or use hand sanitizer before and after voting.





**Curbside voting is available.** Please consider using curbside voting if you're not wearing a mask or have flu-like symptoms. Ask a poll worker about how to vote outside the polling place.

**To vote curbside, call:**

(     ) \_\_\_\_\_ - \_\_\_\_\_

County: \_\_\_\_\_  
City: \_\_\_\_\_  
Precinct number: \_\_\_\_\_  
Type of facility: \_\_\_\_\_

**POLLING PLACE ACCESSIBILITY CHECKLIST**

*Instructions: Complete this accessibility checklist for the polling place before voting begins. If the answers to any questions are no, contact the clerk and correct the condition or improve it as much as possible before voting begins.*

- Apartment
- Business
- Church/Place of Worship
- Club/Lodge
- Other non-public building: \_\_\_\_\_
- Other public building: \_\_\_\_\_
- Library
- Private residence
- School
- Senior facility

Completed by: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

OUTSIDE	Y	N	DATA / MODIFICATIONS / NOTES
Does this location have on-site parking?			
Is there least one van-accessible parking spot (a spot with an adjacent, paved 4ft buffer zone for wheelchair ramp) within 200 feet of the entrance?			
How many total accessible ("handicapped") spots are there?			
Is the path from the accessible parking spots to the entrance firm, slip resistant, obstruction-free, stair-free, and at least 36in wide at all times?			
Is the path marked with tactile surface indicators to help visually-impaired people self-navigate to entrance?			
Do voters with mobility disabilities have to use a separate entrance? If so, is it clearly marked?			
Is there a place to set up a call button for voters with disabilities who require curbside voting?			

INSIDE	Y	N	DATA / MODIFICATIONS / NOTES
Are all entrance ways, doors at least 36in wide?			
Is there enough space for a path throughout the voting process that is firm, slip resistant, obstruction-free, stair-free, and 36in wide at all times?			
If applicable, is the elevator or wheelchair lift operational?			
Is there a working, accessible bathroom (a stall with a 36in door that opens out) that will be available for use on election day?			
Is there a working electrical outlet sufficiently close to the placement of the VAT?			

## **Vendor guidelines for cleaning voting equipment**

EAC (Includes Dominion: <https://www.essvote.com/faqs/covid-19-and-a-clean-voting-environment/>)

Hart <https://www.hartintercivic.com/covid-19-and-clean-equipment/>

ES&S: <https://www.essvote.com/faqs/covid-19-and-a-clean-voting-environment/>

# **EXHIBIT B**



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

ROBERT GORDON  
DIRECTOR

October 9, 2020

### Emergency Order Under MCL 333.2253 – Gathering Prohibition and Face Covering Order

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine for this disease. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic. On March 10, 2020, the Michigan Department of Health and Human Services (“MDHHS”) identified the first two presumptive-positive cases of COVID-19 in Michigan. Throughout the pandemic, Michigan has used a range of public health tools and guidance to contain the spread of COVID-19 and protect the public health, including via the Governor’s authority under the Emergency Management Act and the Emergency Powers of Governor Act. On Friday, October 2, 2020, the Michigan Supreme Court concluded that the Governor was not authorized to issue executive orders addressing COVID-19 after April 30, 2020.

Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove those numbers down dramatically, greatly reducing the loss of life. Although fewer than 100 new cases per day were reported in mid-June, cases have increased since that time, and recently nearly 1,000 new cases have been reported per day. To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and prevent spread in schools as we head into the influenza season, we must not permit the spread of COVID-19 to increase. This necessitates continued use of mitigation techniques to restrict gatherings and require procedures in order to reduce the spread of the virus. In the absence of the Governor’s executive orders, it is necessary to issue orders under the Public Health Code addressing these topics.

Michigan law imposes on MDHHS a duty to continually and diligently endeavor to “prevent disease, prolong life, and promote public health,” and gives the Department “general supervision of the interests of health and life of people of this state.” MCL 333.2221. MDHHS may “[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.” MCL 333.2226(d).

In recognition of the severe, widespread harm caused by epidemics, the Legislature has granted MDHHS specific authority, dating back a century, to address threats to the public health like that posed by COVID-19. MCL 333.2253(1) provides that “[i]f the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.” See also *In re Certified Questions*, Docket No. 161492 (Viviano, J., concurring in part and dissenting in part, at 20) (“[T]he 1919 law passed in the wake of the influenza epidemic and Governor Sleeper’s actions is still the law, albeit in slightly modified form.”); see also *id.* (McCormack, C.J., dissenting, at 12). Enforcing Michigan’s health laws, including preventing disease, prolonging life, and promoting public health, requires limitations on gatherings and the establishment of procedures to control the spread of COVID-19. This includes limiting the number, location, size, and type

of gatherings, and instituting mitigating measures like face coverings, to prevent ill or infected persons from infecting others.

Considering the above, and upon the advice of scientific and medical experts employed by MDHHS, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

**1. Definitions.**

- (a) “Child care organizations” means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101 of the Michigan Administrative Code).
- (b) “Close contact” means being within six feet of an individual for fifteen minutes or longer.
- (c) “Face covering” means a covering that covers at least the nose and mouth.
- (d) “Food service establishment” means that term as defined in section 1107(t) of the Food Law, 2000 PA 92, as amended, MCL 289.1107(t).
- (e) “Employee” means that term as defined in section 2 of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932, and also includes independent contractors.
- (f) “Gathering” means any occurrence where two or more persons from more than one household are present in a shared space.
- (g) “Organized sports” means competitive athletic activity requiring skill or physical prowess and organized by an institution or by an association that sets and enforces rules to ensure the physical health and safety of all participants (“sports organizer” or “sports organizers”).
- (h) “Region 6” means that region as defined in Attachment A to this order.
- (i) “Symptoms of COVID-19” means fever, an uncontrolled cough, new onset of shortness of breath, or at least two of the following not explained by a known medical or physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain.

**2. Attendance limitations at gatherings.**

- (a) The restrictions imposed by this section do not apply to the incidental gathering of persons in a shared space, including an airport, bus station, factory floor, food service establishment, shopping mall, public pool, or workplace.
- (b) Gatherings are permitted only as follows:
  - (1) Indoor gatherings of up to 10 persons occurring at a residence are permitted (face coverings are strongly recommended for such gatherings);

- (2) Indoor gatherings of up to 10 persons occurring at a non-residential venue are permitted provided each person at the gathering wears a face covering except as provided in section 6 of this order;
- (3) Indoor gatherings of more than 10 and up to 500 persons occurring at a non-residential venue are permitted only to the extent that the organizers and venue:
  - (A) In venues with fixed seating, limit attendance to 20% of seating capacity of the venue, provided however that gatherings at up to 25% of seating capacity are permitted in Region 6;
  - (B) In venues without fixed seating, limit attendance to 20 persons per 1,000 square feet in each occupied room, provided however that gatherings of up to 25 persons per 1,000 square feet in each occupied room are permitted in Region 6;
  - (C) Require that each person at the gathering wears a face covering except as provided in section 6 of this order.
- (4) Outdoor gatherings of up to 100 persons occurring at a residence are permitted (face coverings are strongly recommended for such gatherings);
- (5) Outdoor gatherings of up to 100 persons occurring at a non-residential venue are permitted provided that each person at the gathering wears a face covering except as provided in section 6 of this order;
- (6) Outdoor gatherings of more than 100 and up to 1,000 persons occurring at a non-residential venue with fixed seating are permitted only to the extent that the organizers and venue:
  - (A) In venues with fixed seating, limit attendance to 30% of seating capacity;
  - (B) In venues without fixed seating, limit attendance to 30 persons per 1,000 square feet, including within any distinct area within the event space;
  - (C) Require that each person at the gathering wear a face covering except as provided in section 6 of this order.
- (c) Gatherings are permitted for the following purposes notwithstanding the requirements of subsection (b) of this section:
  - (1) Voting or election-related activities at polling places;
  - (2) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
  - (3) Gatherings for the purpose of engaging in organized sports held in accordance with section 8 of this order;
  - (4) Students in a classroom setting or children in a daycare setting.
- (d) Organizers and venues hosting gatherings permitted under subsection (b) of this section must ensure that persons not part of the same household maintain six feet of distance from one another, including by designing the gathering to encourage and maintain distancing.

3. **Capacity restrictions.** In addition to the attendance limitations imposed by section 2 of this order, the following gathering restrictions apply:
- (a) Except in Region 6, a gathering at a retail store, library, or museum may not exceed 50% of total occupancy limit established by the State Fire Marshal or a local fire marshal.
  - (b) Gatherings at recreational sports and exercise facilities, such as gymnasiums, fitness centers, recreation centers, exercise studios, bowling centers, roller rinks, ice rinks, and trampoline parks are prohibited under any of the following circumstances:
    - (1) If they exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal;
    - (2) If there is less than six feet of distance between each workout station.
  - (c) Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, personal care services, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain six feet of distance (this system should include a policy that patients wait in their cars for their appointment to be called, if possible).
  - (d) Gatherings at professional sports and entertainment facilities, including arenas, cinemas, concert halls, performance venues, sporting venues, and stadiums and theaters, are prohibited unless the venue is designed to ensure that patrons not of the same household maintain six feet of distance (e.g. stagger group seating upon reservation, close off every other row, etc.).
  - (e) Gatherings at outdoor pools may not exceed 50% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
  - (f) Gatherings at indoor pools may not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
  - (g) Gatherings at non-tribal casinos may not exceed 15% of total occupancy limits established by the State Fire Marshal or a local fire marshal.

4. **Protection of workers.**

- (a) Gatherings of employees in the workplace are prohibited under any of the following circumstances:
  - (1) Except in Region 6, if not strictly necessary to perform job duties, provided however that, where gatherings are necessary, employees must still maintain six feet of distance from one another where practicable;
  - (2) If employees not otherwise required to wear face coverings cannot maintain six feet of distance from others;
  - (3) If employees not otherwise required to wear face coverings occupy the same indoor shared space, such as conference rooms, restrooms, and hallways;
- (b) Employees who are subject to a recommendation to isolate or quarantine consistent with CDC guidance; have been instructed to remain home by a health or public health professional; or who are awaiting a COVID-19 test or the results of a COVID-19 test after having symptoms of COVID-19, must not be present in a gathering at work until the

employee is advised by a health or public health professional that they may return to work, or the following conditions are met:

- (1) 24 hours have passed since the resolution of fever without the use of fever-reducing medications; and
  - (2) 10 days have passed since their symptoms first appeared or since they were administered a COVID-19 test that yielded the positive result, if applicable; and
  - (3) Other symptoms have improved.
- (c) Employers must not require workers to gather with other persons at work in violation of this order.
- (d) All businesses or operations that require their employees to gather with other persons for work must conduct a daily entry self-screening protocol for all employees or contractors entering the workplace, including, at a minimum, a questionnaire covering symptoms of COVID-19 and suspected or confirmed exposure to people with possible COVID-19.

#### **5. Face covering requirement at gatherings.**

- (a) A person responsible for a business, government office, school, or other operation, or an agent of such person, must not allow indoor gatherings of any kind unless they require individuals in such gatherings (including employees) to wear a face covering, subject to the exceptions in section 6 of this order. For schools in Region 6, the wearing of face coverings is strongly recommended, but not required.
- (b) A person responsible for a business, government office, school, or other operation, or an agent of such person, may not assume that someone who enters the operation without a face covering falls in one of the exceptions specified in section 6 of this order, including the exception for individuals who cannot medically tolerate a face covering. An individual's verbal representation that they are not wearing a face covering because they fall within a specified exception, however, may be accepted.
- (c) All child-care organizations must not permit gatherings unless face coverings are worn by:
- (1) All staff and all children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;
  - (2) All staff and all children 4 years and older when in indoor hallways and common areas. Face coverings should be encouraged for children 2 years and older when in indoor hallways; and
  - (3) All staff and all children 5 years and older when in classrooms, homes, cabins, or similar indoor settings. Face coverings should be encouraged for children 2 years and older when in these settings.
- (d) A person responsible for establishments open to the public, or an agent of such person must:
- (1) Post signs at entrances instructing customers of their legal obligation to wear a face covering when inside the store; and
  - (2) Post signs at entrances informing customers not to enter if they are or have recently been sick.

6. **Exceptions to face covering requirements.** Although a face covering is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face covering in sections 2, 5 and 6 of this order do not apply to individuals who:

- (a) Except as otherwise provided in section 5 of this order, are younger than 5 years old (and, per guidance from the CDC, children under the age of 2 should not wear a face covering);
- (b) Cannot medically tolerate a face covering;
- (c) Are eating or drinking while seated at a food service establishment;
- (d) Are exercising outdoors and able to consistently maintain six feet of distance from others;
- (e) Are swimming;
- (f) Are receiving a service for which temporary removal of the face covering is necessary;
- (g) Are entering a business or are receiving a service and are asked to temporarily remove a face covering for identification purposes;
- (h) Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;
- (i) Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face covering would seriously interfere in the performance of their public safety responsibilities;
- (j) Are at a polling place for purposes of voting in an election;
- (k) Are engaging in a religious service;
- (l) Are giving a speech for broadcast or to an audience, provided that the audience is at least six feet away from the speaker;

7. **Food service establishments.** Food service establishments must prohibit gatherings in all the following circumstances:

- (a) In indoor common areas in which people can congregate, dance, or otherwise mingle;
- (b) If there is less than six feet of distance between each party;
- (c) If they exceed 50% of normal seating capacity;
- (d) Anywhere alcoholic beverages are sold for consumption onsite, unless parties are seated and separated from one another by at least six feet, and do not intermingle.
- (e) If they involve any persons not seated at a table or at the bar top (customers must wait outside the food service establishment if table or bar top seating is unavailable);
- (f) Until the food service establishment has been deep cleaned consistent with Food and Drug Administration and CDC guidance, in the event that an employee of the food service establishment is confirmed positive for COVID-19 or shows symptoms of COVID-19 while at work.

8. **Organized sports.** Gatherings for the purpose of organized sports are permitted in accordance with this section. Organizers and venues of organized sports must ensure that:
- (a) Athletes wear a face covering (except when swimming) or consistently maintain six feet of social distance (except for occasional and fleeting moments) when training for, practicing for, or competing in an organized sport. For example, an athlete participating in a football, soccer, or volleyball game would not be able to consistently maintain six feet of distance, and therefore would need to wear a face covering. Sports organizers must ensure that athletes comply with this section for each organized sporting event.
  - (b) They consider the [guidance](#) issued by this Department regarding how a sport can be played safely.
  - (c) For organized sports competitions, sports organizers must ensure either that the live audience is limited to the guests of the athletes (requiring face coverings for non-athletes consistent with section 6), with each athlete designating up to two guests, or that the event complies with gathering requirements of section 2(b) in this order.
  - (d) For indoor organized sports, sports organizers must ensure that no concessions are sold at the venue.
  - (e) Notwithstanding any other provision of this order, professional sports leagues and teams, including professional athletes engaged in individual sports, may engage in professional sports operations, provided that:
    - (1) The activities are conducted under a COVID-19 safety plan that is consistent with any guidance from the CDC and this Department; and
    - (2) Participants maintain six feet of distance from one another to the extent compatible with the sporting activity.

9. **Contact Tracing.**

- (a) Gatherings are prohibited at the following facilities unless the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:
  - (1) All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal care services;
  - (2) Sports and entertainment facilities (except outdoor, unticketed sporting events), including arenas, cinemas, concert halls, performance venues, sporting venues, stadiums and theaters, as well as places of public amusement, such as amusement parks, arcades, bingo halls, bowling centers, skating rinks, and trampoline parks;
  - (3) Gymnasiums, fitness centers, recreation centers, exercise facilities, exercise studios, bowling centers, roller rinks, ice rinks, and like facilities.
- (b) All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact tracing.

## 10. Implementation.

- (a) Nothing in this order should be taken to modify, limit, or abridge protections provided by state or federal law for a person with a disability.
- (b) Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.
- (c) Law enforcement officers, as defined in the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, MCL 28.602(f), are deemed to be “department representatives” for purposes of enforcing this order, and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.
- (d) Neither a place of religious worship nor its owner is subject to penalty under this order for allowing religious worship at such place. No individual is subject to penalty under this order for engaging in religious worship at a place of religious worship.
- (e) Consistent with MCL 333.2261, violation of this order is a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200.00, or both.
- (f) The October 5, 2020 order entitled Gathering Prohibition and Mask Order is rescinded. Nothing in this order shall be construed to affect any prosecution based on conduct that occurred before the effective date of this order.
- (g) Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are punishable by a *civil* fine of up to \$1,000 for each violation or day that a violation continues.
- (h) If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.

This order is effective immediately, and remains in effect through October 30, 2020. Persons with suggestions and concerns are invited to submit their comments via email to [COVID19@michigan.gov](mailto:COVID19@michigan.gov).

Date: October 9, 2020



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Robert Gordon, Director  
Michigan Department of Health and Human Services

## Attachment A

**Region definitions.** For purposes of this order, Michigan comprises eight separate regions.

- (a) Region 1 includes the following counties: Monroe, Washtenaw, Livingston, Genesee, Lapeer, Saint Clair, Oakland, Macomb, and Wayne.
- (b) Region 2 includes the following counties: Mason, Lake, Osceola, Clare, Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Ottawa, Kent, and Ionia.
- (c) Region 3 includes the following counties: Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Berrien, Cass, Saint Joseph, and Branch.
- (d) Region 4 includes the following counties: Oscoda, Alcona, Ogemaw, Iosco, Gladwin, Arenac, Midland, Bay, Saginaw, Tuscola, Sanilac, and Huron.
- (e) Region 5 includes the following counties: Gratiot, Clinton, Shiawassee, Eaton, and Ingham.
- (f) Region 6 includes the following counties: Manistee, Wexford, Missaukee, Roscommon, Benzie, Grand Traverse, Kalkaska, Crawford, Leelanau, Antrim, Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, and Emmet.
- (g) Region 7 includes the following counties: Hillsdale, Lenawee, and Jackson.
- (h) Region 8 includes the following counties: Gogebic, Ontonagon, Houghton, Keweenaw, Iron, Baraga, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Mackinac, and Chippewa.

# EXHIBIT C