

EXECUTIVE ORDER NO. 239

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200, 210, 215, and 231, issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, August 27, 2020, September 25, 2020, October 24, 2020, November 22, 2020, December 21, 2020, January 19, 2021, February 17, 2021, March 17, 2021, and April 15, 2021, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey, I have issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187, Nos. 189-198, No. 200, Nos. 203-204, No. 207, and Nos. 210-211 (2020) and Nos. 214-216, Nos. 219-220, Nos. 222-223, No. 225,

Nos. 228-235 and Nos. 237-238 (2021), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) closed certain businesses, including recreational and entertainment businesses, and limited certain activities, including gatherings; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, because of the progress we had made in our fight against the COVID-19 pandemic in New Jersey, I was able to announce a series of reopening steps over the course of several months, including increasing the indoor and outdoor gathering limit; and

WHEREAS, indoor dining was permitted to resume on September 4, 2020, pursuant to Executive Order No. 183, with strict health and safety protocols in place, including limiting the number of patrons to 25 percent of the establishment's stated maximum capacity; and

WHEREAS, Executive Order No. 157 (2020) permitted certain recreation and entertainment businesses, to open their indoor premises subject to their compliance with specified health and safety protocols, including the same 25 percent capacity limitation; and

WHEREAS, Executive Order No. 157 (2020) permitted casinos and racetracks to resume operations conditioned on their compliance with requirements imposed by the Division of Gaming Enforcement and New Jersey Racing Commission; and

WHEREAS, Executive Order No. 181 (2020), permitted gyms, fitness centers, and health clubs to open their indoor spaces to the public at 25 percent of the facility's stated maximum capacity; and

WHEREAS, personal care service facilities were permitted to reopen their premises to the public pursuant to Paragraph 2 of Executive Order No. 157 (2020); and

WHEREAS, Executive Order No. 194 (2020) clarified that premises of indoor facilities providing personal care services are limited to 25 percent of the stated maximum capacity; and

WHEREAS, Executive Order No. 219 (2021) increased the indoor capacity for the aforementioned businesses from 25 percent to 35 percent; and

WHEREAS, Executive Order No. 230 (2021) again increased indoor capacity for certain businesses to 50 percent; and

WHEREAS, the current indoor gatherings limit is set at 25 persons and the current outdoor gatherings limit is set at 500 persons, with certain limited exceptions; and

WHEREAS, Executive Order No. 234 (2021) stated that all athletic practices and competitions conducted outdoors are subject to the 200-person limit, but that athletes, coaches, trainers, and other individuals necessary for the practice or competition are not included in the number of individuals present; and

WHEREAS, that Order also permitted certain catered private events to proceed at 35 percent of the capacity of the room in which they take place, up to 150 persons; and

WHEREAS, Executive Order No. 234 (2021) increased the capacity for larger venues to 30 percent outdoors, and lowered the threshold for a venue to be considered large to 2,500 fixed seats from 5,000; and

WHEREAS, Executive Order No. 238 (2021) most recently increased the capacity for larger entertainment and sports venues with 1,000 fixed seats or more to 50 percent outdoors, and increased the indoor capacity for catered events to 50 percent of the room in which they take place, up to 250 persons; and

WHEREAS, in the past year, we have gained critical knowledge regarding COVID-19, including a better understanding of the risks associated with certain activities, the activities that are most conducive to spread of the virus, and the safeguards that can be implemented to mitigate those risks; and

WHEREAS, this information, together with expanded access to testing, personal protective equipment, and other materials necessary to protect individuals from spread of the virus, as well as the ongoing COVID-19 Vaccination Plan ("Plan") discussed below, allows for certain activities to continue subject to more limited restrictions; and

WHEREAS, the number of hospitalized patients, patients in intensive care, and ventilators in use, and the spot positivity of COVID-19 tests have decreased significantly over the past few weeks; and

WHEREAS, given the decisive decreases in key statistics, such as the number of hospitalized patients in the State, and the continuation of the State's Plan, described more fully below, the State can take more significant steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, the Center for Disease Control and Prevention ("CDC") has maintained that physical distance of six feet or more is a critical tool in reducing risk in both indoor and outdoor environments, with limited exceptions for K-12 educational settings; and

WHEREAS, it is appropriate to eliminate capacity restrictions on indoor and outdoor businesses and instead utilize physical distancing requirements to limit occupancy in these settings; and

WHEREAS, indoor gatherings are more likely to involve a group of individuals present in a shared space for an extended period of time than businesses in the course of normal operations, and are more likely to involve individuals interacting with each other, so that it is necessary to maintain numerical restrictions on these gatherings in indoor settings at this time; and

WHEREAS, gatherings at private residences are typically more informal than events organized by a commercial entity, so that it is more difficult to enforce health and safety protocols; and

WHEREAS, certain gatherings, including religious services and political activities, are constitutionally protected activities, and restrictions on these gatherings should be less aggressive than restrictions on other gatherings; and

WHEREAS, legislative and judicial proceedings are particularly important to the functioning of the State, the latter of which implicates constitutional rights and foundational privileges, and so should also proceed with less restrictive limits; and

WHEREAS, addiction group counseling services are a critical social and mental health service that necessitate robust group participation, particularly during the COVID-19 pandemic, which has heightened feelings of stress and social isolation, and thus

can exceed the general gathering limit while following health and safety protocols; and

WHEREAS, certain events such as wedding ceremonies, funerals, and memorial services, which typically happen once in a lifetime, provide benefits to the well-being of the participants such that they can be treated differently from casual social gatherings such as house parties, which occur on a more frequent basis and typically do not present the same compelling need; and

WHEREAS, catered celebrations are structured events with an established list of attendees that would facilitate contact tracing efforts, and involve an overseeing entity capable of overseeing attendee and staff compliance with applicable health and safety protocols, so that all such events can operate at the same capacity as weddings, funerals, and similar events with a higher indoor capacity limitation; and

WHEREAS, the CDC has continued to emphasize that outdoor environments pose a lesser risk of transmission of the virus than indoor environments, so that New Jersey can entirely remove the outdoor gathering limit so long as social distancing and other protective measures remain in place; and

WHEREAS, sports and entertainment venues with a large maximum capacity can accommodate a greater number of individuals at a gathering while still ensuring that a minimum of six feet of distance is maintained between patrons or groups of patrons at all times, including at entrances and egresses to the facility; and

WHEREAS, as part of the State's response to COVID-19, DOH has created a comprehensive Plan to manage the receipt, administration, and tracking of the vaccines developed to inoculate the State's residents and workforce against COVID-19; and

WHEREAS, the State has thus far administered nearly 8 million doses of COVID-19 vaccines to individuals that live, work, and are educated in New Jersey and as of April 19, 2021, has deemed all individuals ages 16 and older as eligible to receive the vaccine; and

WHEREAS, the process of vaccinating the population to levels sufficient to establish community immunity is expected to take several months; and

WHEREAS, while New Jersey continues to vaccinate large numbers of individuals each day, it is still appropriate to maintain mitigation protocols, including overall limits on capacity in establishments open to the public, to ensure spread is limited while dissemination of the vaccine continues; and

WHEREAS, it is critical that individuals continue to follow social distancing, masking, and other infection control protocols while vaccine administration is ongoing in the State; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:24 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Restaurants, cafeterias, dining establishments, including private, non-profit clubs, and food courts, with or without a liquor license, bars, and all other holders of a liquor license with retail consumption privileges, collectively referred

to as "food or beverage establishments," that are permitted to offer in-person service in indoor areas are not subject to any percentage-based capacity limit but shall limit capacity to a number that ensures all patrons can remain six feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table. Food and beverage establishments must continue to ensure that tables in indoor areas where individuals or groups are seated are six feet apart in all directions from any other table or seat. Patrons at indoor bar areas may be seated closer than six feet to each other if they arrived as part of the same group, but that group must be six feet apart from other patrons or groups. Where six feet of distance is not possible, establishments must erect barriers between tables or at the bar pursuant to DOH's "Health and Safety Standards for Indoor Dining." Paragraph 10 of Executive Order No. 230 (2021) is hereby superseded to the extent that it conflicts with the provisions of this Paragraph.

2. The following businesses that are open to the public are not subject to any percentage-based capacity limit but shall limit occupancy to a number that ensures that all patrons or groups of patrons entering the facility together can remain six feet apart:

- a. Indoor premises of retail establishments;
- b. Indoor premises of personal care services authorized to reopen their indoor facilities to the public pursuant to Paragraph 2 of Executive Order No. 157 (2020);
- c. Indoor premises of "health clubs," as defined by N.J.S.A. 56:8-39, which include gyms and fitness centers, as well as amusement and water parks, authorized to reopen their indoor facilities to the

public pursuant to Paragraph 1 of Executive Order No. 181 (2020);

- d. Indoor and outdoor premises of recreational and entertainment businesses that were permitted to reopen their indoor facilities to the public pursuant to Paragraph 7 of Executive Order No. 157 (2020), including amusement and water parks; and
- e. Indoor premises of casinos, including casino gaming floors and retail sports wagering lounges.

Paragraph 7 of Executive Order No. 157 (2020) and Paragraphs 11 - 14 of Executive Order No. 230 (2021) are hereby superseded to the extent that they conflict with the provisions of this Paragraph.

3. The number of individuals at indoor social gatherings at private residences or social gatherings in a public space that are not overseen by an operating entity, and that are not religious services or celebrations, political activities, wedding ceremonies, funerals, or memorial services, shall be limited to 50 persons per room. For purposes of this Order, any private residence or residential unit shall be treated as a single "room." The numerical limits on indoor gatherings in Executive Order No. 230 (2021) are hereby superseded.

4. The number of individuals at indoor gatherings that are political activities, wedding ceremonies, wedding receptions, funerals, memorial services, or Alcoholics Anonymous meeting, Narcotics Anonymous meeting, or similar meetings of an addiction support group shall not exceed 250 persons per room, excluding staff of the gathering venue. For purposes of this Order, any private residence or residential unit shall be treated as a single "room." Paragraphs 2 and 4 of Executive Order No. 230 (2021) are hereby superseded to the extent that they conflict with the

provisions of this Order. Legislative proceedings of State, county, or local government, including local Boards of Education, and State and local judicial proceedings are not subject to the capacity limits on gatherings in this or any other applicable Executive Order.

5. The number of individuals at any commercial gathering and other gatherings hosted in a public space by an operating entity, including, but not limited to, trade expositions, conferences, and events hosted by senior centers, shall not exceed 250 persons per room, excluding staff of the gathering venue.

6. The number of individuals at indoor gatherings that are religious services or celebrations, including wedding ceremonies, funerals, and memorial services that involve religious services, are not subject to any percentage-based capacity limit but shall limit occupancy in indoor areas to a number that ensures that all individuals or groups can remain six feet apart. Paragraph 3 of Executive Order No. 230 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

7. Entertainment centers where performances are viewed or given, including movie theaters, performing arts centers, and other concert venues, that have opened their indoor spaces to the public, must limit the number of patrons in any indoor room where a performance is viewed or given to 250 persons, excluding the entertainment center's employees. The other requirements outlined in Paragraph 2 of Executive Order No. 183 (2020) continue to apply. Paragraph 6 of Executive Order No. 230 (2021) is hereby superseded to the extent that it conflicts with the provisions of this Paragraph.

8. Recreational or entertainment businesses, and restaurants, cafeterias, dining establishments, food courts, bars, and public and private social clubs where events take place that utilize a licensed caterer or where such venue holds a license to prepare and serve food to the public, must limit the number of patrons participating in any indoor celebrations or similar private catered events to 250 persons per room, excluding the venue's staff. Paragraph 7 of Executive Order No. 238 (2021) is hereby superseded to the extent that it conflicts with the provisions of this Order.

9. No indoor gathering may take place in the State, whether on public or private property, unless it adheres to all of the following rules:

- a. All attendees at the gathering must wear face coverings at all times except where doing so would inhibit the individual's health, where the individual is under two years of age, or when wearing a face covering is impracticable, such as when an individual is eating, drinking, or smoking; and
- b. All attendees at the gathering are required to be six feet apart from other attendees at all times, excluding those with whom an attendee has a close personal relationship, such as immediate family members, caretakers, household members, or romantic partners, as well as excluding a limited number of individuals organizing or maintaining the gathering.

10. All athletic practices and competitions, including professional, collegiate, and non-collegiate and non-professional, that are conducted indoors are subject to the indoor gathering limit of 250 persons. Athletes, coaches, referees, and trainers, and other individuals who are necessary for the collegiate sporting event are not included in the number of individuals present at a gathering for purposes of the limits on gatherings. The number of individuals present inside a room where an indoor collegiate athletic practice or competition is taking place may not exceed 250 persons, except that individuals necessary for the sporting event may exceed the 250-person limit. Paragraphs 17 and 19 of Executive Order No. 230 (2021) and Administrative Order No. 2021-01 are hereby superseded to the extent that they conflict with the provisions of this Paragraph.

11. Sports and entertainment venues, including concert venues and stadiums, with fixed seating capacity of 1,000 or greater, that have opened their indoor spaces to the public may permit a number of patrons and/or members of the public totaling up to 30 percent of the stated maximum capacity of any room where such event is held. Such venues shall continue to follow all applicable requirements in any other Executive Order, Administrative Order, and/or Executive Directive, including, but not limited to, the requirements regarding mask wearing in Executive Order No. 192 (2020). All attendees at the event are required to be six feet apart from other attendees at all times, except that individuals who purchase or reserve tickets together may be seated together but must be six feet away from all other groups or individuals in all directions. This paragraph shall apply to events, including collegiate, youth, and professional sports competitions, that take place in sports and entertainment

venues with a fixed seating capacity of 1,000 persons or greater. Paragraph 8 of Executive Order No. 234 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

12. Paragraph 1 of Executive Order No. 238 (2021) regarding the numerical limit on outdoor gatherings is hereby rescinded. No outdoor gathering may take place in the State, whether on public or private property, unless it adheres to all of the following rules:

- a. All attendees at the gathering are required to be six feet apart from other attendees, excluding those with whom an attendee has a close personal relationship, such as immediate family members, caretakers, household members, or romantic partners, as well as excluding a limited number of individuals organizing or maintaining the gathering;
- b. Where the outdoor gathering is a religious service or political activity, such as a protest, the gathering is not required to comply with Paragraph 12(a) of this Order; and
- c. All individuals at the gathering should wear face coverings at all times where other social distancing measures are difficult to maintain, in accordance with CDC recommendations, except where doing so would inhibit the individual's health or where the individual is under two years of age, and all attendees must wear such face coverings where required by another Executive Order.

13. Outdoor entertainment centers where performances are viewed or given, including movie theaters, performing arts centers, and other concert venues, must limit the number of patrons in any outdoor area where a performance is viewed or given to a number that ensures that all individuals or groups can remain six feet apart. Paragraph 2 of Executive Order No. 238 (2021) is hereby superseded to the extent that it conflicts with the provisions of this Order.

14. Recreational or entertainment businesses, and restaurants, cafeterias, dining establishments, food courts, bars, and public and private social clubs where events take place that utilize a licensed caterer or where such venue holds a license to prepare and serve food to the public, must limit the number of patrons participating in any outdoor celebration or similar private catered event to a number that ensures that individuals or groups can remain six feet apart. Paragraph 3 of Executive Order No. 238 (2021) is hereby superseded to the extent that it conflicts with the provisions of this Order.

15. All athletic practices and competitions, including professional, collegiate, and non-collegiate and non-professional, that are conducted outdoors must limit the number of attendees who are not athletes, coaches, referees, trainers, and other individuals who are necessary for the practice or competition to a number that ensures the individuals or groups can remain six feet apart. Paragraph 4 of Executive Order No. 238 (2021) and Administrative Order No. 2020-22 are hereby superseded to the extent that they conflict with the provisions of this Order.

16. Sports and entertainment venues, including concert venues and stadiums, with fixed seating capacity of 1,000 or greater, that have opened their outdoor spaces to the public must

limit attendance to a number that ensures the attendees or groups of attendees can remain six feet apart. Such venues shall continue to follow all applicable requirements in any other Executive Order, Administrative Order, and/or Executive Directive, including, but not limited to, the requirements regarding mask wearing in Executive Order No. 192 (2020). All attendees at the event are required to be six feet apart from other attendees at all times, except that individuals who purchase or reserve tickets together may be seated together, but must be six feet away from all other groups or individuals in all directions. This paragraph shall apply to events, including sports competitions and performances, that take place in sports and entertainment venues with a fixed seating capacity of 1,000 persons or greater. Paragraph 5 of Executive Order No. 238 (2021) is superseded to the extent that it conflicts with the provisions of this Order.

17. Paragraphs 5 and 6 of Executive Order No. 194 (2020) are hereby rescinded, and indoor interstate youth sports competitions, as defined in that Order, are permitted to resume subject to the limitations on capacity for such indoor competitions and the DOH's "Guidance for Sports Activities."

18. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

19. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of

any nature whatsoever, to cooperate fully in all matters concerning this Order.

20. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement, except as otherwise provided in Executive Order No. 195 (2020).

21. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

22. This Order shall take effect at 6:00 a.m. on Wednesday, May 19, 2021, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
12th day of May,
Two Thousand and Twenty-one,
and of the Independence of
the United States, the Two
Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor