



**TWELFTH SUPPLEMENTAL EMERGENCY REGULATION GOVERNING
THE CONTROL AND PREVENTION OF COVID-19
(INDOOR DINING AND THEATER)**

WHEREAS, the Pennsylvania Disease Control and Prevention Act of 1955, 1956, April 23, P.L. 1510, 35 P.S. § 52.1 *et seq.*, (the DCPA) and Chapter 6-200 of The Philadelphia Code authorize the Board of Health to establish lists of reportable diseases and conditions, and further provide that the Board and the Department of Public Health are responsible for implementing appropriate disease control and prevention measures in order to limit the spread of disease in an epidemic emergency; and

WHEREAS, Sections 6-205 and 6-206 of The Philadelphia Code provide that the Department of Public Health may by order forbid the congregation of persons when necessary to prevent the further spread of a communicable and quarantinable disease and may take such other measures as are necessary to prevent the spread of such disease; and

WHEREAS, on March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, or global epidemic; and

WHEREAS, on March 12, 2020, the City's Board of Health by emergency regulation added COVID-19 to the City's list of reportable and quarantinable diseases; and

WHEREAS, beginning on March 17, 2020, the Mayor and the Commissioner of Health as well as the Governor of the Commonwealth of Pennsylvania issued a series of orders ordering certain businesses to close across the City and Commonwealth, respectively, and requiring individuals to remain at home with certain exceptions.

WHEREAS, on March 26, 2020, the Board of Health approved an Emergency Regulation Governing the Control and Prevention of COVID-19 (effective March 27, 2020), which adopted the Mayor and the Health Commissioner's March 22, 2020 Prohibition on Non-Essential Business and expressly authorized the Health Commissioner to issue such additional orders as the Commissioner determines are necessary or appropriate control or prevention measures to limit the spread of COVID-19; and

WHEREAS, on April 15, 2020, the Secretary of Health of the Commonwealth of Pennsylvania issued an Order requiring comprehensive safety measures to be employed in all businesses maintaining physical operations, including standards for cleaning and disinfecting high-touch areas, establishing protocols for businesses exposed to probable or confirmed cases of

COVID-19, limiting the numbers of employees on the premises and ensuring access to protective and sanitary equipment and supplies; and

WHEREAS, on May 29, 2020, the Mayor and Health Commissioner issued an “Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They Are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19)”; and

WHEREAS, the Mayor and Health Commissioner, in recognition that cautious reopening with constant review of potential impacts on public health is in the best interests of Philadelphia, have issued a series of Orders gradually easing restrictions with respect to, *inter alia*, outdoor dining, use of pools, personal grooming services, retail businesses, outdoor sports, and other activities; and

WHEREAS, while daily COVID-19 case counts have fallen significantly from their peak earlier in the year, risk of community spread of COVID-19 remains, necessitating continued vigilance; and

WHEREAS, the Mayor and Health Commissioner have determined that, under applicable safety requirements and guidelines, certain additional activities are within the range of acceptable activities that may resume; and

WHEREAS, to that end, the Mayor and Health Commissioner issued on September 8, 2020 a “Third Amendment Regarding Additional Permitted Activities to the Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They Are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19), Further Changes to Modified Green Phase” (the “September 8, 2020 Order”) which permitted the resumption of indoor on-site dining activities and the operation of indoor theater and performance venues, in each case subject to applicable restrictions, guidance, and requirements; and

WHEREAS, the Board of Health agrees with these determinations, and recognizes that the situation involving the COVID-19 pandemic is fast moving and often requires changes to control measures both to impose additional measures and to roll back required measures when appropriate; and

WHEREAS, consistent with the foregoing, the Board hereby promulgates the below Twelfth Supplemental Emergency Regulation Governing the Control and Prevention of COVID-19 (Indoor Dining and Theater) to adopt the September 8, 2020 Order, as a temporary regulation effective upon delivery to the Department of Records, while the remaining procedures and formalities of Section 8-407 are followed to promulgate the amendment as a permanent regulation;

NOW, THEREFORE, the Board of Health hereby adopts the following regulation, effective immediately:

1. This Emergency Regulation supplements the Philadelphia Department of Public Health's *Regulations Governing the Control of Communicable and Non-communicable Diseases and Conditions* and its other emergency regulations governing the control and prevention of COVID-19.

2. The Board hereby fully adopts the September 8, 2020 "Third Amendment Regarding Additional Permitted Activities to the Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians That They Are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19), Further Changes to Modified Green Phase," which permitted the resumption of indoor on-site dining activities and the operation of indoor theater and performance venues, in each case subject to applicable restrictions, guidance, and requirements, and which is attached hereto as Attachment A.

3. This Emergency Regulation shall be effective upon filing with the Department of Records and remain effective until expressly superseded or repealed by the Board at the conclusion of the COVID-19 emergency.

Attachment A



CITY OF PHILADELPHIA
OFFICE OF THE MAYOR
DEPARTMENT OF PUBLIC HEALTH

THIRD AMENDMENT REGARDING
ADDITIONAL PERMITTED ACTIVITIES TO THE

EMERGENCY ORDER ALLOWING LIMITED REOPENING OF BUSINESSES,
ADVISING PHILADELPHIANS THAT THEY ARE SAFER AT HOME, AND
ESTABLISHING SAFETY MEASURES TO PREVENT THE SPREAD OF
2019 NOVEL CORONAVIRUS (COVID-19)

FURTHER CHANGES TO
MODIFIED GREEN PHASE

WHEREAS, the 2019 novel coronavirus disease, COVID-19, can cause severe disease and death, particularly in older adult and other vulnerable populations; and

WHEREAS, on March 6, 2020, in response to the emerging spread of COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic, or global epidemic; and

WHEREAS, on March 12, 2020, the City's Board of Health by emergency regulation added COVID-19 to the City's list of reportable and quarantinable diseases; and

WHEREAS, on March 17, 2020, the Mayor and the Health Commissioner jointly issued an Emergency Order prohibiting operation of non-essential businesses to prevent the spread of COVID-19; and

WHEREAS, on March 19, 2020, the Governor and the Secretary of the Pennsylvania Department of Health issued orders requiring all non-life-sustaining businesses to close across the Commonwealth, to help stop the spread of the virus and the Governor and Secretary updated the aforementioned orders and list of life-sustaining and non-life sustaining businesses on March 20, 2020 and multiple times thereafter; and

WHEREAS, on March 22, 2020, the Mayor and the Health Commissioner jointly issued an Emergency Order Temporarily Prohibiting Operation of Non-Essential Businesses and Congregation of Persons to Prevent the Spread of COVID-19, which superseded the Emergency Order issued by the Mayor and Health Commissioner dated March 17, 2020, and which was approved as a regulation of the City by the Board of Health on March 26, 2020, which expressly authorized the Health Commissioner to issue such additional orders as the Commissioner determines are necessary or appropriate to limit the spread of COVID-19; and

WHEREAS, on April 15, 2020, the Secretary of Health of the Commonwealth of Pennsylvania issued an Order “Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations,” which requires comprehensive safety measures to be employed in all businesses maintaining physical operations, including standards for cleaning and disinfecting high-touch areas, establishing protocols for businesses exposed to probable or confirmed cases of COVID-19, limiting the numbers of employees on the premises and ensuring access to protective and sanitary equipment and supplies; and

WHEREAS, on April 23, 2020, the Governor announced a *Plan for Pennsylvania* that set residents and businesses on a path to recovery from the COVID-19 pandemic while continuing to protect life from the dangers of this deadly virus, which included, *inter alia*, Red, Yellow, and Green Phases of reopening; and

WHEREAS, the Mayor and Health Commissioner determined on May 29, 2020, that Philadelphia could move to the Yellow Phase with additional, Philadelphia-specific restrictions that would apply in addition to restrictions established by the Governor, including limitations on outdoor dining, and executed an Order entitled “Emergency Order Allowing Limited Reopening of Businesses, Advising Philadelphians that They are Safer at Home, and Establishing Safety Measures to Prevent the Spread of 2019 Novel Coronavirus (COVID-19): Yellow Phase of Reopening” (“Yellow Phase Order”) to implement that decision, effective on the date determined by the Governor that the City of Philadelphia should move into the Yellow Phase, expected to be June 5, 2020; and

WHEREAS, on or around May 28, 2020, the City’s Department of Public Health released *Safe Mode: Guidelines for Safer Operations During the COVID-19 Pandemic*, which provides specific reopening guidance for specific types of facilities that may be able to open or expand operations during the Yellow Phase; and

WHEREAS, on June 4, 2020, the Governor and Secretary of Health’s amended their respective orders for Limited Opening of Businesses, Lifting of Stay at Home Requirements, and Continued Aggressive Mitigation Efforts, to apply to Philadelphia effective June 5th,

which generally moved the City into the Yellow Phase pursuant to the Governor's guidelines; and

WHEREAS, the Mayor and Health Commissioner, authorized outdoor dining to recommence effective June 12, 2020, subject to certain restrictions and guidance; and

WHEREAS, since that time, the Mayor and Health Commissioner, in recognition that cautious reopening with constant review of potential impacts on public health is in the best interests of Philadelphia, have issued a series of Orders gradually easing restrictions with respect to, *inter alia*, use of pools, personal grooming services, retail businesses, outdoor sports and other activities; and

WHEREAS, although the Governor announced that Philadelphia was authorized to join other southeastern Pennsylvania counties in moving to the Green Phase of reopening on June 26, 2020, the Mayor and Health Commissioner, in consideration of public health data and the noted effects on public health in June and July in states that have hastily reopened, including marked increases of positively identified COVID cases, the City is taking a cautious approach to moving to the Green Phase; and

WHEREAS, Philadelphians are working hard to turn back COVID-19, and they are succeeding. Because of social-distancing actions and the various City Orders protecting the public health, daily COVID-19 case counts have fallen significantly from counts in mid-April and mid-May. The rate of community spread of COVID-19 in Philadelphia remains high, however, and measures to continue to reduce its spread must be maintained and observed; and

WHEREAS, on June 26, 2020, the Mayor and Health Commissioner issued an order requiring the wearing of masks in many indoor and outdoor situations, and on July 1, 2020, the Governor issued a similar order; and

WHEREAS, the Mayor and Health Commissioner have determined that, under applicable safety requirements and guidelines, certain additional activities are within the range of acceptable activities that may resume in a modified Green Phase of reopening; and

WHEREAS, pursuant to authority set forth in The Philadelphia Code and The Philadelphia Home Rule Charter, the Mayor has broad authority to set forth limitations on public activities during a state of national health emergency; and

WHEREAS, Sections 6-205 and 6-206 of The Philadelphia Code provide that the Department of Public Health may by order forbid the congregation of persons when

necessary to prevent the further spread of a communicable and quarantinable disease and may take such other measures as are necessary to prevent the spread of such disease;

NOW, THEREFORE, James F. Kenney, Mayor of the City of Philadelphia, and Dr. Thomas A. Farley, Health Commissioner of the City of Philadelphia, pursuant to all authority granted under the Philadelphia Home Rule Charter, The Philadelphia Code, the Regulations of the Board of Health of the City of Philadelphia and applicable state law, hereby **ORDER** as follows:

Section 1. Operation of Indoor Dining.

Indoor on-site dining activities at restaurants, cafes, retail food service businesses, and catering halls and event spaces may operate in the beginning on September 8, 2020, subject to the following:

a. All operations must adhere to all restrictions, requirements, and guidance of the Commonwealth and the City, applicable to the specific business generally, and to indoor dining specifically, including but not limited to, Commonwealth's *Guidance for Businesses in the Restaurant Industry Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public*, as it may be subsequently amended, and all orders and guidance cited therein; and all applicable City orders and guidance. With respect to restaurants, cafes, and retail food service businesses, this includes the City's *Reopening Guidance – Restaurants and Mobile Food Vendors*, as it may be subsequently amended. With respect to catering halls and event spaces, this includes the City's *Reopening Guidance – Celebrations, Catering Halls, and Special Events*. All businesses providing indoor dining activities must adhere to the following specific health and safety requirements, in addition to the requirements in the aforementioned guidance documents:

- i. Servers must wear both face shields and masks indoors.
- ii. Indoor dining parties are limited to 4 or fewer people at a table.
- iii. Former smoking or vaping areas must remain closed.
- iv. Indoor dining facilities may not refill food and beverage containers or implements brought in by customers.
- v. Service at bars, including bars within restaurants or private event spaces, remains prohibited.
- vi. Alcohol can be served only for on-premises consumption when in the same transaction as a meal.
- vii. Adjust work assignments to ensure employees can stay six (6) feet from each other throughout their shifts.

viii. Occupancy limits and spacing requirements: (1) Indoor occupancy must be limited to 25% of the stated fire code occupancy, and (2) tables must be arranged as follows unless impermeable physical barriers are used that extend at least 6 feet from the floor separate a table in any given direction: customers sitting at a table must not be within six feet of any customer sitting at another table or customers passing by, in all directions.

ix. In addition to the limitations above, discrete indoor event or gathering in a business in the retail food services industry, including those hosted at private event spaces and wedding venues, are further limited to a maximum of 25 persons.

c. All permitting, licensing and other requirements and limitations of City and Commonwealth law applicable to restaurants and food establishments, including with respect to outdoor dining and authorized locations for such activities, remain in place and are not superseded or impacted by this Order.

Section 2. Operation of Indoor Theaters and Performance Events

Indoor theaters and performance venues may operate beginning September 8, 2020, such facilities are limited to the lesser of twenty-five (25) individuals, attendees and staff combined, or twenty-five percent (25%) occupancy of the facility, and otherwise conducted pursuant to all applicable guidance and requirements of the Commonwealth and the City, including masking and social distancing requirements. Indoor theaters and performance venues may not allow eating, drinking, or smoking on-site, and must follow the City's *Reopening Guidance – Indoor Live Theaters, Music Venues, and Movie Theaters*, as it may be subsequently amended.

Section 2. Interpretation and Implementation.

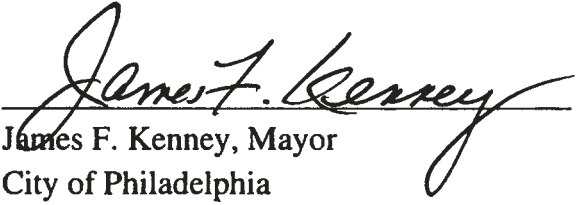
a. Unless otherwise stated, this Order shall be interpreted as consistent with applicable orders and requirements of the Commonwealth of Pennsylvania. The City shall continue to adhere to waivers, exemptions, or recategorizations issued by the Commonwealth from its emergency orders, subject to all applicable laws and regulations. The City shall continue reviewing inquiries and submissions regarding the applicability of the City's orders to businesses and activities.

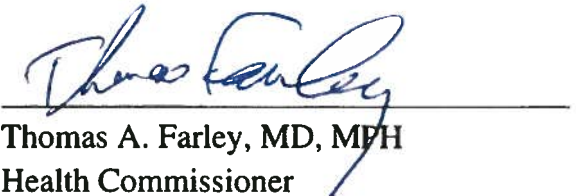
b. If emergency safety orders or safety guidance documents from multiple government agencies differ or conflict, businesses must follow the most restrictive applicable order or guidance.

c. Facilities subject to this Order must allow inspection of ongoing operations as a condition of operation. Failure to comply with this Order shall result in orders to cease operations and the imposition of penalties, fines, license suspensions, and other remedies as provided for by law.

c. This Order shall be effective September 8, 2020 and shall remain in effect until rescinded, superseded, or amended by further Order.

Date: September 8, 2020


James F. Kenney, Mayor
City of Philadelphia


Thomas A. Farley, MD, MPH
Health Commissioner
City of Philadelphia