

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

JUSTIN GREEN,

Case No. 2020-CA-001249

Plaintiff,

Div. J

v.

ALACHUA COUNTY, a political subdivision
of the State of Florida, and the Honorable RON
DESANTIS, in his official capacity as Governor of
the State of Florida,

Defendants.

_____ /

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF¹

COMES NOW JUSTIN GREEN ("Plaintiff"), requesting an Order of the Court declaring that the mandatory mask requirement contained in Amended Order 2020-21 (the "Amended Order") published by Alachua County ("Defendant") is unconstitutional, and enjoining the County from enforcing the unconstitutional mandate.

Jurisdictional Allegations

1. This is an action for declaratory and injunctive relief against a chartered county in Florida.
2. Justin Green is a resident of Alachua County, who has been required to purchase, has purchased, and has worn the mandated medical devices.
3. Alachua County is a home rule charter county, a political subdivision of the State of Florida managed by a Board of County Commissions ("BOCC").

¹ Amended to correct scrivener's errors and add Counts for Violation of Due Process and Pre-Emption.

4. The Honorable Ron DeSantis is the Governor of the State of Florida (the “Governor” or “Governor DeSantis”).

5. Robert Hutchinson is the chairman of the BOCC. The County may be served via service on Mr. Hutchinson.

6. Venue is properly in Alachua County because it is where at least one Defendant is located, it is where the causes of action accrued, and it relates to certain orders issued by the County or its purported agents.

7. The Circuit Court has authority to review the constitutionality of the challenged Amended Order.

Allegations

8. On Monday, March 23, 2020, Alachua County’s Board of County Commissioners held a public meeting to discuss the entry of the very first emergency order related to the pandemic. The public was informed by the Commission that “it appears cases are doubling every two days.” This alarming statistic turned out to be false. Cases have not doubled every two days. Or every four days. Or every ten days. In fact, at this point, nobody talks about doubling any more.

9. On Monday, May 4, 2020, the County published the Amended Order, attached as **Exhibit A**, which mandates that most – but not all – citizens implement personal medical devices in the form of “face coverings” (masks) at their own cost for an indefinite, if not unlimited, period of time. Citizens can be fined or even jailed for seeking essential services and supplies without wearing a mask – even though the vast majority of citizens are perfectly healthy, are not sneezing or coughing, and pose no danger to anyone.

10. Since Monday, police officials have harassed dozens of citizens, angry altercations have broken out between citizens and business employees, and citizens have been denied access to essential services.² Commissioner Robert Hutchinson has publicly stated that he is personally roaming the County to enforce his illegal mandate.

11. Ironically, the Amended Order exempts from the mask requirement citizens who are in *poor* health, regardless of whether they are positive for COVID-19. So, a citizen who *is* chronically coughing or sneezing may easily be exempt from the mask requirement.

12. COVID-19 hit Dade County harder than any other county in the state. With 2.7 million residents in an area roughly the size of Alachua County,³ who mainly live near the coast, it has the highest density in the state. Dade has 13,232 COVID-19-positive residents, including 1,832 who have been hospitalized; 432 Dade citizens have died since the pandemic began. Today, Dade county has a 14% positive rate (cases/tests), and back when Miami ordered mandatory masks, was approaching 20% positive.⁴

13. Alachua has been one of the *least* affected counties with active COVID-19. With one-tenth the population of Dade County, and low density, Alachua has had only 284 positive cases with only 51 citizens hospitalized since inception. Only one citizen has died in the County

² As early as May 5, 2020, BOCC Chair Hutchinson admitted that local employees have been placed in the line of fire by the County's mask mandate: "**store clerks are being threatened** by those who are too selfish or inconsiderate to be part of the solution rather than part of the problem." Robert Karl Hutchinson Facebook Post, May 5, 2020, *available online at* <https://www.facebook.com/robert.hutchinson1/posts/10158343671513328> (emphasis added).

³ Miami-Dade County is the most populous county in the state, and the seventh most populous county in the United States.

⁴ On April 9, 2020, when the mayor of Miami entered their mask order, he was facing +500 new COVID-19 cases per day, and scores of deaths *every day*.

from COVID-19. Four residents of a poorly-performing nursing home in the County have died. Alachua's positive rate is only 3.8%—one of the *lowest* in the state.

14. Despite being among the *least* dangerous counties in the state, as of May 4, Alachua County had issued twenty-seven (27) emergency orders related to the public health emergency since March 16, 2020.⁵ Only one county has issued more emergency orders: Dade County, the hardest-hit county in Florida.⁶ Even Broward and Palm Beach counties, the second and third hardest-hit counties in Florida, have each only entered fifteen (15) emergency orders. Alachua has nearly doubled those numbers.

15. Palm Beach County, the second worst-hit county in the state, entered a non-mandatory mask order *on April 11—just after the peak*.

16. At the time that Alachua County entered the Amended Order—over a month *past* the peak in Florida—Alachua County was averaging fewer than two (2) hospitalizations per day from COVID-19. At the same time, the Department of Health reported over 820 available hospital beds in the County. COVID-19 tests are widely available; according to our Health Department Supervisor, there is plenty of excess (“underutilized”) testing capacity.

17. The Florida Constitution guarantees that citizens shall not “be deprived of life, liberty or property without due process of law.” Citizens also have the constitutional “right to be let alone and free from governmental intrusion into the person's private life[.]”

⁵ See Florida Association of Counties website, *available online at* <https://flicg.org/county-by-county-covid-19-information/>.

⁶ The initial version of the Amended Order referred explicitly to Miami-Dade's mask order.

18. The Florida Constitution's privacy right "embraces more privacy interests, and extends more protection to the individual in those interests, than does the federal Constitution." *In re T.W.*, 551 So.2d 1186, 1193 (Fla. 1989).

19. In order to invade a citizen's fundamental right of privacy, the County must meet a "strict scrutiny" standard. *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So.2d 612, 635 (Fla.2003) ("Florida courts consistently have applied the 'strict' scrutiny standard whenever the Right of Privacy Clause was implicated, regardless of the nature of the activity.")

20. To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest. *State v. J.P.*, 907 So. 2d 1101, 1110 (Fla. 2004).

21. Strict scrutiny requires the County to show that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means. *See Winfield v. Div. of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla. 1985) (explaining that where a law intrudes on fundamental right to privacy guaranteed in Florida's Constitution, the State must demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means).

22. Where strict scrutiny is required, the offending legislation is presumed to be unconstitutional and the County has the burden of proving that the law passes muster. *N. Fla. Women's Health & Counseling Servs., Inc.*, 866 So.2d at 625 n.16 ("The legislation is presumptively unconstitutional ... the State must prove that the legislation furthers a compelling State interest through the least intrusive means").

23. Finally, Alachua County lacks authority to force healthy citizens to wear medical devices under Article VIII of the Florida Constitution, Chapter 125 of the Florida Statutes, its County powers under Article 1 (general powers), or even under Article 27 (emergency powers) of the County Code.

24. Alachua County's compelling state interest is an interest in preventing our local medical capacity from being overwhelmed by COVID-19 cases.

25. This interest has been widely described as "flattening the curve."⁷

26. The mask requirement in the Amended Order is not narrowly tailored to advance the compelling state interest. In fact, BOCC Chair Robert Hutchinson appears to implicitly admit this in his May 5, 2020 Facebook post explaining the County's mask mandate:⁸

- a) Hutchinson admitted that masks are not effective in eliminating the spread of the virus, but said it "reduces the spread" along with other measures like handwashing, isolation, and an eventual vaccine.
- b) He stated two other objectives for the mask mandate, neither of which is a compelling state interest.
- c) He said "masks are the only outwardly visible signal that you are contributing to the solution."

⁷ The idea is that the graph of the number of new cases over time should remain below a line designating the maximum medical capacity. If the new cases "curve" passes over the medical capacity threshold, the system is overwhelmed and catastrophe results. As recently as May 5, BOCC Chair referred to "flatten[ing] the curve of the infection rate" in his Facebook post defending the mask mandate. See citation at note 6.

⁸ Robert Karl Hutchinson Facebook Post, May 5, 2020, *available online at* <https://www.facebook.com/robert.hutchinson1/posts/10158343671513328>.

- d) He said “masks are also a sign of respect [to employees] that you recognize their risk and are doing something to lower it.”
- e) Hutchinson’s comments about signaling reflect other non-constitutional motives for the mask mandate.
- f) The mask mandate could easily have been more narrowly tailored. For example, it could have required masks to be worn by persons experiencing flu-like symptoms plus citizens who have recently been in contact with persons experiencing flu-like symptoms.

27. The mask requirement in the Amended Order does not advance the compelling state interest by the least intrusive means.

28. The mask requirement is presumptively unconstitutional.

The State’s Executive Order and Plan

29. On May 4, 2020, the State of Florida issued its Executive Order 2020-112 (the “Executive Order”), which provided for the implementation of “Phase One” of the State’s plan for reopening. The State’s Executive Order does not require the use of masks, even in the hardest-hit counties. The Executive Order is attached as **Exhibit B**.

30. On the same date, the State of Florida’s Task Force published a Report⁹ called “Plan for Florida’s Recovery” that describes various scenarios under which citizens should “consider” using masks. Nothing in the Plan suggests that masks should be made mandatory. The Task Report’s Plan is attached as **Exhibit C**.

31. The Plan identifies seven “Guiding Principles.”

⁹ Available online at <https://www.flgov.com/wp-content/uploads/covid19/Taskforce%20Report.pdf>.

32. The Plan's fifth Guiding Principle is "Protecting Civil Rights:"

Measures taken by the government must not impair the fundamental rights of Floridians, and when **restrictive measures** are imposed, they should be **the least restrictive measures feasible** to accomplish a **specific medically necessary objective**.

Florida's Re-Opening Task Force Report, p. 7 (emphasis added).

33. The mask requirement in the Amended Order imposes a restrictive measure.

34. The mask requirement in the Amended Order is not medically necessary to a specific objective.

35. The mask requirement in the Amended Order is not the least restrictive measure feasible.

36. The Task Force also identified three metrics that must be met in order for a county to enter Phase One.

- a) Downward trajectories of influenza-like and COVID-19-like illnesses.
- b) Downward trajectories of documented COVID-19 cases or downward trajectories of positive tests as a percentage of total tests (flat or increasing volume of tests).
- c) Capability to treat all patients without triggering surge capacity and robust testing program in place for at risk healthcare workers including antibody tests.

37. Alachua County meets or exceeds the targets established by the Task Force for Phase One.¹⁰ In many cases, Alachua County has never exceeded the minimum targets for Phase One.

¹⁰ The Department of Health's Surveillance Dashboard reports on whether a county meets Phase I criteria.

The BOCC Knew There is No Evidence Masks are Effective

38. At each BOCC public meeting where the issue of masks was discussed, Alachua County's Health Department Supervisor Paul Meyer told the BOCC that:

- a) there was "no evidence" that masks are effective at preventing community spread of COVID-19,
- b) studies are inclusive at best,
- c) masks are not useful without proper training, and
- d) studies have shown that masks in fact be harmful because they result in more face-touching and may cause some people to have a false sense of security.

39. Nevertheless, the BOCC signed the Amended Order requiring every single citizen—even healthy citizens—to implement these personal medical devices.

40. The Amended Order makes only two findings that are related to the mask mandate:

[1] WHEREAS, COVID-19 is spread through airborne transmission from individuals sneezing, speaking and coughing and infectious droplet nuclei can spread for a great distance, **although how far is not fully understood at present;** and

[2] WHEREAS, the Centers for Disease Control have **recommended** the use of facial coverings to reduce the spread of the virus since many individuals with no symptoms can spread the virus, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>; and

Amended Order, p. 2 (emphasis added).

41. Neither of the findings necessitate mandatory masks.

42. Finding [1] is not particularly helpful because it explicitly admits that COVID-19's airborne transmission distance "is not fully understood at present[.]" This is far from a finding

that would support the “medical **necessity**” of a face mask mandate for all citizens at all times in the listed locations.

43. As to finding [2], the cited Centers for Disease Control (CDC) website does not state that masks should be mandatory. It doesn’t even suggest non-mandatory use of masks in all cases. In fact, it *only* recommends the non-mandatory use of cloth face masks “where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), **especially in areas of significant community-based transmission.**”¹¹

44. Even non-mandatory mask guidance varies among the leading authorities. For example, the World Health Organization (WHO) takes the position that healthy persons need not wear masks.¹²

45. First, Alachua County is not an “area[] of significant community-based transmission.” Even the BOCC has not made this claim.

46. Second, the CDC web page cited in the Amended Order lists five requirements for cloth face coverings (masks), including, for example, the requirement that it include “multiple layers of fabric.”

47. The Amended Order does not require its mandated masks to comply with the requirements on the CDC web page. The Amended Order defines a compliant face covering as meeting only the first and second of the five criteria set forth by the CDC on the very same web

¹¹ CDC, “Use of Cloth Face Coverings to Help Slow the Spread of COVID-19,” *available online at* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

¹² World Health Organization, “Advice on the use of masks in the context of COVID-19: interim guidance, 6 April 2020,” *available online at* <https://apps.who.int/iris/handle/10665/331693>.

page supporting the County's finding. For example, it does not require cloth face coverings to include multiple layers of fabric.

48. There is no finding in the Amended Order supporting the departure from the CDC's mask requirements.

49. The mask mandate set forth in paragraph 8 of the Amended Order is both overinclusive and overbroad because it includes the vast majority of the population which is healthy and unable to transmit the virus, as well as recovered persons, and persons with natural immunities.

50. The compelling state interest has been defined as preventing Alachua County's medical capacity from being overwhelmed. No findings in the Amended Order support a conclusion that the mask mandate is necessary and narrowly tailored to prevent the County's medical capacity from being overwhelmed.

51. The County has publicly stated that its authority to issue the illegal and unconstitutional mask mandate comes from the Governor. According to the County, Governor DeSantis has authorized it to enter restrictive measures like the mask mandate.

52. The County has publicly referenced guidance received directly from the Governor's office to that end. In his May 5, 2020 Facebook post, BOCC Chairman Robert Hutchinson identified the Governor as the source of BOCC's authority *for the mask mandate*:

“Local governments, under the current state of emergency, have the authority to enact more protective measures than those rolled out by the State. **This has been confirmed by the Governor's office...**”

Robert Karl Hutchinson Facebook Post, May 5, 2020, *available online at* <https://www.facebook.com/robert.hutchinson1/posts/10158343671513328> (emphasis added).

53. Governor DeSantis has ratified or endorsed the County's illegal and unconstitutional mask mandate, giving it the *imprimatur* of legality, or illegally delegated his emergency powers, and encouraged the County to take excessive and unconstitutional actions.

54. In other words, Governor DeSantis conspired with the County to deprive Plaintiff of his constitutional rights.

55. The County and the Governor worked together to do an unlawful act.

56. The Governor's advice to the County that it could implement restrictive measures in general or the mask measure in particular was an overt act in pursuance of the conspiracy.

57. Plaintiff has been injured as a result of the acts performed pursuant to the conspiracy.

58. The Plaintiff has been forced to incur attorney's fees and expend costs in order to prosecute this action.

COUNT I
Declaratory Action – Lack of Authority (Alachua County)

59. Paragraphs 1-58 are incorporated by reference.

60. Chapter 27 of the Alachua County Code provides for the emergency powers of the Board of Commissioners during County-wide emergencies.

61. Section 27.08 enumerates items that the BOCC may impose by executive order.

62. The BOCC implemented the mask mandate by executive order.

63. Tellingly, § 27.08 does not provide for *universal* authority to order anything and everything that the BOCC imagines is necessary to respond to an emergency.

64. To the contrary, the § 27.08 enumerated executive order powers are quite specific and detailed and not general.

65. The enumerated powers include things like suspension of the sale of firearms and explosives, ability to limit demonstrations on public property, impose a curfew, prohibit sellers from overcharging, prohibit certain uses of fresh water, declare areas off limits, and compel evacuation.

66. None of the § 27.08 enumerated powers provide the BOCC with authority to order private citizens to purchase and use personal medical equipment by executive order.

67. The County's mask mandate is *ultra vires* and void.

68. There is a present bona fide dispute regarding a citizen's duties under the Amended Order.

WHEREFORE Plaintiff requests the Court to declare that the portion of the Amended Order related to the use of face masks be found to have been entered without authority from the County's charter and is void, and award Plaintiff his attorney's fees and costs.

COUNT II
Declaratory Judgment – Taking (Alachua County)

69. Paragraphs 1-58 are incorporated by reference.

70. The Fifth Amendment of the United States Constitution includes a provision known as the Takings Clause, which states that "private property [shall not] be taken for public use, without just compensation." While the Fifth Amendment by itself only applies to actions of the federal government, the Fourteenth Amendment extends the Takings Clause to actions by state and local governments.

71. Similarly, Article I, § 2 of the Florida Constitution provides that "No person shall be deprived of life, liberty or property without due process of law." Procedural due process

requires notice, a hearing, and an opportunity for each citizen to be heard before they are deprived of liberty or property.

72. Plaintiff was deprived of procedural due process.

73. The County's mandate requires all citizens—under threat of criminal prosecution and/or substantial fines—to purchase masks using their own money. This is a “taking.”

74. The County is “taking” its citizens' money (or property) for public use. The public use is the County's theory that use of face coverings (masks) by some citizens will help prevent the medical system from being overwhelmed.

75. While the burden to the individual may be moderately small, the burden to all 274,000+ collective residents of the County is substantial.

76. The County may not order citizens to purchase a product to help further a temporary public health initiative without just compensation. The County must provide just compensation if it wants to mandate use of masks.¹³

WHEREFORE Plaintiff requests the Court to declare that the portion of the Amended Order related to the use of face coverings (masks) be found to be an unconstitutional taking and therefore void, and award Plaintiff his attorney's fees and costs.

COUNT III
Declaratory Judgment – Right to Privacy (Alachua County)

77. Paragraphs 1-58 are incorporated by reference.

78. Article I, § 9 of the Florida Constitution provides that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.”

¹³ The analysis would be completely different were the County providing the masks.

79. An order requiring a person to alter their physical appearance in a fundamental way—i.e. covering their face, and thereby “erasing” their identity—is a clear invasion of their bodily autonomy, i.e. privacy.

80. An order requiring a person to use unnecessary personal medical equipment, attached to their body—is a clear invasion of their bodily autonomy, i.e. privacy.

81. The County’s rationale for mandatory masks is contradicted by the CDC and the WHO (both affirming the US Surgeon General’s conclusion that there is no evidence that masks help control spread of the virus and may in fact be harmful where used without proper training), the County’s own Health Department administrator, and countless scientific studies. The vast majority of the County’s citizens are healthy, not sneezing, and not coughing—but are for an arbitrary reason required to wear the masks anyway or be sentenced to a “definite term of imprisonment” of up to 60 days.

82. Furthermore, the mask mandate arbitrarily exempts some people within a class but not others; and irrationally exempts unhealthy people even if they are infected with COVID-19 while requiring healthy, uninfected citizens to comply.

83. While a compelling State interest to avoid overwhelming the County’s medical capacity exists, the Order’s mask requirement is not narrowly tailored or necessary to that objective, nor is it the least intrusive means.

84. There is a present bona fide dispute regarding a citizen’s duties under the Amended Order

WHEREFORE Plaintiff requests the Court to declare that the portion of the Amended Order related to the use of face coverings (masks) be found to be an unconstitutional violation of Plaintiff's Right to Privacy, and therefore void, and award Plaintiff his attorney's fees and costs.

COUNT IV
Injunctive Relief (Alachua County)

85. Paragraphs 1-58 are incorporated by reference.

86. A party seeking an injunction in Florida must demonstrate: 1) irreparable harm; 2) a clear legal right; 3) an inadequate remedy at law; 4) consideration of the public interest.

87. The invasion of Plaintiff's privacy, the County's forcing him to perform acts and implement personal medical equipment, and the takings create an irreparable harm.

88. The Plaintiff has no adequate remedy at law.

89. Because of the County's lack of authority to enact the mask mandate by executive order, and the constitutional violations, Plaintiff has a clear legal right to this relief.

90. The public interest is clearly implicated in this action, since the harm to Plaintiff is repeated with regard to each and every citizen of Alachua County who does not fall into one of the enumerated exceptions.

91. Furthermore, because the mask mandate is presumptively unconstitutional, Plaintiff is also presumptively likely to succeed on the merits.

WHEREFORE, Plaintiff requests that this Court permanently enjoin the County from enforcing the mask mandate contained in the Amended Order, and award Plaintiff his attorney's fees and costs.

COUNT V
Declaratory Judgment – Equal Protection (Alachua County)

92. Paragraphs 1-58 are incorporated by reference.

93. When those who appear similarly situation are nevertheless treated differently, the Equal Protection Clause requires a least a rational reason for the difference, to ensure that all persons subject to legislation or regulation are indeed being “treated alike, under like circumstances and conditions.” *Engquist v. Or. Dep’t of Agric.*, 553 U.S. 591, 602 (2008).

94. The Florida Constitution's Declaration of Rights, section 1, which reads “all men are equal before the law . . .,” is the source of Florida's equal protection inhibition. *Ga. So. & Fla. Ry. v. Seven-Up Bottling Co.*, 175 So.2d 39, 40 (Fla. 1965), quoting from *Davis v. Fla. Power Co.*, 64 Fla. 246, 60 So. 759 (1913).

95. There must, under our Florida Charter, be “some just relation to, or reasonable basis in, essential difference of conditions and circumstances with reference to the subject regulated, and [the statute] should not merely be arbitrary” *Eslin v. Collins*, 108 So.2d 889, 891 (Fla. 1959).

96. In addition, a class should include all those similarly situated, unless there are practical differences sufficient to warrant a special classification. See *Ga. So. & Fla. Ry. v. Seven-Up Bottling Co.*, supra note 1.

97. Yet, Plaintiff is permitted to enter grocery stores, restaurants, retail facilities, pharmacies, construction sites, public transit vehicles, vehicles for hire, along with locations where social distancing measures are not possible in other counties in Florida without being required to wear a face mask under threat of criminal prosecution and significant financial penalty.

98. Furthermore, even within Alachua County, Plaintiff may enter all other places besides grocery stores, restaurants, retail facilities, pharmacies, construction sites, public transit vehicles, vehicles for hire, along with locations where social distancing measures are not possible. Such places include government buildings, such that the effect is that Alachua County has exempted itself and its employees from the mask mandate

99. The Amended Order also excludes from the mask mandate the following classes of persons:

- a) Children under six years of age.
- b) Persons who have trouble breathing due to a chronic pre-existing condition.
- c) Individuals with a documents or demonstrable medical problem.

100. As the exclusions show, the required use of masks by persons who have trouble breathing through them actually endangers such persons.

101. There is no rational basis for not excluding children six or older.

102. There is no rational basis for not excluding persons who have trouble breathing due to an acute pre-existing condition.

103. There is no rational basis for not excluding persons who have trouble breathing due to a newly developed condition.

104. There is no rational basis for not excluding persons who have an “undocumented” medical problem or one that is not easily “demonstrable.”

105. The imagination reels considering how the County would want a citizen to “demonstrate” their medical condition as a pre-requisite to buying essential goods and services.

106. As an example, there is no articulable rational basis to exclude a person who for the first time in their life this week puts on a face mask and discovers an anxiety that frustrates their ability to breath easily. Such a person faces the Hobson's choice of wearing the mask or being jailed or heavily fined.

107. There is no rational basis for excluding persons who are infected with COVID-19 just because they have anxiety about wearing a mask, for example.¹⁴

108. In fact, even a person who has flu-like symptoms and *difficulty breathing* (a COVID-19 symptom), would be excluded from the mask mandate. This is not rational.

109. The mask mandate violates the Equal Protection clause of the Florida Constitution and is void.

110. There is a present bona fide dispute regarding citizen's duties under the Amended Order.

WHEREFORE Plaintiff requests the Court to declare that the portion of the Amended Order related to the use of face coverings (masks) be found to be an unconstitutional violation of the Equal Protection Clause under the U.S. and Florida Constitutions and therefore void, and award Plaintiff his attorney's fees and costs.

COUNT VI
Violation of Civil Rights (Alachua County and State of Florida)

111. Paragraphs 1-58 are incorporated by reference.

112. Alachua County and Governor DeSantis have subjected or caused to be subjected Plaintiff to a deprivation of his Constitutional Rights.

¹⁴ The County's FAQ web page lists "anxiety" as an example of an exemptible medical condition.

113. Alachua County and Governor DeSantis worked in concert to deprive Plaintiff of his Constitutional Rights.

114. Plaintiff has been harmed as a result of being deprived of his Constitutional Rights.

WHEREFORE Plaintiff requests the Court to enjoin the County's illegal mask mandate, declare that the portion of the Amended Order related to the use of face coverings (masks) be found to be an unconstitutional violation of the Equal Protection Clause and therefore void, and award Plaintiff his damages and attorney's fees and costs.

COUNT VII
Declaratory Judgment – Violation of Due Process (Alachua County)

115. Paragraphs 1-58 are incorporated by reference.

116. The Due Process Clause of the Fourteenth Amendment, as well as Article I, § 2 of the Florida Constitution, guarantee that the state may not deprive any person of life, liberty, or property without due process of law.

117. A State “violates this guarantee by taking away someone’s life, liberty or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 135 S. Ct. 2551, 2556 (2015).

118. Because the Amended Order contracts the Governor's Executive Order, which does not require citizens to wear masks to purchase essential goods and services, it fails to provide sufficient notice of which actions will potentially subject Plaintiff to the criminal penalties the orders incorrectly seek to apply. It is unclear – at best – to any person of ordinary intelligence what the Governor's Executive Order and the County's Amended Order collectively prohibit and allow.

119. The Amended Order purports to impose criminal liability to Plaintiff should he follow the Governor's Executive Order.

120. And, none of the statutory provisions cited in the Executive Order or the Amended Order actually authorize the imposition of criminal sanctions in these circumstances, leaving citizens unclear as to whether they may be nonetheless wrongfully prosecuted, or—indeed—exactly what conduct is proscribed.

121. There is a present bona fide dispute regarding citizen's duties under the Amended Order.

WHEREFORE Plaintiff requests the Court to enjoin the County's illegal mask mandate, declare that the portion of the Amended Order related to the use of face coverings (masks) be found to be an unconstitutional violation of the Fourteenth Amendment and Article I, § 2 of the Florida Constitution, and therefore void, and award Plaintiff his damages and attorney's fees and costs.

COUNT VIII Pre-Emption (Alachua County)

122. Paragraphs 1-58 are incorporated by reference.

123. Under Article VIII, § 1 of the Florida Constitution, "Counties operating under county charters shall have all powers of local self-government **not inconsistent with general law**, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances **not inconsistent with general law**" (emphasis added).

124. Furthermore, Florida law vests the Governor with substantial additional authority to control the response to state-wide emergencies. *See, e.g.*, Florida Statutes § 252.36.

125. Nothing in § 252 permits the Governor to delegate his emergency powers to the BOCC.

126. Alachua County's Amended Order is in conflict with the Executive Order, and related orders, to the extent that it requires citizens to wear face masks and the Governor's orders to not.

127. Under the Florida Constitution, Alachua County may not enact ordinances that are inconsistent with the Governor's orders.

WHEREFORE Plaintiff requests the Court to enjoin the County's illegal mask mandate, declare that the portion of the Amended Order related to the use of face coverings (masks) is in conflict with the Governor's orders, and find it to be an unconstitutional violation of Article VIII, § 1, and therefore void, and award Plaintiff his damages and attorney's fees and costs.

Dated this 11th day of May, 2020.



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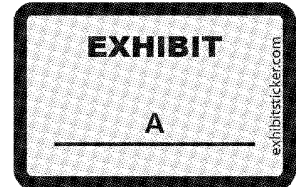
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished this day via filing with the

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**FIRST AMENDMENT TO EMERGENCY ORDER NO. 2020-21
PHASE ONE STEP BY STEP RECOVERY ORDER
ALACHUA COUNTY, FLORIDA**



WHEREAS, COVID-19, a respiratory illness caused by a virus that spreads rapidly from person to person and may result in serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Alachua County; and,

WHEREAS, on March 1, 2020, Governor DeSantis declared a Public Health Emergency because of COVID-19; and, on March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a State of Emergency because of COVID-19; and,

WHEREAS, on March 11, 2020, the World Health Organization declared the spread of COVID-19 to be a global pandemic; and, on March 13, 2020, President Trump declared a national emergency concerning COVID-19; and,

WHEREAS, Emergency Order 2020-01 declared a local state of emergency in Alachua County based on the COVID-19 virus on March 16, 2020; and,

WHEREAS, on March 17, 2020, Governor DeSantis issued Executive Order 20-68, prohibiting the sale of alcoholic beverages at certain establishments and placing certain limitations on gatherings for bars, restaurants, and beaches; and,

WHEREAS, to reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention ("CDC") and the Florida State Department of Health recommend implementation of community mitigation strategies to increase containment of the virus, including cancellation of large gatherings and social distancing of at least six feet between persons in smaller gatherings; and,

WHEREAS, limitations on gatherings and the use of social distancing to prevent transmission of COVID-19 are especially important for people who are over sixty years old and people with chronic health conditions because those populations are at a higher risk of severe illness and death from COVID-19. However, everyone, regardless of age or health condition, is threatened by COVID-19; and,

WHEREAS, this Emergency Order is necessary to ensure that our healthcare delivery system can serve those who are ill; and

WHEREAS, the continuing operation of essential businesses is necessary to provide essential goods and services to the public; and,

WHEREAS, on April 1, 2020 Governor DeSantis issued Executive Order 20-91 putting in place a state-wide stay at home order and listing what are to be considered essential services and activities; and

WHEREAS, Executive Order 20-91 adopts both the Essential Critical Infrastructure Workers guidelines issued by the Department of Homeland Security and the list of essential services and activities set forth in Miami-Dade County Emergency Order 07-20; and,

WHEREAS, the CDC, the Florida Department of Health and the University of Florida

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recommends the use of face coverings, including those which are homemade to slow the spread of the disease; and

WHEREAS, the gradual reopening of the State and the County will lead to more contact between individuals and lead to more potential for the increased community spread of the disease. Face masks are of great assistance in preventing individuals who may be shedding the virus to spread it to other individuals; and

WHEREAS, researchers at the University of Florida believe it is too early to ease restrictions without enhanced testing in place and that such testing is not currently in place and that COVID-19 will be present in the population for a long time <https://mediasite.video.ufl.edu/Mediasite/Play/b8849c7ddb114f2db5fcc0be6a4ec0b41d>; and,

WHEREAS, according to the Department of Health 7,174 out of 269,043 residents or 2.66% have been tested therefore, local testing has been underutilized and the number of individuals being tested needs to increase and contact tracing must increase as well; and

WHEREAS, COVID-19 is spread through airborne transmission from individuals sneezing, speaking and coughing and infectious droplet nuclei can spread for a great distance, although how far is not fully understood at present; and

WHEREAS, the Centers for Disease Control have recommended the use of facial coverings to reduce the spread of the virus since many individuals with no symptoms can spread the virus, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>; and

WHEREAS, Governor DeSantis has issued Executive Order 20-112 designed to ease some restrictions established by Executive Order 20-90 in the first phase of a plan to fully reopen the State; and

WHEREAS, Executive Order 20-112, does not preempt the authority of local governments to add additional restrictions to businesses opened by the Governor; and

WHEREAS, the Board of County Commissioners met on May 1st in special session to consider the Governor's Order and to receive public comment, and

WHEREAS, the Board of County Commissioners considered the public comment along with information received from the Department of Health and the University of Florida regarding challenges raised at this point in time by COVID-19; and

WHEREAS, the Board of County Commissioners believes based upon the foregoing that it is important to be cautious in the process of opening up businesses in the absence of detailed testing and contact testing while implementing the Governor's plan in phasing, reopening as local conditions allow to be done with prudence; and,

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WHEREAS, the Chair of the County Commission is the Official Authority as prescribed in the County's Code Section 27.07; and,

WHEREAS, acting on his own authority as the Official Authority and based upon the actions taken on May 1st by the Board of County Commissioners meeting in public session; and

WHEREAS, pursuant to §252.38(1), Florida Statutes the County has jurisdictional authority over the entire county.

THEREFORE, IT IS ORDERED THAT:

1. While Executive Order 20-112 provides more opportunity to be outside the home, those who are vulnerable to infection should stay home as much as possible. Those who are not considered to be at risk should use prudence when leaving their home and stay at home if possible.
2. Pursuant to Executive Order 20-112, Essential Services and Activities are those set out in the CISA guidance and Executive Order 20-89 and a list propounded by Miami-Dade County in its Emergency Order 07-20. As stated in Order 20-91, this list is subject to change and an updated list may be found at www.floridadisaster.org. Private museums, libraries, botanical gardens and wildlife preserves may reopen at 25% of their capacity, but shall not allow any use of interactive displays or playground equipment.
3. All places of public assembly are closed to the public. Whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, water parks, pools, zoos, arcades, fairs, children's play centers, playgrounds, theme parks, bowling alleys, pool halls, movie and other theaters, concert and music halls, country clubs, social clubs and fraternal organizations. To the extent any of these businesses have retail sales facilities as part of their operation, they may open subject to the limitations below and calculating occupancy based upon the retail space.
4. All Essential Services and Activities are encouraged to remain open. To the greatest extent feasible, Essential Services and Activities should comply with Social Distancing Requirements as recommended by the Centers for Disease Control and the Surgeon General of Florida, including by maintaining six-foot distance between both employees and members of the public always, including when any customers are standing in line. Pursuant to the Governor's Executive Order 20-83, and the Surgeon General's Health Advisory, employers should make every effort to reduce the onsite workforce to 50% capacity, where possible, to the extent that reduction can be accomplished without significantly disrupting the ability to conduct business. OSHA guidelines regarding COVID-19 found in publication 3990 shall be followed. <https://www.osha.gov/Publications/OSHA3990.pdf> or subsequent rules. Workers shall be educated by employers of the standards and require that standards be present on worksite. If an employee believes that they are being required to work in sub-standard conditions they may call the County's 311 phone number and leave a complaint anonymously. To the extent that there is an industry association, governing body, or licensure agency that imposes more stringent guidelines than OSHA, then the business shall comply with those requirements.

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5. Pursuant to Executive Order 20-112, retail businesses may now open subject to the limitations in that order. Retail businesses are encouraged to utilize curbside service and via delivery to limit face to face contact. All businesses which are open, retail or otherwise, shall comply with the safety guidelines established by the CDC and OSHA. To the extent any business is governed by licensure or board requirements which are stricter than those of the CDC or OSHA, those board requirements will take precedence. A list will be developed covering Industry Specific Operating Standards for Pandemic Response which will be the standard used for enforcement.
6. In addition to the restrictions set forth in Executive 20-112, restaurants and food service facilities shall comply with the Food and Drug Administration "Best Practices for Retail Food Stores, Restaurants, and Food Pick Up and Delivery Services During the Covid-19 Pandemic."
7. Essential Services and Activities, and retail establishments shall limit occupancy, to one per five hundred square feet of covered space. In no case does this allow more than Executive Order 20-112. The business shall also be responsible for ensuring that appropriate social distancing be followed. Restaurants may open at 25% occupancy but, as set forth in the Governor's Executive Order 20-112, must follow appropriate social distancing in seating. Outdoor seating does not count against indoor occupancy but must meet the requirements of social distancing set forth in the Governor's Executive Order 20-112. The occupancy limits, for purposes of the one per five hundred square feet of covered space standard, do not include members of staff as long as they are able to comply with appropriate social distancing techniques under the circumstances. The limitations regarding essential services do not apply to Hospitals or other medical facilities following appropriate use of PPE as required by their licensing bodies. Child care facilities may use reasonable occupancy limits as allowed by their license and their ability to use PPE on the part of staff and after screening the children for at risk exposure.
8. Use of face coverings and personal protective equipment
 - a. Persons working in or visiting grocery stores, restaurants, retail facilities, pharmacies, construction sites, public transit vehicles, vehicles for hire, along with locations where social distancing measures are not possible shall wear facial coverings as defined by the CDC.
 - b. Face covering includes any covering which snugly covers the nose and mouth, whether store bought or homemade, and which is secured with ties or ear loops. Examples of compliant homemade masks may be found at <https://www.cdc.gov/coronavirus/2019ncov/prevent-getting-sick/diy-cloth-face-coverings.html>. Persons should not utilize N95 rated masks, as those are critical supplies for health care workers, police, fire, emergency management, or other persons engaged in life/safety activities. Persons who wear face coverings should review the CDC and Florida Department of Health guidelines regarding safely applying, removing, and cleaning face coverings.
 - c. A face covering shall not be required for children under six, persons who have trouble breathing due to a chronic pre-existing condition or individuals with a documented or demonstrable medical problem.
 - d. This Order does not change or alter any social distancing requirements imposed by this or in any other Emergency Order.
 - e. Face masks do not have to be worn while eating or drinking.

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9. Pursuant to the Governor's Executive Order 20-91, no public gathering of 10 or more persons is allowed. Pursuant to the Order, groups greater than 10 may be ordered to disperse. This includes any gathering which takes place in the commons area of any multiple residence facility.

10. Severability.

Any provision(s) within this Emergency Order that conflict(s) with any State or Federal law or constitutional provision, including the State's preemption of the regulation of firearms and ammunition codified in section 790.33, Florida Statutes or conflict(s) with or are superseded by a current or subsequently-issued Executive Order of the Governor or the President of the United States, shall be deemed inapplicable and deemed to be severed from this Emergency Order, with the remainder of the Emergency Order remaining intact and in full force and effect. To the extent application of some or all the provisions of this Emergency Order is prohibited on the sovereign land of a federally or state recognized sovereign Indian tribe, such application is expressly excluded from this Emergency Order.

11. Effective Date; Duration.

This Order supersedes Emergency Order 20-09. This Order shall be effective May 5th, 2020 at 12:01 a.m. and will stay in effect during the pendency of the state of emergency or until adoption of subsequent order or repeal.

12. This Emergency Order is in addition to the Executive Orders issued by Governor DeSantis, including Emergency Orders 20-70 and 20-71.

13. This Emergency Order applies to incorporated and unincorporated areas within Alachua County, but has no application outside of Alachua County. Municipalities have the authority to enforce this County Order within their jurisdiction.

14. The County or municipalities within its boundaries will direct any establishment to cease and desist operations that are in violation of this Emergency Order and may treat violations as a violation of County or Municipal ordinance as appropriate. The County has jurisdiction countywide to enforce the terms of this Order.

15. This Order does not apply to operations of local governments within the county, to the State University System, State College System, the State of Florida, or Federal agencies who are encouraged to adopt their own rules and procedures regarding the matters set forth herein.

16. Any violation of these emergency measure(s) shall be a violation of §252.50, Florida Statutes and may be punishable as provided therein and shall be enforced by law enforcement as provided by law. For failure to wear face coverings in compliance with this Order, the County or municipalities within their jurisdictions will direct any individual acting in violation of this Emergency Order to come into compliance immediately. Failure to comply with the requirements of section 8 of this Emergency Order presents a serious threat to the public health, safety, and welfare, pursuant to Chapter 162, Florida Statutes, and a citation may be issued immediately for such violation. The first violation of section 8 of this Emergency Order shall be subject to a fine of \$125.00 to the violator. The second violation of section 8 of this Emergency Order shall be subject to a fine of \$250.00 to the violator. All

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subsequent violations of section 8 of this Order shall constitute a Class V violation under Article II, Chapter 24 of the Alachua County Code of Ordinances, requiring a mandatory court appearance and subject to a fine not to exceed \$500.00. All other remedies available at law or equity, including injunction, remain available to the County, even after issuance of a citation.

17. This Order supersedes and replaces any conflicting provisions of prior orders.

Dated this 4th day of May, 2020 at 7:05 p.m.

BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY, FLORIDA

By: 
Robert Hutchinson, Chairman

APPROVED AS TO FORM:



County Attorney's Office

STATE OF FLORIDA

OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 20-112 (Phase 1: Safe. Smart. Step-by-Step. Plan for Florida's Recovery)

WHEREAS, on March 9, 2020, I issued Executive Order 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on April 3, 2020, I issued Executive Order 20-91 and Executive Order 20-92 directing all persons in Florida to limit their movements and personal interactions outside of their home only to those necessary to obtain or provide essential services or conduct essential activities; and

WHEREAS, my administration has implemented a data-driven strategy devoted to high-volume testing and aggressive contact tracing, as well as strict screening protocols in long-term care facilities to protect vulnerable residents; and

WHEREAS, data collected by the Florida Department of Health indicates the State has achieved several critical benchmarks in flattening the curve, including a downward trajectory of hospital visits for influenza-like illness and COVID-19-like syndromic cases, a decrease in percent positive test results, and a significant increase in hospital capacity since March 1, 2020; and

WHEREAS, during the week of April 20, 2020, I convened the Task Force to Re-Open Florida to evaluate how to safely and strategically re-open the State; and

WHEREAS, the path to re-opening Florida must promote business operation and economic recovery while maintaining focus on core safety principles.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution and Chapter 252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order:

Section 1. Phase 1 Recovery

In concert with the efforts of President Donald J. Trump and the White House Coronavirus Task Force, and based on guidance provided by the White House and the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the Florida Surgeon General and State Health Officer, Dr. Scott Rivkees, I hereby adopt the following in response to the recommendations in Phase 1 of the plan published by the Task Force to Re-Open Florida.

Section 2. Responsible Individual Activity

A. All persons in Florida shall continue to limit their personal interactions outside the home; however, as of the effective date of this order, persons in Florida may provide or obtain:

1. All services and activities currently allowed, *i.e.*, those described in Executive Order 20-91 and its attachments, which include activities detailed in Section 3 of Executive Order 20-91, the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce and a list propounded by Miami-Dade County in multiple orders (as of April 1, 2020), as well as other services and activities approved by the State Coordinating Officer. Such services should continue to follow safety

guidelines issued by the CDC and OSHA. If necessary, employee screening or use of personal protective equipment should continue.

2. Additional services responsibly provided in accordance with Sections 3 and 4 of this order in counties other than Miami-Dade, Broward and Palm Beach. In Miami-Dade, Broward and Palm Beach counties, allowances for services and activities from Sections 3 and 4 of this order will be considered in consultation with local leadership.

B. Except as provided in Section 2(A)(1) of this order, senior citizens and individuals with a significant underlying medical condition (such as chronic lung disease, moderate-to-severe asthma, serious heart conditions, immunocompromised status, cancer, diabetes, severe obesity, renal failure and liver disease) are strongly encouraged to stay at home and take all measures to limit the risk of exposure to COVID-19.

C. For the duration of this order, all persons in Florida should:

1. Avoid congregating in large groups. Local jurisdictions shall ensure that groups of people greater than ten are not permitted to congregate in any public space that does not readily allow for appropriate physical distancing.
2. Avoid nonessential travel, including to U.S. states and cities outside of Florida with a significant presence of COVID-19.
3. Adhere to guidelines from the CDC regarding isolation for 14 days following travel on a cruise or from any international destination and any area with a significant presence of COVID-19.

D. This order extends Executive Order 20-80 (Airport Screening and Isolation) and Executive Order 20-82 (Isolation of Individuals Traveling to Florida), with exceptions for persons involved in military, emergency, health or infrastructure response or involved in commercial activity. This order extends Sections 1(C) and 1(D) of Executive Order 20-86 (Additional Requirements of Certain Individuals Traveling to Florida), which authorize the Department of Transportation, with assistance from the Florida Highway Patrol and county sheriffs, to continue to implement checkpoints on roadways as necessary.

Section 3. Businesses Restricted by Previous Executive Orders

Unless I direct otherwise, for the duration of this order, the following applies to businesses directly addressed by my previous Executive Orders:

- A. Bars, pubs and nightclubs that derive more than 50 percent of gross revenue from the sale of alcoholic beverages shall continue to suspend the sale of alcoholic beverages for on-premises consumption. This provision extends Executive Order 20-68, Section 1 as modified by Executive Order 20-71, Sections 1 and 2.
- B. Restaurants and food establishments licensed under Chapters 500 or 509, Florida Statutes, may allow on-premises consumption of food and beverage, so long as they adopt appropriate social distancing measures and limit their indoor occupancy to no more than 25 percent of their building occupancy. In addition, outdoor seating is permissible with appropriate social distancing. Appropriate social distancing requires maintaining a minimum of 6 feet between parties, only seating parties of 10 or fewer people and keeping bar counters closed to seating. This provision

extends Executive Order 20-68, Section 3 and supersedes the conflicting provisions of Executive Order 20-71, Section 2 regarding on-premises food consumption.

- C. Gyms and fitness centers closed by Executive Order 20-71 shall remain closed.
- D. The prohibition on vacation rentals in Executive Order 20-87 remains in effect for the duration of this order.
- E. The Department of Business and Professional Regulation shall utilize its authorities under Florida law to implement and enforce the provisions of this order as appropriate.

Section 4. Other Affected Business Services

Unless I direct otherwise, for the duration of this order, the following applies to other business services affected by my previous Executive Orders:

- A. In-store retail sales establishments may open storefronts if they operate at no more than 25 percent of their building occupancy and abide by the safety guidelines issued by the CDC and OSHA.
- B. Museums and libraries may open at no more than 25 percent of their building occupancy, provided, however, that (a) local public museums and local public libraries may operate only if permitted by local government, and (b) any components of museums or libraries that have interactive functions or exhibits, including child play areas, remain closed.

Section 5. Medical Procedures

Subject to the conditions outlined below, elective procedures prohibited by Executive Order 20-72 may resume when this order goes into effect. A hospital ambulatory surgical center, office surgery center, dental office, orthodontic office, endodontic office or other health care

practitioners' office in the State of Florida may perform procedures prohibited by Executive Order 20-72 only if:

- A. The facility has the capacity to immediately convert additional facility-identified surgical and intensive care beds for treatment of COVID-19 patients in a surge capacity situation;
- B. The facility has adequate personal protective equipment (PPE) to complete all medical procedures and respond to COVID-19 treatment needs, without the facility seeking any additional federal or state assistance regarding PPE supplies;
- C. The facility has not sought any additional federal, state, or local government assistance regarding PPE supplies since resuming elective procedures; and
- D. The facility has not refused to provide support to and proactively engage with skilled nursing facilities, assisted living facilities and other long-term care residential providers.

The Agency for Health Care Administration and the Department of Health shall utilize their authority under Florida law to further implement and enforce these requirements. This order supersedes the conflicting provisions of Executive Order 20-72.

Section 6. Previous Executive Orders Extended

The Executive Order 20-69 (Local Government Public Meetings) is extended for the duration of this order.

Section 7. Enforcement

This order shall be enforced under section 252.47, Florida Statutes. Violation of this order is a second-degree misdemeanor pursuant to section 252.50, Florida Statutes, and is punishable by imprisonment not to exceed 60 days, a fine not to exceed \$500, or both.

Section 8. Effective Date

This order is effective at 12:01 a.m. on May 4, 2020.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 29th day of April, 2020.


RON DESANTIS, GOVERNOR

ATTEST:


SECRETARY OF STATE

FILED
2020 APR 29 PM 4:52
TALLAHASSEE, FLORIDA



Safe. Smart. Step-by-Step.

PLAN FOR FLORIDA'S RECOVERY

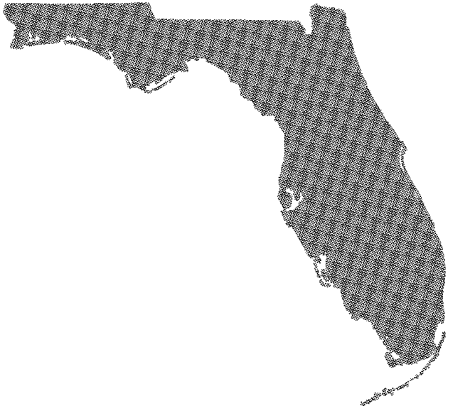


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Message From Lieutenant Governor Jeanette Nuñez

Governor DeSantis:

As you know, the onset of this pandemic has truly tested the fiber of the state of Florida. We have, indeed, been living in uncertain times, fighting a faceless opponent, but rising to the occasion thanks to selfless medical professionals, health administrators, first responders, our National Guard, and your unwavering leadership.

During this unprecedented health crisis, your actions have been thoughtful, measured and critical to minimizing the spread of COVID-19. When you delivered your inaugural address, you pledged to Floridians that you would use your best judgment and courage of your convictions, and during this crisis, you have done just that.

Early on and throughout this pandemic, our Administration's focus has been on flattening the curve, protecting our most vulnerable residents, and ensuring access to testing and hospital capacity. With a strategic and preventive approach in our nursing homes, assisted living facilities, and long-term care facilities, our elderly were prioritized to curtail the spread of the virus and ensure their well-being.

Your prompt and unrelenting emphasis on testing capabilities aided us in pinpointing the areas of our state with the highest infection rates. Your swift action to allow recently retired law enforcement, first responders and healthcare personnel to return to the workforce emphasized an all-hands-on-deck approach to combating this silent disease.

These are just a few examples of the mitigation measures that saved lives in Florida, however, we have not yet turned the page on this virus and the health and economic impact it has left behind. I have all the faith in our Administration, our healthcare professionals, our economic and industry leaders and our community to emerge even stronger.

The Task Force demonstrated a commitment to a safe, incremental, and comprehensive approach. With input from public and private sector leaders, business executives and residents from the Florida Keys to the Emerald Coast, we are vested in initiatives that support our workforce, while renewing and restoring our economy. Attached herein is a report based on presentations, discussions, and public commentary.

Thank you for entrusting me to lead our Re-Open Florida Task Force Executive Committee. I am honored to have moderated comprehensive discussions that explored the best way to open up the Sunshine State with public health-driven data at the forefront.

God Bless,

A handwritten signature in black ink that reads "Jeanette M. Nuñez".

Lieutenant Governor Jeanette Nuñez

Re-Open Florida Task Force

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Nancy Tower, *President and CEO, Tampa Electric*
Eric Silagy, *President and CEO, Florida Power & Light Company*
Catherine Stempien, *State President, Florida, Duke Energy*
Marva Johnson, *Group President, Charter Communications*
Tom Vice, *CEO, Aerion Corp*
Dan Doyle Jr., *CEO, DEX Imaging*



The COVID-19 Pandemic in Florida

HISTORY

In late 2019, a novel infectious disease was detected in Wuhan, China. This virus, eventually named Coronavirus disease 2019 (COVID-19), rapidly spread throughout China and eventually the world, leading the World Health Organization to declare a Public Health Emergency of International Concern and a global pandemic.

The virus reached the West Coast of the United States in January of 2020. When two Florida residents tested positive the first week of March, Governor Ron DeSantis responded by issuing Executive Order 20-51, directing the Florida Department of Health to declare a Public Health Emergency. Eight days later, Governor DeSantis declared a State of Emergency.

As of the date of this report, over 3 million cases of COVID-19 have been reported across 185 countries and territories, resulting in over 200,000 deaths. Over 32,000 Floridians have tested positive, and over 1,200 have lost their lives.

STATE RESPONSE

Since the introduction of COVID-19 into the State of Florida, the state has taken a strategic and methodical approach to combat the spread of this deadly virus. On March 1, Governor DeSantis instructed the State Surgeon General to declare a Public Health Emergency. On March 9, Governor DeSantis placed Florida in a State of Emergency, which provided the Governor and his team of experts with the needed flexibility to take decisive actions to prepare for and respond to the COVID-19 pandemic in Florida. Governor DeSantis worked to ensure that our most high-risk and vulnerable populations were protected. As a result, Governor DeSantis prohibited visitors to our state's nursing homes, assisted living facilities and long-term care facilities statewide and directed our State Surgeon General to issue a public health advisory urging all persons over the age of 65—as well as all persons with serious underlying medical conditions—to stay home.

Governor DeSantis did not take a “one size fits all” approach to mitigating the threat of COVID-19 in our large and diverse state. The plan was measured and mitigation efforts were targeted. Governor DeSantis worked with local governments where the spread of COVID-19 proliferated—primarily in Southeast Florida—to limit physical movement and mitigate the further spread of COVID-19 in these areas.

When Governor DeSantis implemented statewide mitigation efforts, he did so carefully. Governor DeSantis took actions designed to limit movement and interaction across industries that posed a higher risk for transmitting the virus, like restaurants, bars, nightclubs and gyms, while preserving the capacity of our health care system. Any medically unnecessary surgical procedures were prohibited—freeing up imperative hospital bed capacity. Additionally, Governor DeSantis took important steps to limit the entry of COVID-19 into our state by requiring those traveling into our state from areas with substantial community spread to isolate for a period of 14-days upon entry into Florida.

The COVID-19 Pandemic in Florida (continued)

As the curve is flattening statewide and our health care system’s capacity remains steady, Governor DeSantis is leading the charge to safely re-open the state's economy.

COVID-19 IN FLORIDA

At the close of April 2020, the state of Florida has achieved several critical benchmarks relating to syndromic surveillance, epidemiology and outbreak decline, and health care capability indicating successful management of the COVID-19 pandemic.

During the final weeks of April, the state saw a downward trajectory of emergency department visits for influenza-like and COVID-19-like illness (Figures 1-3).

Figure 1

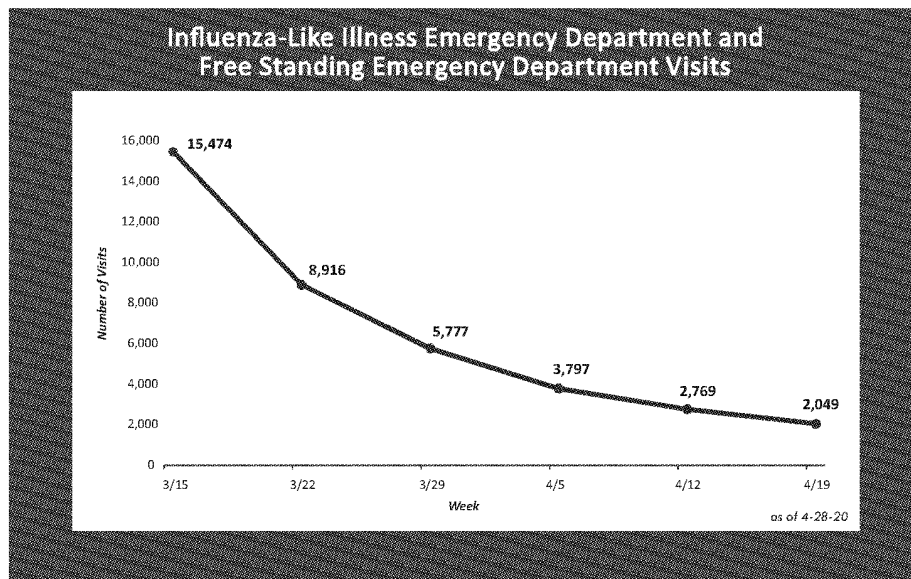
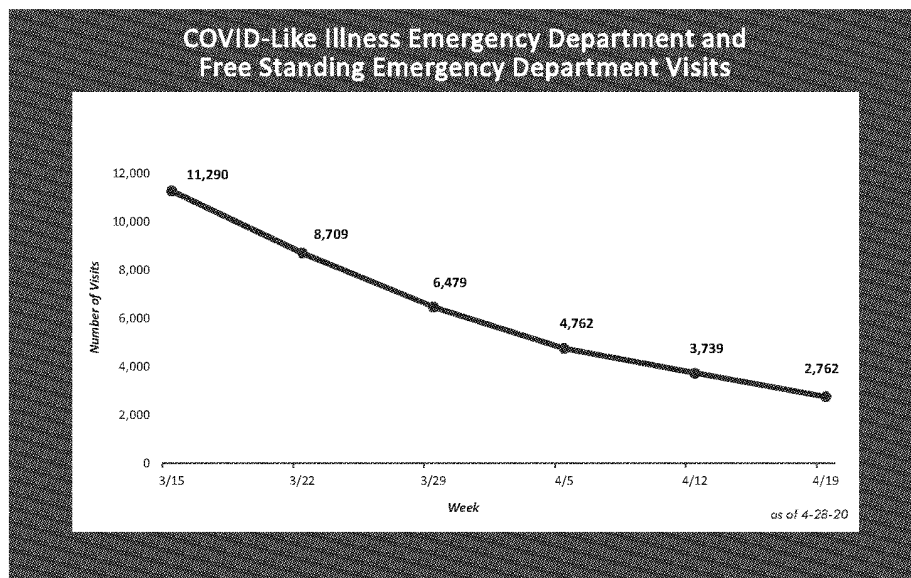
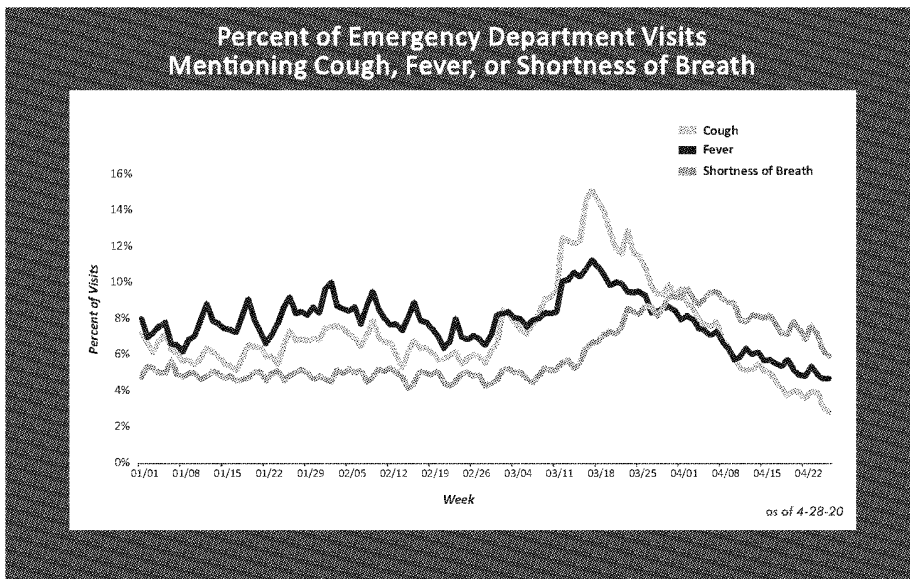


Figure 2



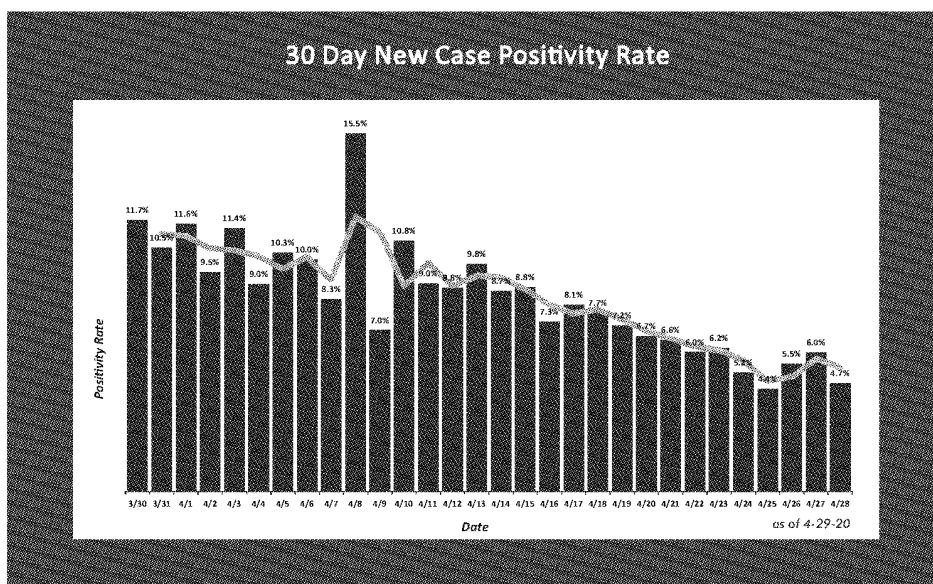
The COVID-19 Pandemic in Florida (continued)

Figure 3



Statewide, Florida has seen the percent of new positive cases steadily decrease (Figure 4).

Figure 4



The COVID-19 Pandemic in Florida (continued)

Finally, Florida continued to expand its testing program for first responders, at-risk health care workers, and vulnerable populations. The state deployed Mobile Testing Teams in conjunction with the National Guard to obtain samples in nursing homes, and pharmacies began offering on-site testing for eligible individuals. In addition, the state’s hospital system demonstrated the ability to treat patients without resorting to surge capacity models (Figure 5).

Figure 5

Florida Hospital Bed Availability

	FLORIDA	MIAMI-DADE	BROWARD	PALM BEACH	HILLSBOROUGH	ORANGE	DUVAL
Total Licensed Beds	68,735	9,455	6,816	4,332	4,378	4,751	3,927
Total Staffed Beds	58,742	8,102	5,403	4,044	3,982	3,743	3,794
Total Available Beds	22,060	2,991	1,739	1,815	1,470	1,204	1,684
Available Capacity	37.55%	32.19%	32.19%	44.88%	36.92%	32.17%	44.39%
Hospitalizations Change in Last 24 Hours	30	38	-12	7	4	-1	-3
Hospitalizations	2,131	767	324	230	41	52	58

as of 4-29-20

With these critical benchmarks achieved and a flattening of the curve, the state stands ready to begin Phase 1 of a multi-phase path toward the gradual elimination of restrictions on movement, congregation, and participation in society. As we recommend lifting these restrictions, it is important to continue implementing measures that mitigate and reduce the spread of COVID-19 in Florida while prioritizing the protection of individuals over the age of 65 and those who have serious underlying medical conditions.

The COVID-19 Pandemic in Florida (continued)

AGENCY RESOURCES

For additional information on COVID-19 in Florida, several of Florida's agencies provide updated, detailed reports of COVID-19-related information.

The Department of Health maintains a dashboard providing daily updates regarding positive cases, sources of exposure, hospitalizations, and deaths. These data are available to the public at <https://floridahealthcovid19.gov/>.

The Florida Agency for Health Care Administration maintains a publicly accessible database of up-to-date information regarding hospital capacity, including bed availability and intensive care unit bed availability by hospital and county. The information is accessible at http://ahca.myflorida.com/covid-19_alerts.shtml

In addition to making information available, Florida has deployed novel tools to gather data and predict needs. Florida partnered with Google to launch a survey that collects information regarding symptom prevalence, travel history, mitigation behaviors, and exposure to COVID-19. The survey is available to Floridians and non-Floridians alike and can be accessed at <https://strongerthanc19.com>.



Guiding Principles for Re-Opening



PUBLIC HEALTH & SAFETY

The first priority in re-opening is maintaining the health and safety of all Floridians. Every measure taken by state and local governments, businesses, and individuals should consider the general health and safety of the public.



PROTECTION OF THE VULNERABLE

Targeted measures should focus on Floridians over the age of 65 and those who have serious underlying medical conditions to prevent exposure to COVID-19.



HEALTH CARE SYSTEM READINESS

Health facilities should be able to return to normal operations through a prudent approach that ensures available capacity to treat COVID-19 patients in the event of a medical surge. Health care systems also need to develop models for the sustainability of medical supplies and preservation of medical resources without the need for public augmentation of medical supplies.



ECONOMIC RECOVERY

The **Safe. Smart. Step-by-Step.** plan to re-open Florida should support the highest practicable level of business operation while maintaining public health and safety, so that all Floridians can return to work and the economy can recover.



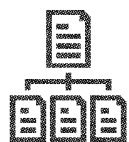
PROTECTION OF CIVIL LIBERTIES & MAINTAINING INDIVIDUAL RIGHTS

Measures taken by the government must not impair the fundamental rights of Floridians, and when restrictive measures are imposed they should be the least restrictive measures feasible to accomplish a specific medically necessary objective.



PUBLIC CONFIDENCE

The **Safe. Smart. Step-by-Step.** plan to re-open Florida must be rooted in sound medical judgement and driven by health metrics so that every Floridian feels safe as they return to work and their daily activities. An effective communications strategy is critical to ensuring public confidence in the COVID-19 mitigation strategies.



PARTNERSHIP WITH LOCAL COMMUNITIES

Local communities are partners with the state as the **Safe. Smart. Step-by-Step.** plan to re-open Florida is implemented. Florida is a geographically large and diverse state and each of our local communities has unique insight into their individual circumstances. Local communities will play an important role in the plan to re-open Florida.



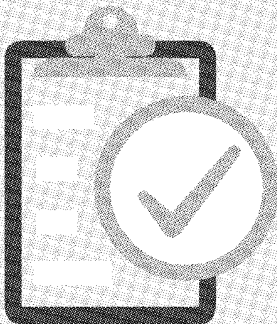
Roadmap for Re-Opening

Florida's **Safe. Smart. Step-by-Step.** plan to re-open is grounded in up-to-date data measuring COVID-19 spread, risk, and readiness. This plan is designed to mitigate the risk of resurgence and to protect the most vulnerable, while allowing for a phased path to economic recovery.

This plan should occur in four phases: Phase 0, which is the current phase we are in today; Phase 1; Phase 2; and Phase 3. Entry into each phase will be consistently evaluated in close consultation with public health experts and local government officials.



BENCHMARKS



Florida should track critical benchmarks on a statewide basis, the most important of which is hospital capacity to respond in the event of an unexpected surge of COVID-19. If the state shows consistent success, these guidelines contemplate advancement to the next phase. If, however, COVID-19 data suggests increased spread, the state should remain in the current phase. The state should continually review any sudden, unexplained spikes in the number of COVID-19 cases, while factoring in increases in testing and monitor any increases in hospitalizations. In extreme situations, the Governor may deploy a geographically targeted response in consultation with public health officials.

Benchmarks for Re-Opening

Using the *White House Guidelines for Opening up America Again* as a baseline, the Florida Department of Health has identified three data components that should be considered.

SYNDROMIC SURVEILLANCE

Syndromic surveillance methods look at individual and population health indicators (such as characteristic symptoms of a particular disease). The objective of this surveillance system is to provide the data and analytic tools needed to identify outbreaks or unusual trends more rapidly, leading to timely public health responses.

Metric

a. Downward trajectory of influenza-like illnesses (ILI)

AND

b. Downward trajectory of COVID-19-like illnesses (fever, cough, shortness of breath)

AND

Data Source: Early Notification of Community-Based Epidemics (ESSENCE): Florida's syndromic surveillance system.

EPIDEMIOLOGY & OUTBREAK DECLINE

Outbreak data captures actual reports of positive cases and traces the causes of health outcomes and diseases. It includes the study of the distribution (frequency, pattern) and determinants (causes, risk factors) of diseases.

The objective of monitoring these data is to ensure the state is managing the spread of COVID-19 and employing effective mitigation measures.

Metric

a. Downward trajectory of documented COVID-19 cases

OR

b. Downward trajectory of positive tests as a percent of total tests (flat or increasing volume of tests)

AND

Data Source: Merlin, Florida's reportable disease data base.

HEALTH CARE CAPABILITY

Data about hospital capacity and readiness shows whether the health care system is ready to respond in the event of an unexpected surge of COVID-19 illness. The ideal situation is for the system to be able to treat all patients without needing to use emergency surge plans and to have a robust COVID-19 testing program in place.

Metric

a. Capability to treat all patients without triggering surge capacity

AND

b. Robust testing program in place for at-risk healthcare workers, including emerging antibody testing

Data Source: Emergency Status System (ESS) for bed availability data.

Roadmap (continued)

HEALTH CARE CAPABILITY ADDITIONAL REQUIREMENTS

Hospitals satisfy the benchmark for health care capability if they:

1. Have the capacity to immediately convert additional facility-identified surgical and intensive care beds for treatment of COVID-19 patients in a surge capacity situation; and,
2. Have adequate personal protective equipment (PPE) available.
 - o Hospitals must have a well-established supply chain management structure and controls to maintain appropriate levels of PPE and report regularly both PPE levels and bed capacity to the Agency for Health Care Administration.
 - o The adequacy of supplies must take into consideration universal masking of all staff and patients and other guidelines per the Centers for Disease Control and Prevention (CDC) and the Florida Department of Health.
 - o Hospitals should maintain, an adequate supply of N95 masks, surgical masks, gloves, surgical gowns, and other critical resources for current needs with sufficient supply remaining in the event of a surge.
 - o Hospitals must confirm the reliability of their commercial supply chains to ensure timely and adequate supplies of PPE.
 - o Hospitals should not be seeking any additional federal or state assistance requesting PPE supplies upon resuming elective procedures.
 - o Protocols to conserve PPE should be well established and hospitals must provide effective training in PPE conservation including appropriate donning and doffing of PPE.

TESTING

Testing for COVID-19 is a critical component to Florida's plan to re-open in a **Safe. Smart. Step-by-Step.** approach. As the state re-opens, the amount of testing should be further expanded so state and local health officials can adequately monitor the prevalence of the virus within communities.

The state, in coordination with local governments, healthcare providers, private laboratories, and educational institutions, should have the capacity to reach the following average amount of tests per day over a 7-day period:

- 30,000 average tests per day by May 15;
- 40,000 average tests per day by June 15.

Importantly, Florida has more testing capacity than actual demand. We must work to encourage the expansion of testing up to our capacity.

Roadmap (continued)

The state should pursue an aggressive strategy to further expand testing. Strategies should include:

- Optimizing existing state data dashboards by leveraging the current reporting process for the Department of Health and Agency for Health Care Administration.
- Leveraging private sector partners to scale up testing by partnering with health systems throughout the state.

Local governments should develop testing strategies that expand their rate of testing in the population and reduce the need for state and federal supported testing locations. This plan should provide law enforcement agencies, health care professionals and first responders with priority access to rapid testing, either at point-of-care, when available, or when tests are sent to laboratories.

Local governments should coordinate with health care facilities within their jurisdiction in the development of their testing strategy. The rate of testing within a county should not decline as the state progresses through the phases of re-opening and each community should maintain a minimum level of testing with the goal of achieving and maintaining recommended testing capabilities.

CONTACT TRACING

To enhance the state and local health system's contact tracing process, collaboration methods should be pursued for state-wide expansion of rigorous contact tracing. These methods should prioritize adoption of digital applications, increased work force and use of technological innovations. Specific objectives for an expanded contract tracing program:

- Scale and implement contact tracing programs throughout the state using a phased-in approach targeting geographic regions to contain new outbreaks of COVID-19.
- Leverage private sector and university partners to scale up contact tracing throughout the state.



General Mitigation Guidance

There is currently no vaccine to prevent contraction of COVID-19. We must bear in mind that, as Floridians, we are all in this together and we have a responsibility to continue practicing mitigation measures.

These general mitigation guidelines are minimum recommended health protocols and are designed to be utilized at every phase of re-opening. Individuals and employers should continue to adhere to federal, state and local guidance, including information from the CDC.

INDIVIDUALS

Individuals are encouraged to practice good hygiene and engage in healthy activities, including outdoor activities, while practicing social distancing.

The following general guidance is recommended for all individuals throughout each phase of re-opening:

- Practice social distancing, as the virus is most transmissible indoors under close, sustained contact. If you are around other people, try to maintain 6 feet of separation.
- Avoid hugs, handshakes, large gatherings and close quarters.
- Frequently wash hands with soap and water for at least 20 seconds or use hand sanitizer with at least a 60 percent alcohol base if soap and water are not available.
- Consider wearing a face mask or cloth face cover when entering a business, or within close proximity to members of the public.
- Avoid touching eyes, nose and mouth.
- Cover your cough or sneeze with your elbow or a tissue and dispose of the tissue.
- Clean and disinfect frequently touched items and surfaces as much as possible.
- Monitor your symptoms carefully. If you feel sick, stay home.
- If you believe you are infected with COVID-19, contact your health care provider immediately.
- If you are older than 65 years of age or have a serious underlying medical condition, avoid large crowds.

EMPLOYERS

Employers should prepare their workplaces and consider how to minimize the spread of COVID-19 and lower the impact in their workplace.

General Mitigation (continued)

The following general guidance is recommended for all employers throughout each phase of re-opening:

- Practice social distancing, as the virus is most transmissible indoors under close, sustained contact. If you are around other people, try to maintain 6 feet of separation.
- Avoid hugs, handshakes, large gatherings and close quarters.
- Clean and disinfect high-touch, high-traffic surface areas.
- Develop and implement policies and procedures to train employees on personal hygiene expectations, including increased frequency of hand washing, the use of hand sanitizers with at least 60 percent alcohol and, clear instruction to avoid touching hands to face.
- For businesses that are close contact or have a high potential for exposure to COVID-19, require employees to wear masks, cloth face coverings or other PPE while inside or within close proximity to members of the public.
- Make hand sanitizer, disinfecting wipes, soap and water, or similar disinfectant readily available to employees and customers.
- Encourage employees who feel sick to stay home and monitor employees for COVID-19 symptoms.
- Do not allow symptomatic people to physically return to work until they meet CDC criteria to do so and are cleared by a medical provider.
- Develop and implement policies and procedures for workforce tracing following a positive COVID-19 test by an employee or an employee who has come into contact with an individual testing positive for COVID-19.



General Protocols

These general protocols are applicable statewide and at every phase of re-opening.

VISITS TO LONG-TERM CARE FACILITIES & CORRECTIONAL FACILITIES

Visits to nursing homes, assisted living facilities, adult family-care homes, long-term care facilities, adult group homes and correctional facilities should remain prohibited. Those who interact with residents and patients must adhere to strict hygiene protocols. These restrictions may be lifted by order of the Governor in consultation with state health officials and should not be a component of the phased-in the **Safe. Smart. Step-by-Step.** plan.

HOSPITAL REGIONAL COLLABORATION WITH SKILLED NURSING FACILITIES, ASSISTED LIVING FACILITIES & OTHER RESIDENTIAL PROVIDERS

- To support safe and effective infection prevention and control strategies at long-term care facilities, hospitals should proactively engage and collaborate with skilled nursing facilities, assisted living facilities, and other long-term care residential providers to share best practices on infection control.
 - If a resident at a skilled nursing facility, assisted living facility, or other long-term care residential facility is admitted to a hospital, the hospital should only discharge those residents for return to their skilled nursing facility, assisted living facility, or other long-term care residential facility only after a negative COVID-19 test result.
- If available, hospitals should provide timely access to testing for residents and staff.
- An alert system in hospital electronic medical record systems should be established to identify emerging COVID-19 cases at local facilities.
- Additionally, hospitals should provide other identified and important resources to support the care of frail elderly and others with underlying medical conditions in these residential facilities to:
 - Prevent the introduction of the virus into the facility;
 - Appropriately care for those with COVID-19; and
 - Prevent the spread of the virus in these facilities.

ELECTIVE PROCEDURES AT HEALTH CARE FACILITIES

Upon the expiration of Executive Order 20-72 on May 8, 2020, healthcare practitioners should resume all inpatient and outpatient elective procedures at hospitals, ambulatory surgical centers, office surgery centers, dental, orthodontic and endodontic offices, and other health care practitioners' offices. The Governor should authorize the Agency for Health Care Administration and the Florida Department of Health to take actions necessary to limit elective procedures if:

General Protocols (continued)

- Hospitals do not have the capacity to immediately convert additional facility-identified surgical and intensive care beds for treatment of COVID-19 patients in a surge capacity situation;
- Hospitals do not have adequate PPE available to complete all medical procedures and respond to COVID-19 treatments needs;
- Hospitals seek any additional federal, state, or local assistance regarding PPE supplies once resuming elective procedures; and
- Hospitals fail to provide support to and proactively engage with skilled nursing facilities, assisted living facilities, and other long-term care residential providers.

CHILDCARE FACILITIES (i.e. Daycares and Summer Camps)

Childcare facilities, including daycares and voluntary pre-kindergarten programs, should continue to operate throughout each phase of the **Safe. Smart. Step-by-Step.** plan and follow general mitigation protocols as outlined in this report. Childcare facilities should consider implementing the following mitigation techniques:

- Require all staff to wear masks or cloth face coverings and other PPE while on premises.
- Limit class size to maximize social distancing, where feasible, as the virus is most transmissible indoors under close, sustained contact.
- Institute handwashing at regular intervals (i.e. every hour).
- Conduct temperature checks daily.



The Plan: Phases For Re-Opening PHASE 0: CURRENT PHASE

Floridians are operating under the Current Phase as of the date of this report. Executive Order 20-91, which permitted only essential services and activities, expires on April 30, 2020.

INDIVIDUALS

Vulnerable Populations

Individuals older than 65 years of age with a serious underlying medical condition (such as chronic lung disease, moderate-to-severe asthma, serious heart conditions, immune-compromised status, cancer, diabetes, severe obesity, renal failure and liver disease) are urged to stay at home and only leave their homes when necessary to obtain or provide essential services or conduct essential activities.

Social Gatherings

All individuals are urged to continue to maximize physical distance from others in public, particularly in enclosed environments. Individuals are urged to avoid socializing in groups of more than 10 people.

Travel

Individuals are urged to avoid all non-essential travel and cruises, including to U.S. states and cities outside of Florida with community spread of COVID-19. Individuals coming to Florida from an area with substantial community spread, including the New York Tri-State Area (Connecticut, New Jersey and New York) and Louisiana, should isolate for 14 days upon arrival in Florida.

EMPLOYERS

Telework

Employers are encouraging teleworking, where practical.

Employee Screening

All employers are urged to screen employees before entering the premises for symptoms of COVID-19 or influenza like illness and, where practical, take the temperature of each employee.

Travel

Employers are urged to avoid non-essential travel and adhere to CDC guidelines regarding isolation following travel.

Local Government Meetings

Requirements for in-person quorum for a local government body to meet are suspended and the use of technology and video conferencing for local government meetings is authorized.

The Plan: Phase 0, Current Phase (continued)

OTHER

Bars, Pubs and Nightclubs

Bars, pubs, and nightclubs that derive at least 50 percent of sales from alcohol are currently closed.

Restaurants

Currently, all restaurants and food establishments are limited to take-out service only.

Gyms and Fitness Centers

Gyms and fitness centers are closed unless they are:

- Amenities of hotels which have a capacity of 10 persons or less,
- Amenities of a residential building,
- Interior to any fire or police stations, or
- Located inside any single-occupant office building.

Recreation

- **Public Beaches:** Beach access is limited to parties of 10 or less with 6-foot distance required between groups. Beach closures remain a local government decision.
- **Large Venues:** (i.e. movie theaters, concert halls, auditoriums, bowling alleys, arcades, playhouses, casinos) These facilities are not deemed essential activities.

Large Sporting Event and Theme Parks

These facilities are currently operating under restricted business measures or have closed.

Vacation Rentals

Vacation Rentals are currently suspended if:

- Rented for periods of less than 30 days or one calendar month, whichever is less;
- Advertised or held out to the public as a place regularly rented to guests; or
- Otherwise regulated by the Department of Business and Professional Regulation as a vacation rental pursuant to section 509.241, Florida Statutes.
- This prohibition does NOT include:
 - Hotels, motels, inns, resorts, non-transient public lodging establishments, or time share projects;
 - Long-term rentals; or
 - Rentals to persons performing military, emergency, governmental, health or infrastructure response, or travelers engaged in non-vacation commercial activities.

The Plan: Phase 0, Current Phase (continued)

Personal Services Businesses

Currently, personal services businesses such as cosmetology salons, barber shops and nail salons are operating under restricted business measures or have closed.

Retail Businesses

Currently, many retail establishments are operating under restricted business measures or have closed.



The Plan: Phases For Re-Opening PHASE 1

Phase 1 should begin based on the benchmarks provided for in the Roadmap for Re-Opening which includes a downward trajectory of the syndromic and epidemiology criteria while maintaining adequate health care capacity.

The **Safe. Smart. Step-by-Step.** plan sets forth minimum recommended health protocols. Individuals and businesses should adhere to all public guidance by federal, state and local officials, including state regulatory agencies.

INDIVIDUALS

Vulnerable Populations

Individuals older than 65 years of age and individuals with a serious underlying medical condition (such as chronic lung disease, moderate-to-severe asthma, serious heart conditions, immune-compromised status, cancer, diabetes, severe obesity, renal failure and liver disease) should continue to stay at home. When leaving home, these individuals should follow social distancing and other general mitigation guidance. Those living with vulnerable individuals should be aware of the exposure risk that they could carry the virus back home after returning to work or other environments where distancing is not practical. Vulnerable populations should affirmatively inform their employer that they are a member of the vulnerable population so that their employer can plan accordingly.

Social Gatherings

All individuals should continue to maximize physical distance from others in public, particularly in enclosed environments. Individuals should avoid socializing in groups of more than 10 people in circumstances that do not readily allow for appropriate social distancing of at least 6 feet.

Travel

Individuals should avoid all non-essential travel and cruises, including to U.S. states and cities outside of Florida with substantial community spread of COVID-19. Individuals coming to Florida from an area with substantial community spread, such as the New York Tri-State Area, should adhere to CDC guidelines regarding isolation for 14 days upon arrival in Florida.

EMPLOYERS

Telework

All employers should encourage teleworking, where practical. Employers should develop plans for employees to return to work in phases, which should be implemented in subsequent phases of the **Safe. Smart. Step-by-Step.** plan.

Employee Screening

All employers should screen employees before entering the premises for symptoms of COVID-19 or influenza like illness and, where practical, take the temperature of each employee.

The Plan: Phase 1 (continued)

Travel

Employers should avoid non-essential travel and adhere to CDC guidelines regarding isolation following travel.

Local Government Meetings

The in-person quorum for a local government body to meet should remain suspended and the use of technology and video conferencing for local government meetings should be encouraged.

OTHER

Bars, Pubs and Nightclubs

Bars, pubs, and nightclubs that derive at least 50 percent of sales from alcohol should remain closed.

Restaurants

Restaurants and food establishments should operate at no more than 50 percent capacity, with appropriate social distancing and a minimum of 6 feet separating parties, as the virus is most transmissible indoors under close sustained contact.

- Parties should not exceed 10 people. Businesses should limit inside waiting areas for patrons waiting to be seated.
- Businesses should thoroughly clean and disinfect all surfaces after each use.
- Businesses should consider a reservations-only business model or call-ahead seating to manage spacing in restaurant.
- Outdoor dining areas should be prioritized.
- Businesses should consider posting signs to remind staff and patrons of safety and sanitization protocols.
- Businesses should screen employees before work and should consider requiring employees to wear face masks or cloth face coverings while inside or within close proximity to members of the public.
- Bar areas should remain closed.
- Menus, if laminated, should be cleaned after each usage. Paper menus should be designed for single use and then disposed of immediately after use.
- Businesses should avoid cafeteria-style dining arrangements. If salad bars or buffets are permitted efforts to mitigate risk should include barriers to block virus spread from sneezes and coughs and service utensils should be handled by staff and/or washed frequently.

Gyms and Fitness Centers

Gyms and fitness centers may re-open but should at a minimum:

- Operate at no more than 50 percent of building capacity.
- Adhere to strict social distancing and sanitation protocols, including cleaning and disinfecting all surfaces.
- Separate patrons by at least 6 feet.

The Plan: Phase 1 (continued)

- Encourage appointment only or scheduled use of equipment.
- Prohibit indoor group sessions or classes.

Recreation

- **State Parks:** A limited number of state parks should open for daytime use only. During this phase, visitors will not have access to certain amenities, such as pavilions, picnic areas and campsites, due to sections of the park being closed or staff and visitor safety considerations.
- **Public Beaches:** Beach access should be limited to parties of 10 or less with 6-foot distance between groups. Beach closures should remain a local government decision.
- **Large Venues:** (i.e. movie theaters, concert halls, auditoriums, bowling alleys, arcades, playhouses, casinos) These venues should utilize strict social distancing protocols and should operate at no more than 50 percent capacity, with a minimum of 6 feet separating parties. Additional guidance includes:
 - Parties should not exceed 10 people.
 - Operators should clean and disinfect all surfaces after each use.
 - Businesses should consider screening employees before work and require workers to wear face masks or cloth face coverings while inside or within close proximity to members of the public.

Large Sporting Events and Theme Parks

- Large spectator sporting events should use strict social distancing guidelines and limit occupancy of venues to 25 percent of building capacity.
- Theme parks should remain closed.

Vacation Rentals

Vacation rentals should remain suspended.

Personal Services Businesses

Personal Services Businesses, such as cosmetology salons, barber shops and nail salons, should limit occupancy to 50 percent of building capacity and should consider the following mitigation measures:

- Welcome patrons by appointment only and avoid group appointments that increase occupancy during the same time periods.
- Regularly sanitize working stations and equipment between interactions with customers to the greatest frequency feasible.
- Require all employees to wear face masks, cloth face coverings and other PPE while inside or within close proximity of members of the public.
- Encourage customers to wear face masks or cloth face coverings when entering the premises and provide face masks or cloth face coverings upon request, if available.
- Post signage to direct customers against congregating outside of the premises.
- Remove all unnecessary, frequent-touch items such as magazines, newspapers, service menus, any other unnecessary paper products and décor from customer service areas.

The Plan: Phase 1 (continued)

Retail Businesses

These types of businesses should consider the following mitigation measures:

- Operate at no more than 50 percent of building capacity.
- Post signage to direct the flow of customers within the premises to promote social distancing, as the virus is most transmissible indoors under close, sustained contact.
- Regularly sanitize work stations and frequently touched surfaces.
- Develop and implement policies and procedures to train employees on personal hygiene expectations, including increased frequency of hand washing, the use of hand sanitizers with at least 60 percent alcohol and, clear instruction to avoid touching hands to face.
- Consider dedicating a certain time each day for vulnerable populations.



The Plan: Phases For Re-Opening PHASE 2

Phase 2 will begin after the successful conclusion of Phase 1, which includes a downward trajectory of the syndromic and epidemiology criteria while maintaining adequate health care capacity. This will occur when there is no evidence of a rebound or resurgence of COVID-19 cases and satisfies the benchmarks outlined in this **Safe. Smart. Step-by-Step.** plan.

The **Safe. Smart. Step-by-Step.** plan sets forth minimum recommended health protocols. Individuals and businesses should adhere to all public guidance by federal, state and local officials, including state regulatory agencies.

INDIVIDUALS

Vulnerable Populations

Individuals older than 65 years of age and individuals with a serious underlying medical condition (such as chronic lung disease, moderate-to-severe asthma, serious heart conditions, immune-compromised status, cancer, diabetes, severe obesity, renal failure and liver disease) should continue to stay at home. When leaving the home, these individuals should follow social distancing and other general mitigation guidance. Those living with vulnerable individuals should be aware of the exposure risk that they could carry the virus back home after returning to work or other environments where distancing is not practical. Vulnerable populations should affirmatively inform their employer that they are a member of the vulnerable population so that their employer can plan accordingly.

Social Gatherings

All individuals should continue to maximize physical distance from others in public, particularly in enclosed environments.

- Individuals should avoid socializing in groups of more than 50 people in circumstances that do not readily allow for appropriate social distancing of at least 6 feet.

Travel

Individuals may resume non-essential travel.

EMPLOYERS

Telework

All employers should continue to encourage teleworking where practical. Employers should begin implementing plans for employees to return to work in phases.

Employee Screening

All employers should screen employees before entering the premises for symptoms of COVID-19 or influenza like illness and, where practical, take the temperature of each employee.

The Plan: Phase 2 (continued)

Travel

Employers should minimize non-essential travel and adhere to CDC guidelines regarding isolation following travel.

Local Government Meetings

In-person quorum for local government bodies should resume, allowing no more than 50 people in attendance, as long as social distancing guidelines can still be maintained. Continue to allow authorized technology and video conferencing for public participation at local government meetings.

OTHER

Bars, Pubs and Nightclubs

Bars, pubs, and nightclubs that derive more than 50 percent of sales from alcohol should operate at 50 percent of building capacity with an emphasis on diminished standing room capacity and prioritizing outdoor service. Owners should consider:

- Spacing tables at least six feet apart and reducing and spreading the arrangement of seating at the bar to incorporate appropriate social distancing between patrons as well as between patrons and the bar staff.
- Restricting coupling of tables or table groups to 10 or fewer patrons.
- Encouraging beverage orders to be taken at the table by bar or wait staff rather than at the bar counter.
- Incorporating intentional and manageable traffic flows to enable responsible social distancing for patrons waiting on service when accepting orders directly at the bar.
- Cleaning and disinfecting all surfaces after each use.
- Menus, if laminated, should be cleaned after each usage. Paper menus should be designed for single use and then disposed of immediately after use.

Restaurants

Restaurants and food establishments should operate at no more than 75 percent of building capacity, with appropriate social distancing and a minimum of 6 feet separating parties, as the virus is most transmissible indoors under close, sustained contact.

- Parties should not exceed 10 people. Businesses should limit inside waiting areas for patrons waiting to be seated.
- Allow walk-ins but continue to emphasize a reservations-only business model or call-ahead seating to manage spacing effectively in restaurant.
- Outdoor dining areas should continue to be prioritized.
- Operators should clean and disinfect all surfaces after every use.
- Businesses should consider posting signs to remind staff and patrons of safety and sanitization protocols.
- Businesses should continue to screen employees before work and consider requiring employees to wear face masks or face coverings while inside or within close proximity to members of the public.

The Plan: Phase 2 (continued)

- Menus, if laminated, should be cleaned after each usage. Paper menus should be designed for single use and then disposed of immediately after use.
- Businesses should avoid cafeteria-style dining arrangements. If salad bars or buffets are utilized, efforts to mitigate risk should include barriers to block virus spread from sneezes and coughs and service utensils should be handled by staff and/or washed frequently.

Gyms and Fitness Centers

Gyms and fitness centers should:

- Operate at no more than 75 percent of building capacity.
- Adhere to strict social distancing and sanitation protocols, including cleaning and disinfecting all surfaces after each use.
- Separate patrons by at least 6 feet.
- Resume indoor group sessions and classes with restricted capacity to promote social distancing, as the virus is most transmissible indoors under close, sustained contact.

Recreation

- **State Parks:** All state parks should be opened for daytime use. Some facilities within state parks—including overnight accommodations, pavilions, interpretive programs, any large group activities or events—will remain closed.
- **Public Beaches:** Beaches should be fully open.
- **Large Venues:** (i.e. movie theaters, concert halls, auditoriums, bowling alleys, arcades, playhouses, casinos) These venues should utilize strict social distancing protocols and should operate at no more than 75 percent capacity, with a minimum of 6 feet separating parties. Additional guidance includes:
 - Parties should not exceed 10 people.
 - Operators should clean and disinfect all surfaces after each use.
 - Businesses should consider screening employees before work and requiring workers to wear face masks or cloth face coverings while inside or within close proximity to members of the public.

Large Sporting Events and Theme Parks

- Large spectator sporting events should limit occupancy of venues to 50 percent of building capacity and use strict social distancing.
- Theme parks may consider re-opening with capacity limits, strict social distancing and proper measures to clean and disinfect.

Vacation Rentals

Vacation rentals should consider the following:

- Vacation rentals should open and operate for in-state reservations only (i.e. only Florida residents).
- Prohibit rentals to persons traveling internationally or from a state or locality with a substantial community spread of COVID-19.

The Plan: Phase 2 (continued)

- Maintain 72 hours between guest check-ins to allow for effective cleaning and disinfecting of the rental unit.
- Thoroughly clean and disinfect the property between rentals and post signage in all units detailing cleaning and sanitation procedures.

Personal Services Businesses

Personal Services Businesses, such as cosmetology salons, barber shops and nail salons, should limit occupancy to 75 percent of building capacity and should consider the following mitigation measures:

- Allow service for walk-in patrons at the discretion of the business owner, so long as patron waiting areas can accommodate proper social distancing protocols, as the virus is most transmissible indoors under close, sustained contact.
- Regularly clean and disinfect working stations and equipment between interactions with customers to the greatest frequency feasible.
- Suggest all employees wear face masks, cloth face coverings and other PPE while inside or within close proximity to members of the public.
- Encourage customers to wear face masks or cloth face coverings when entering the premises and provide face masks or cloth face coverings upon request, if available.
- Post signage to discourage customers against congregating outside of the premises.
- Remove all unnecessary, frequent-touch items such as magazines, newspapers, service menus, any other unnecessary paper products and décor from customer service areas.

Retail Businesses

Retail businesses should consider the following mitigation measures:

- Operate at no more than 75 percent of building capacity.
- Post signage to direct the flow of customers within the premises to promote social distancing.
- Regularly clean and disinfect working stations and commonly touched surfaces at the greatest frequency feasible.



The Plan: Phases For Re-Opening PHASE 3

Phase 3 will begin after the successful conclusion of Phase 2, which includes a downward trajectory of the syndromic and epidemiology criteria while maintaining adequate health care capacity. This will occur when there is no evidence of a rebound or resurgence of COVID-19 cases and satisfies the benchmarks outlined in this **Safe. Smart. Step-by-Step.** plan.

The **Safe. Smart. Step-by-Step.** plan sets forth minimum recommended health protocols. Individuals and businesses should adhere to all public guidance by federal, state and local officials, including state regulatory agencies.

INDIVIDUALS

Vulnerable Populations

Individuals older than 65 years of age and individuals with a serious underlying medical condition (such as chronic lung disease, moderate-to-severe asthma, serious heart conditions, immune-compromised status, cancer, diabetes, severe obesity, renal failure and liver disease) can resume public interactions, but should practice social distancing, minimizing exposure to social settings where distancing may not be practical, unless precautionary measures are observed. Vulnerable populations should affirmatively inform their employer that they are a member of the vulnerable population so that their employer can plan accordingly.

Social Gatherings

Non-vulnerable populations should consider minimizing time spent in crowded environments.

Travel

Non-essential travel may continue.

EMPLOYERS

Telework

Employees should resume unrestricted staffing of worksites and implement the final phasing in of employees returning to work. For vulnerable populations, teleworking can be considered.

Employee Screening

Employers should take prudent and practical measures to ensure employees do not enter the premises if they believe they are infected with COVID-19 or show symptoms of influenza like illness.

The Plan: Phase 3 (continued)

Travel

Employees should resume non-essential travel and adhere to CDC guidelines regarding isolation following travel.

Local Government Meetings

These meetings should return to in-person quorum and public participation for local government bodies.

OTHER

Bars, Pubs and Nightclubs

Bars, pubs, and nightclubs that derive more than 50 percent of sales from alcohol should operate at full capacity with limited social distancing protocols. Businesses should maintain adequate sanitation practices among employees and patrons during all hours of operation. Menus, if laminated, should be cleaned after each usage. Paper menus should be designed for single use and then disposed of immediately after use.

Restaurants

Restaurants and food service establishments may operate at full capacity with limited social distancing protocols. Businesses should maintain adequate sanitation practices among employees and patrons during all hours of operation. Menus, if laminated, should continue to be cleaned after each usage. Paper menus shall be designed for single use and then disposed of immediately after use.

Gyms and Fitness Centers

Gyms and fitness centers should open to full capacity but should maintain adequate sanitation practices among employees and patrons during all hours of operation.

Recreation

- **State Parks:** State parks should be fully opened, including overnight accommodations.
- **Public Beaches:** Beaches should remain fully opened.
- **Large Venues:** (i.e. movie theaters, concert halls, auditoriums, bowling alleys, arcades, playhouses, casinos) These venues should re-open fully with limited social distancing protocols.

Large Sporting Events and Theme Parks

- Large spectator sporting events should consider reducing capacity with limited social distancing protocols.
- Theme parks may return to normal operations with limited social distancing protocols.

The Plan: Phase 3 (continued)

Vacation Rentals

Vacation Rentals should resume normal operating procedures but should continue to thoroughly clean and disinfect the property between rentals.

Personal Services Businesses

Personal Services Businesses, such as cosmetology salons, barber shops and nail salons, should operate under full capacity but should consider the following mitigation measures:

- Continue to maintain adequate sanitation practices for employees and patrons.
- Regularly clean and disinfect working stations and equipment between interactions with customers to the greatest frequency feasible.
- Remove all unnecessary, frequent-touch items such as magazines, newspapers, service menus, any other unnecessary paper products and décor from customer service areas.

Retail Businesses

Operators of retail businesses should operate at full capacity but should continue to maintain adequate sanitation practices for employees and patrons.



Ongoing Considerations

EDUCATION

The Department of Education and the State University System, in consultation with state health officials, should monitor the re-opening phases as set by this report. However, plans should be developed to resume on-campus learning, full-time, for the 2020-2021 school year.

- The Department of Education should develop a plan to phase-in education, safely, during the summer months to provide supplemental education for closing achievement gaps for early learning through K-12 students who may need additional supports due to COVID-19 school closures.
- Florida's postsecondary institutions should continue to implement distance learning measures to the extent possible and develop a plan for return to on-campus instruction.

SMALL AND RURAL BUSINESSES

Small businesses are the backbone of the Florida economy. Getting them up and working again is critically important for Florida's economic recovery. The guidance contained in Florida's **Safe. Smart. Step-by-Step.** plan is not a condition for a small business to operate, but the deployment of these recommended measures should occur to the greatest extent feasible to promote economic recovery while ensuring the public health and safety of all Floridians.

Businesses that frequently interact with customers should institute mitigation measures outlined in the guidance within specific phases to ensure that they can conduct their operations in a safe manner and prevent the spread of COVID-19. While these measures should be universally deployed, many small businesses will be unable to afford PPE and need assistance to provide PPE or other protective equipment.

As the state moves forward with the **Safe. Smart. Step-by-Step.** plan, resources should be provided to aid small businesses to acquire the protective materials needed to restart operations. These measures can include:

- Direct grant assistance to local governments focused on small business programs to acquire PPE and other protective infrastructure such as sneeze guards, thermometers, and sanitation supplies.
- Coordinated support from the Division of Emergency Management to local governments to provide protective health supplies when deficiencies exist that severely impair small business operations.

Additionally, rural communities have experienced the COVID-19 pandemic differently than urban areas. Florida's agriculture industry has felt significant economic strain through the supply chain from mitigation measures taken by restaurants and retail businesses.

Ongoing Considerations (continued)

Through all stages of economic recovery, Florida's rural communities should be a focus of efforts to restore stability to the state's diverse economic base. Some examples of measures include:

- Policies developed by Florida's social services programs for food assistance should prioritize buying from Florida growers and producers, and state vendors should prioritize Florida businesses as a condition of all procurement.
- Florida economic development planning should develop marketing and branding strategies to further promote rural communities and products and food produced in Florida to Floridians.

The Florida Department of Economic Opportunity, through its emergency operation function, should continue to partner with local governments and small businesses to communicate successful mitigation strategies for businesses.

TOURISM

Tourism is vital to Florida's economic well-being. Tourism marketing by VISIT FLORIDA should be reintroduced in phases that acknowledge the progression the state makes through the **Safe. Smart. Step-by-Step.** plan. Currently, VISIT FLORIDA is engaged in limited marketing. During the initial phases of the **Safe. Smart. Step-by-Step.** plan, VISIT FLORIDA should focus on promoting in-state travel when businesses are ready.

HURRICANE PREPAREDNESS: BUSINESS DISASTER PLANNING

Before a Disaster Strikes

A disaster of any size could have an impact on business. All businesses should build a disaster continuity plan and encourage employees to create a family emergency plan. It is important to consider how a disaster could affect employees, customers and workplaces. Important considerations include: how to manage a business if access to the workplace is limited by road closures, streets are impassable, or communication is limited.

Additionally, businesses should similarly plan for the unique challenges of a hurricane during a pandemic and set aside disaster supplies. This may include warehousing or storage of emergency masks, cloth face coverings or other PPE along with generators and other equipment.

During a Disaster

During a disaster, safety is the main concern. Businesses are encouraged to review their Business Continuity Plan to ensure the information is up to date and employees are aware of the plan and their responsibilities. It is important to monitor relevant emergency management news for weather and safety updates. In case an evacuation is ordered, business owners should secure their businesses and follow instructions by local emergency management on evacuation orders. If local emergency management officials order an evacuation and a business owner makes the decision to remain at their business, emergency responders will not be able to respond during the disaster.

Ongoing Considerations (continued)

Regarding COVID-19, the unique issues of this public health crisis may require emergency management officials to consider stay-at-home orders instead of evacuating people in a storm's path. If evacuations are required, transportation network companies, such as Uber and Lyft, may be considered in addition to buses to assist in evacuations. Further, utilizing additional school locations to add capacity to allow for greater social distancing as well as hotels may be considered in addition to current evacuation centers.