

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

ERIC OSTERGREN and  
JASON GILLMAN, JR,  
Plaintiffs,

Case No.: 20-\_\_\_\_\_-MZ  
Honorable \_\_\_\_\_

v.

**VERIFIED COMPLAINT**

GOVERNOR GRETCHEN WHITMER  
and STATE OF MICHIGAN,  
Defendants

\_\_\_\_\_/

OUTSIDE LEGAL COUNSEL PLC  
PHILIP L. ELLISON (P74117)  
Attorney for Plaintiffs  
PO Box 107  
Hemlock, MI 48626  
(989) 642-0055

**VERIFIED COMPLAINT**

NOW COME Plaintiffs ERIC OSTERGREN and JASON GILLMAN, JR, by and through counsel at OUTSIDE LEGAL COUNSEL PLC, and complains as follows:

**PARTIES**

1. Plaintiffs ERIC OSTERGREN and JASON GILLMAN, JR are residents of the State of Michigan who have or will be making requests for government records under the Michigan *Freedom of Information Act*.
2. Defendant GOVERNOR GRETCHEN WHITMER is the Governor of the State of Michigan and serves as the State of Michigan's Chief Executive.
3. Defendant STATE OF MICHIGAN is a state sovereign formed and operated by the consent of People.

**JURISDICTION**

4. This Court has jurisdiction pursuant to MCL 600.6419(a).

## GENERAL ALLEGATIONS

5. Under the *Freedom of Information Act*, a FOIA requester (like Plaintiffs) can make a request for records containing key government information and/or records documenting the actions and decisions of government actors at both the state and local levels.

6. COVID-19 is a novel respiratory virus that began circulating in late 2019 and reached Michigan in March 2020.

7. As of the date of this filing, less than two-tenths of one percent of the Michigan population is or has been infected with the COVID-19 virus (15,718 ÷ 9.9 million residents).

8. While this infection level warrants serious attention by our government, the legal, financial, and governmental response by Defendant STATE OF MICHIGAN and its state and local officials has been unprecedented.

9. Since March 10, 2020, Defendant GOVERNOR GRETCHEN WHITMER has suspended or altered countless laws, regulations, legal obligations, and statutes, including the following—

- a. criminalizing the operations of businesses deemed by GOVERNOR GRETCHEN WHITMER to be non-essential;
- b. criminalizing the freedom of movement of individuals;
- c. criminalizing the freedom of assembly of individuals;
- d. suspension of and criminalizing gatherings of people who are not of the same household;
- e. suspension of and criminalizing the right to protest in traditional public forums;
- f. suspension of the operation of schools, places of worship, and places of higher learning;
- g. suspension of and criminalizing access of family members and friends to individuals admitted to hospitals, nursing homes; and healthcare facilities;
- h. releasing of criminally-convicted individuals from incarceration in Michigan jails and prisons;
- i. creating new laws, without passage by the Legislature, as to the discharge or discipline of employees for selecting to stay home;

- j. expanding the unemployment compensation system beyond the legal limits imposed that statutory scheme; and
- k. spent or committed funds, without appropriations, in amounts of millions of public dollars.

10. In addition, other state and local actors have, based on the actions of Defendants, also started issuing their own “orders” which also and further criminalizes traditional lawful and constitutionally protected activities.

11. For example, the Director of the Michigan Department of Health and Human Services issued an “Director’s Order” which, in unusual part, criminalized obligations made on a “Frequently Asked Questions” state webpage which do not have the force or effect of law.

12. A fair and accurate copy of the “Director’s Order” is attached as **Exhibit B**.

13. By way of further example, a local public health officer in Northern Michigan issued what it calls “Emergency Order 2020-1” for “control of epidemic/pandemic” which imposes additional and costly measures on businesses operating already in trying circumstances to supplement the Governor’s prior orders.

14. A fair and accurate copy of said Order is attached as **Exhibit C**.

15. Plaintiffs, as are many other citizens, are concerned of the depth, scope, and foundation of state officials’ decisions and directives, and the decisions and the directives of all other levels of government acting under the broadest centralization of powers to the exclusion of review by legislative officials and judicial officers.

16. The *Freedom of Information Act* serves the most important tool for citizens, media, businesses, and others in accessing and securing needed information and documents from state and local governments.

17. Many times, governments will not provide key document(s) unless and until a request is formally made under the *Freedom of Information Act*.

18. Michigan’s FOIA law makes clear that—

It is the “public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process. MCL 15.231(2).

19. As the late federal judge Damon Keith famously opined—

The Executive Branch seeks to uproot people's lives, outside the public eye, and behind a closed door. Democracies die behind closed doors. [The law], through a free press, protects the people's right to know that their government acts fairly, lawfully, and accurately in deportation proceedings. When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.

20. The Framers of our Government "did not trust any government to separate the true from the false for us." *Kleindienst v Mandel*, 408 US 753, 773 (1972).

### **Executive Order No. 2020-38**

21. In the late hours of Sunday, April 5, 2020, Defendant GOVERNOR GRETCHEN WHITMER, claiming to act under "the Michigan Constitution of 1963 and Michigan law," purportedly ordered massive suspensions and alterations of the Michigan Freedom of Information Act pursuant to what she designated as Executive Order 2020-38.

22. A fair and accurate copy of Executive Order 2020-38 is attached as **Exhibit A**.

23. Such actions are drastic, unprecedented, and unauthorized by the text of the Michigan Constitution.

24. Such actions are drastic, unprecedented, and unauthorized by the text of the Michigan *Freedom of Information Act*.

25. Executive Order 2020-38 asserts to do all of the following—

- Waive governmental compliance with response time periods provided by Sections 5(2), 10(2), and 10a(2) of the *Freedom of Information Act*;
- Waive and/or indefinitely suspends governmental compliance with "in-person efforts" to locate and disclose government records under the the *Freedom of Information Act* even if a government official can safely provide the same;
- Provides a purported legal basis for state and local public bodies to simply not physically open the envelope containing a *Freedom of Information Act* request or not physically take a faxed request from the fax machine to blindly avoid having to respond to a lawfully made *Freedom of Information Act* request(s);
- Provides a purported legal basis to simply refuse to respond in the methods provided by Section 5(2) of the *Freedom of Information Act* and instead indefinitely suspends disclosure of needed information for as

long as the public body self-deems necessary until the Governor decides to withdraw the emergency declarations;

- Imposes new public policy (not approved by the Legislature) of incomplete disclosure contrary to MCL 5.231(2) whereby now citizens are only entitled to *government-selected* information regarding the affairs of government and the official acts of those who represent them as public officials and public employees; and citizens are only be *partially informed* or *completely uninformed* thereby impinging of their constitutional and statutory rights to fully participate in the democratic process.

### ***Powers & Violation of Authority***

26. Under the Michigan Constitution, “[a]ll political power is inherent in the people,” not the Governor, as “[g]overnment is instituted for [the people’s] equal benefit, security and protection.”

27. Under the Michigan Constitution, “the executive power is vested in the governor.”

28. The Michigan Constitution says nothing about Michigan’s governor issuing emergency executive orders or who is in charge in an emergency to expressly suspend government transparency laws and obligations created by constitution and/or statutory law.

29. The only provision dealing with emergencies or what it labels as “continuity of government in emergencies” is Article VI, Section 39.

30. Section 39 provides—

In order to insure continuity of state and local governmental operations in periods of emergency only, resulting from disasters occurring in this state caused by enemy attack on the United States, the legislature may provide by law for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices; and enact other laws necessary and proper for insuring the continuity of governmental operations.

31. COVID-19 is not a disaster caused by enemy attack on the United States.

32. As such, there is no Constitutional provision to authorize the Governor to suspend the government operations and mandatory information disclosure obligations under the *Freedom of Information Act* statute.

33. The other legal authorities that the Governor regularly invokes (but did not specify in Executive Order 2020-38) is the “*Emergency Management Act*” and the “*Emergency Powers of the Governor Act of 1945*.”

34. The *Emergency Management Act* provides that “[t]he governor is responsible for coping with dangers to this state or the people of this state presented by a disaster or emergency” and “may issue executive orders, proclamations, and directives having the force and effect of law to implement this act.”

35. The *Emergency Management Act* also authorizes upon the declaration of a state of disaster or emergency, that Governor may “suspend a regulatory statute, order, or rule prescribing the procedures for conduct of state business, when strict compliance with the statute, order, or rule would prevent, hinder, or delay necessary action in coping with the disaster or emergency.”

36. Pursuant to Section 3(3), the Governor may issue a “state of disaster” which expires automatically 28 days thereafter unless extended by the Legislature upon the request of the Governor.

37. Pursuant to Section 3(4), the Governor may issue a “state of emergency” which expires automatically 28 days thereafter unless extended by the Legislature upon the request of the Governor.

38. Defendant GOVERNOR GRETCHEN WHITMER issued such a declaration on March 10, 2020 as Executive Order 2020-4.

39. It expires after April 7, 2020.

40. As of the date of this filing, the states of emergency or disaster have not been extended by the Legislature as required by law to allow Defendant GOVERNOR GRETCHEN WHITMER to act thereafter.

41. Executive Order 2020-38 was issued on April 5, 2020 and purposes to remain in effect until June 4, 2020 and thusly exceeds the authority provided to Defendant GOVERNOR GRETCHEN WHITMER given the 28-day limit as provided by statute absent prior Legislature approval.

42. Executive Order 2020-38 exceeded the authority of the Defendant GOVERNOR GRETCHEN WHITMER to issue on April 5, 2020 as fulfillment of FOIA requests, consistent with the current statutory obligations and deadlines, would not prevent, hinder, or delay necessary action in coping with the disaster or emergency as the Governor’s Executive Office is not subject to the “*Freedom of Information Act*.”

43. The other law, the *Emergency Powers of the Governor Act of 1945*, authorizes the Governor to issue a declaration of a “state of emergency.”

44. That statute provides that “[a]fter making the proclamation or declaration, the governor may promulgate *reasonable* orders, rules, and regulations as he or she

considers necessary to protect life and property or to bring the emergency situation within the affected area under control.”

45. Executive Order 2020-38 is not a *reasonable* order.

46. At times of emergency, timely and meaningful access to government-held information and records of decision is at its highest and suspension and limitation of the same is not reasonable and outside the scope of the authority under Michigan law.

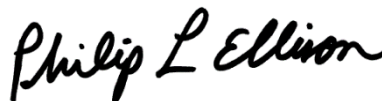
### **RELIEF REQUESTED**

47. WHEREFORE, Plaintiffs respectfully requests this Court to—

- a. Declare, pursuant to Michigan Court Rule 2.605, that Executive Order 2020-38, as issued, exceeds the authority for Defendant STATE OF MICHIGAN, by Defendant GOVERNOR GRETCHEN WHITMER, to issue as to effectuate the suspension, termination, or limitation on access to information and government records required to be produced by law;
- b. Declare, pursuant to Michigan Court Rule 2.605, that Executive Order 2020-38 is unlawful in whole or in part as so determined;
- c. Issue a preliminary and permanent injunction, pursuant to Michigan Court Rule 3.310, to enjoin the ongoing enforcement and utilization of Executive Order 2020-38, as issued, as exceeding the authority for Defendant STATE OF MICHIGAN, by Defendant GOVERNOR GRETCHEN WHITMER, as to effectuate the suspension, termination, or limitation on access to information and government records required to be produced by law; and
- d. Grant all such other relief that is warranted by this case.

Date: April 6, 2020

RESPECTFULLY SUBMITTED:



OUTSIDE LEGAL COUNSEL PLC  
BY PHILIP L. ELLISON (P74117)  
Attorney for Plaintiffs  
PO Box 107  
Hemlock, MI 48626  
(989) 642-0055  
(888) 398-7003 - fax  
pellison@olcplc.com

## VERIFICATION

I, ERIC OSTERGREN, being duly sworn hereby declares as follows:

1. I am citizen of the United States of America, and a resident of the State of Michigan.
2. Regarding the allegations of which I have personal knowledge, I believe them to be true.
3. Regarding the allegations of which I do not have personal knowledge, I believe them to be true based on specified information, documents, or both.

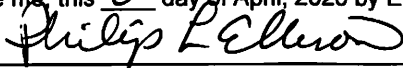
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on APRIL 6, 2020

  
Eric Ostergren

Signed and sworn to before me, this 6<sup>th</sup> day of April, 2020 by Eric Ostergren.

Notary's Signature:



Notary's Name:

Philip L. Ellison

Notary Public, Saginaw County, State of Michigan

Acting in County of Saginaw, Michigan

My commission expires: 10/08/2023

(SEAL)  
if required



## VERIFICATION

I, JASON GILLMAN, JR, being duly sworn hereby declares as follows:

1. I am citizen of the United States of America, and a resident of the State of Michigan.
2. Regarding the allegations of which I have personal knowledge, I believe them to be true.
3. Regarding the allegations of which I do not have personal knowledge, I believe them to be true based on specified information, documents, or both.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on 4-6-20, 2020

  
Jason Gillman, Jr

Signed and sworn to before me, this 6th day of April, 2020 by Jason Gillman, Jr.

Notary's Signature: Taylor Kolodica

Notary's Name: Taylor Kolodica

Notary Public, Eaton County, State of Michigan

Acting in County of Eaton, Michigan

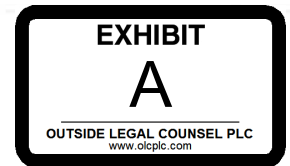
My commission expires: 6-29-25

Notary Public, State of Michigan  
Taylor L. Kolodica  
County of Eaton  
My Commission Expires June 29, 2025  
Acting in the County of Eaton



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING



GARLIN GILCHRIST II  
LT. GOVERNOR

SENATE JOURNAL  
APR 6 2020 AM 9:55

## EXECUTIVE ORDER

No. 2020-38

### Temporary extensions of certain FOIA deadlines to facilitate COVID-19 emergency response efforts

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. In response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33 on April 1, 2020. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

To mitigate the spread of COVID-19, protect the public health, and provide essential protections to vulnerable Michiganders, it is crucial that all Michiganders limit in-person contact to the fullest extent possible. This includes practicing social distancing and restricting in-person work and interaction to only that which is strictly necessary. At the same time, and as memorialized by Michigan's Freedom of Information Act ("FOIA"), 1976 PA 442, as amended, MCL 15.231 et seq., it remains the public policy of this state—and a priority of my administration—that Michiganders have access to "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees," so that they "may fully participate in the democratic process." MCL 15.231(2). To balance this core priority with the steep and urgent demands posed by the COVID-19 pandemic, it is reasonable and necessary to provide limited and temporary extensions of certain FOIA deadlines, so that Michiganders may remain informed and involved in their government during this unprecedented crisis without unduly compromising the health and safety of this state and its residents.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Strict compliance with the required response periods set forth under sections 5(2), 10(2), and 10a(2) of the Freedom of Information Act ("FOIA"), 1976 PA 442, as amended, MCL 15.235(2), 15.240(2), and 15.240a(2), is temporarily suspended, as follows:
  - (a) A public body must respond in writing to a request or an appeal received at its physical office via mail, hand delivery, or facsimile within 10 business days after actual receipt of the request or appeal. For purposes of this order, actual receipt of a request or appeal occurs when an employee of the public body physically opens the envelope containing the request or physically takes the faxed request from the fax machine. Nothing in this order requires an employee to report to the office to open mail or check the fax machine if the employee would not otherwise be permitted to report to the office in person and required to perform those tasks.
  - (b) If COVID-19 or any accompanying response efforts, including but not limited to compliance with any emergency order or mitigation recommendations related to COVID-19, interferes with the timely grant or denial of a request or the timely reversal or upholding of a denial on appeal, a public body may issue a notice under section 5(2)(d), 10(2)(d), or 10a(2)(d) of the FOIA, MCL 15.235(2)(d), 15.240(2)(d), or 15.240a(2)(d), as applicable, extending the period of time in which to respond for as long as the public body deems necessary but no longer than until the expiration of this order or any order that follows from it.
2. Strict compliance with the requirements relating to in-person efforts in connection with a public records request set forth under sections 3 and 4 of the FOIA, MCL 15.233 and 15.234, is temporarily suspended, as follows:
  - (a) If a public records request requires in-person efforts, such as an in-person search, inspection, examination, preparation, or production of public records, by

the requestor or the public body, a public body may defer that portion of the request until the expiration of this order or any order that follows from it.

- (b) If a public body defers a portion of a public records request pursuant to section 2(a) of this order, it must explain this deferral and its reason in the public body's response to the requestor under section 5(2) or 10(2) of the FOIA, MCL 15.235(2) and 15.240(2), as applicable.
  - (c) If a public body defers a portion of a public records request pursuant to section 2(a) of this order, the requestor may inform the public body in writing that the requestor is amending its request to exclude the deferred portion of the request so that the public body may more promptly process the request. The public body must notify the requestor of its ability to amend its request in the response required under section 2(b) of this order.
- 3. It is the public policy of this state that, during the COVID-19 states of emergency and disaster, public bodies continue to respond to requests for public records as expeditiously as possible and, to the extent practicable, by using electronic means.
  - 4. The provisions of this order apply notwithstanding any contrary policy adopted by a public body.
  - 5. For purposes of this order, the terms "public body" and "public record" mean those terms as defined under section 2 of the FOIA, MCL 15.232.
  - 6. This order is effective immediately and continues through June 4, 2020 at 11:59 pm.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 5, 2020

Time: 8:47 pm



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GRETCHEN WHITMER  
GOVERNOR

By the Governor:

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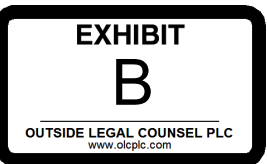
SECRETARY OF STATE



STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

GRETCHEN WHITMER  
GOVERNOR



ROBERT GORDON  
DIRECTOR

## DIRECTOR'S ORDER

### **Emergency Order Pursuant to MCL 333.2253 Regarding Executive Orders 2020-11, 2020-20, and 2020-21**

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, Governor Gretchen Whitmer issued Executive Order 2020-4 declaring a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-.421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33. And in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, the Governor issued Executive Order 2020-33 on April 1, 2020. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

As of April 1, 2020, there were 9,334 cases of COVID-19 diagnosed in Michigan and 337 reported deaths. The exponential increase in cases demonstrates that many of these cases are the result of widening community spread.

Social distancing measures, including isolation of persons affected by COVID-19, are essential to control the epidemic. Social distancing is the primary tool available to slow the spread of COVID-19 and reduce the overwhelming strain on the State's healthcare system.

On March 16, 2020, Governor Whitmer issued Executive Order 2020-11 re: Temporary prohibition on large assemblages and events and temporary school closures.

On March 22, 2020, Governor Whitmer issued Executive Order 2020-20 re: Temporary restrictions on the use of places of public accommodation.

On March 23, 2020, Governor Whitmer issued Executive Order 2020-21 re: Temporary requirement to suspend activities that are not necessary to sustain or protect life (i.e., stay home stay safe order).

Considering the above, and upon the advice of scientific and medical experts employed by the Michigan Department of Health and Human Services, I have concluded pursuant to MCL 333.2253 that COVID-19 has reached epidemic status in Michigan. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws.

I therefore order that:

1. The procedures and restrictions outlined in EO 2020-11, EO 2020-20, and EO 2020-21 and their accompanying frequently asked questions (FAQs) that may be updated from time-to-time (available at [www.michigan.gov/coronavirus](http://www.michigan.gov/coronavirus)) are necessary to control the epidemic and protect the public health. Every person, as that term is defined in MCL 333.1106, in this State, must comply with the procedures and restrictions outlined in EO 2020-11, EO 2020-20, and EO 2020-21 and their accompanying FAQs.
2. This Order applies to any future Executive Order that may be issued that rescinds and replaces EO 2020-11, EO 2020-20, or EO 2020-21.
3. Pursuant to MCL 333.2235(1), I authorize local health departments to carry out and enforce the terms of this Order.
4. Chiefs of police, sheriffs, and other local law enforcement leaders are specifically authorized to investigate potential violations of EO 2020-11, EO 2020-20, and EO 2020-21. They may coordinate as necessary with the local health department and enforce this Order within their jurisdiction. Law enforcement is specifically authorized to bar access to businesses and operations that fail to comply with the procedures and restrictions outlined in EO 2020-11, EO 2020-20, and EO 2020-21 and its accompanying FAQs. County prosecutors are likewise specifically authorized to enforce this Order to control the epidemic and protect the public health in coordination with the appropriate local law enforcement authority and, as necessary, the local health department.

This Order is effective immediately and remains in effect until vacated in writing or until the state of emergency in Michigan ceases.

Date: April 2, 2020



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Robert Gordon, Director

Michigan Department of Health and Human Services

**Lisa Peacock, Health Officer**

1-800-432-4121

**EMERGENCY ORDER (2020-1) FOR CONTROL OF EPIDEMIC/PANDEMIC**

**Required screening and social distancing measures at open businesses and operations subject to the Governor's Executive Order 2020-21**

This Emergency Order is made pursuant to Section 2453 of the Public Health Code, being MCL 333.2453.

Matters concerning the public health of the residents of Antrim, Charlevoix, Emmet and Otsego Counties have been brought to the attention of the Health Department of Northwest Michigan Local Health Officer. The Local Health Officer has determined that controls are necessary to reduce transmission of COVID-19 to protect the public's health of Antrim, Charlevoix, Emmet and Otsego Counties based on the following facts:

1. A State of Emergency was declared March 10, 2020 with an Executive Order expanding the emergency declaration and declaring a State of Disaster on April 1, 2020 by Governor Whitmer and Michigan is under threat of a pandemic virus that has reached epidemic status in Michigan.
2. On April 2, 2020, an Emergency Order regarding the Governor's Executive Orders was issued by Michigan Department of Health and Human Services Director, Robert Gordon, which declared COVID-19 an epidemic in the State of Michigan.
3. All Emergency Orders (also called "Executive Orders") of the Governor related to the Coronavirus and the Emergency Order of the MDHHS Director are incorporated herein by reference.
4. COVID-19 and its effects have been detected within **Antrim, Charlevoix, Emmet and Otsego Counties.**
5. Coronavirus, which causes COVID-19, is a communicable disease and can be transmitted from person to person.
6. The Coronavirus transmission is possible even though the infected person has no symptoms and is unaware of the infection.
7. In order to control and limit the spread of this communicable disease, it is necessary to prevent infected people from coming into contact with uninfected people. It is also imperative that critical infrastructure workers (hereafter, call "worker" or "workers") be protected.
8. Although healthcare workers and their employers are exempt from compliance with Part 1, Section b., Item ii in this Emergency Order, it is recommended that these parties reference the guidance issued in the memorandum dated March 20, 2020 as well as any subsequent guidance from Dr. Joneigh Khaldun, Chief Medical Executive of the Michigan Department of Health and Human Services.



**It is hereby ordered** that businesses and operations remaining open under EO 2020-21 **must** only be conducting operations that require employees to leave their homes or places of residence for functions that are necessary to sustain or protect life or to conduct minimum basic operations as defined by EO 2020-21 and **must** take the following actions:

- 1) Develop and implement a daily screening program for all workers, who do not work from their residence.
  - a) Screening criteria must include asking the worker the following questions and taking the following actions:
    - i) Determine whether the worker is experiencing the following symptoms: fever, cough, shortness of breath, sore throat, diarrhea. When a touchless thermometer is available, a temperature check is strongly recommended in lieu of verbal confirmation. However, in the presence of a shortage of thermometers, employees may self-report temperature.
    - ii) Determine whether the worker has had any close contact in the last 14 days with someone with a diagnosis of COVID-19. "Close contact" means someone identified as "close contact" by the local health department, a household member, or someone within 6 feet for 10 minutes or longer.
    - iii) Determine whether the worker has engaged in any activity or travel within the last 14 days which fails to comply with Executive Order 2020-21 (COVID-19).
    - iv) Determine whether the worker has been directed or told by the local health department or their healthcare provider to self-isolate or self-quarantine.
  - b) A "yes" to any of the screening questions above requires the worker, who is not working from their residence, to be excluded from work:
    - i) 3 days with no fever and 7 days since onset of first symptom.
    - ii) 14 days if close contact of a diagnosed case of COVID-19 as described in 1(a)(ii).
    - iii) 14 days following any activity or travel as described in 1(a)(iii).
  - c) The business and operations remaining open under EO 2020-21 shall maintain written or digital documentation of the results for each worker, who is subject to the daily screening program that is described above. All written or digital documentation, which is required by this Emergency Order, shall be made available to the local health department or its authorized representative upon request.
  - d) Exemptions:
    - i) First responders, healthcare workers, law enforcement, EMS, health-related transportation workers and other essential healthcare workers are exempt from Part 1, Section b., Item ii.
    - ii) Nothing in this order shall limit the operations of first responders, healthcare workers, law enforcement, EMS, health-related transportation workers and other entities that are involved in the mitigation of risk during this pandemic.
- 2) Develop and implement a plan to manage and control social/physical distancing (at least 6 ft spacing) for workers alongside one another and customers waiting in lines within or outside the business.



- 3) Limit capacity inside facilities to provide for social distancing of customers and between customers and workers including but not limited to visual markings and signage, entrance limits, and specialized hours.
- 4) Post this Emergency Order and maintain the posting of this Emergency Order at each entrance to the facility and additionally document distribution of this Emergency Order to all critical infrastructure workers.
- 5) This Emergency Order shall be enforced as provided by law and violations of this Emergency Order shall be subject to any penalty as provided by law, including, but not limited to misdemeanor penalties as provided in MCL 333.2443.

This Emergency Order shall become effective on **April 6 at 12:00 pm (noon)** and shall be effective until **April 13, 2020 at 11:59 pm.**



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Lisa Peacock, Local Health Officer  
Health Department of Northwest Michigan  
Antrim, Charlevoix, Emmet & Otsego Counties, Michigan

04/05/2020

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Date