

October 30, 2020

FIRST AMENDED JEFFERSON COUNTY PUBLIC HEALTH ORDER 20-009 LIMITING GATHERINGS AND ALCOHOL SALES

The Jefferson County Public Health Department (“JCPH”) is working to stop the spread of Coronavirus 2019 (“COVID-19”). To support this effort, I find it necessary to implement emergency measures to further reduce gathering sizes in a variety of settings within Jefferson County, including at events and sporting activities, and to prohibit the sale of alcoholic beverages after 10:00 P.M.

FINDINGS AND NECESSITY OF ORDER

COVID-19 was first detected in Wuhan, China in late 2019, and since then has spread to over 213 countries, including the United States.

COVID-19 is a respiratory illness transmitted like other respiratory illness through person-to-person contact or by contact with surfaces contaminated with the virus. Persons infected with COVID-19 may become symptomatic anywhere from two to fourteen days after exposure. Symptoms include fever, cough or shortness of breath or difficulty breathing. Individuals with serious chronic health conditions and older adults are most at risk for becoming very ill with this disease.

On March 10, 2020, the Governor of Colorado declared a State of Emergency relating to the presence of COVID-19.

On March 25, 2020, the Governor of Colorado issued Executive Order D 2020-017, ordering all Coloradoans to Stay-at-Home due to the presence of COVID-19 in the state (“Stay-at-Home Order”).

On April 26, the Governor of Colorado issued Executive Order D 2020-044, Safer at Home, through May 27, 2020 (“Safer-at-Home Order”).

On June 1, 2020, the Governor of Colorado issued Executive Order D 2020-091, Safer-at-Home and in the Vast, Great Outdoors (“Safer-at-Home and in the Vast, Great Outdoors Order”), which was most recently extended by Executive Order D 2020-213 until November 5, 2020.

Jefferson County’s movement from the Stay-At-Home Order to Safer-At-Home and in the Vast, Great Outdoors Order resulted in the easing of social distancing restrictions in Jefferson County.

On September 16, 2020, the Executive Director of CDPHE issued Public Health Order 20-35, Safer at Home Dial, which implements the requirements of the Safer at Home and in the Vast, Great Outdoors Order (PHO 20-35). PHO 20-35 includes three levels in which a county may be placed based on its number of cases, positivity rate, and number of hospitalizations. Jefferson County was placed into Level 2 of the Safer at Home Dial when PHO 20-35 went into effect.

Numerous studies of epidemiological data have found that COVID-19 is primarily transmitted through respiratory aerosols, and that a small subset of infected individuals (approximately 20%) are likely responsible for a majority of transmissions. Moreover, infectious individuals may be asymptomatic and infectious viral loads are generated in the body two to three days before the onset of symptoms and may be generated through day 10 of an active infection. The early viral load of COVID-19 suggests that community spread is occurring from prolonged contact with infected yet primarily pre- and early-symptomatic individuals. Scientific evidence shows that limiting interactions among people slows virus transmission. For this reason, CDPHE PHO 20-35 includes specific limits on the number of people that may interact in various situations. This emerging evidence on transmission dynamics and an analysis of county-level data has informed the mitigation strategies contained in this Order.

There is substantial evidence of the continued spread of COVID-19 throughout Jefferson County. As of October 28, 2020, there were 100,208 confirmed and probable cases of COVID-19 statewide in Colorado, and 8,464 confirmed and probable cases in Jefferson County, Colorado, as well as 2,094 deaths due to COVID-19 statewide and 309 deaths in Jefferson County. Additionally, as of October 28, 2020, Jefferson County's two-week incidence rate is 293.3 cases/100,000 population and its test positivity rate is 6.2%. Hospitalizations are increasing and due to rising cases and hospitalizations around the Denver Metro region, hospital surge capacity is under threat. As of October 28, 2020, CDPHE data shows that 80% of the ICU hospital beds across the state are currently in use and that 36% of adult critical care ventilators are in use.

On October 19, 2020, Jefferson County exceeded the threshold number of cases set by CDPHE that will require a mitigation plan and potentially lead to Jefferson County being moved to Level 3 of the Safer at Home Dial. As of October 28, 2020, Jefferson County's two-week incidence rate was 293.3 cases per 100,000 residents. At this level, Jefferson County's two-week incident rate is less than 57 cases from the Stay at Home level, which begins at 350. Because case counts and hospitalizations continue to rise, I find it necessary to immediately implement additional measures to minimize the spread of COVID-19 with the goal of reducing the number of cases to be within the Level 2 threshold, and thereby preventing Jefferson County from being moved to Level 3 or, worse, to the Stay at Home level. More importantly, given the significant usage of ICU beds and adult critical care ventilators in the state, these additional measures are necessary to decrease the spread of COVID-19 in Jefferson County to ensure our ICU beds and critical care ventilators are available for those who need them.

On October 23, 2020, due to a significant increase in the number of cases and a positivity rate of over 5% statewide, the Executive Director of CDPHE issued the Third Amended Public Health Order 20-35, Safer at Home Dial, which limited public and private gatherings in all levels to 10 individuals from no more than 2 households when not otherwise regulated as a specific sector or activity in the Order. When a population's positivity rate is greater than 5%, this is an indication that there is community spread of the virus. Much of this spread has been attributed to informal social gatherings. While CDPHE's amendment to PHO 20-35 seeks to reduce such community spread through greater restrictions on informal social gatherings, Jefferson County believes that additional regulation of social gatherings in other settings, including events, sporting activities, and restaurants and bars is necessary to adequately slow the spread of the virus.

By limiting indoor and outdoor events to the capacity limits set forth in Level 3 of the Safer at Home Dial, eliminating spectators at Colorado High School Activities Association (CHSAA)-sanctioned sporting events, non-CHSAA-sanctioned high school-level sporting events, and adult recreational and league sports, and ceasing all alcohol beverage sales at 10:00 P.M., JCPH can help ensure that there are fewer opportunities for COVID-19 to spread within Jefferson County. These actions serve the dual purpose of allowing many businesses to continue operations under Level 2 of the Safer at Home Dial while minimizing the spread of COVID-19 in social and recreational settings, with the goal of preventing the County from being moved to the more restrictive Level 3 of the Safer at Home Dial.

INTENT

The intent of this Order is to supplement CDPHE's limits on public and private gatherings in social settings in Jefferson County to further reduce the opportunity for the spread of COVID-19 to greatest extent possible, while balancing the need for limited social activity and economic opportunity. By targeting large social gatherings and events, JCPH's hope is that Jefferson County can reduce the spread of COVID-19 to a level that avoids the more drastic shutdowns in Level 3 and ultimately the Stay at Home level.

CDPHE PHO 20-35 allows for different attendance levels at events depending on which level a county is in. Counties at Level Three may permit indoor venues to allow up to 25 people per room and outdoor venues to allow up to 75 people per designated activity with certain additional requirements. PHO 20-35 at ¶ II.B.2.k & l. Counties at Level Two may permit indoor venues to allow up to 100 people per room and outdoor venues to allow up to 175 people per designated activity with certain additional requirements. PHO 20-35 at ¶ II.C.2.k & l. Counties at Level One may permit indoor venues to allow up to 175 people per room and outdoor venues to allow up to 250 people per designated activity with certain additional requirements. PHO 20-35 at ¶ II.B.2.k & l. Under these provisions, venues may create separate designated activities or areas, and thus exceed the cap on the number of attendees at a single venue. PHO 20-35 at Appendix I.I.A. Furthermore, CHSAA-sanctioned and non-CHSAA-sanctioned high school-level sporting events and

adult recreational and league sports (non-professional sporting events) may have spectators so long as those spectators follow the requirements for events in Appendix I of PHO 20-35. Finally, in Level Two, all sales of alcoholic beverages must cease at 11:00 P.M.

Because of the high potential for interaction between people in different designated activities or areas, thereby increasing the potential spread of COVID-19, the intent of this First Amended Jefferson County Public Health Order 20-009 is to require events in Jefferson County to adhere to the capacity limits for events in Level Three while this Order is in effect regardless of the actual level under the Dial for which Jefferson County may qualify. This means that indoor events are limited to 25 people and outdoor events are limited to 75 people. An indoor event may not utilize more than one room to increase the capacity for attendees at its event beyond the 25-person limit. Similarly, outdoor events may not create separate activities or areas to increase the number of attendees beyond the 75-person limit. Because drive-in events do not have the same potential for spread, the outdoor capacity limit in this Order does not apply to drive-in events that comply with CDPHE requirements set forth in PHO 20-35 at Appendix I.I.J.

Due to insufficient resources at JCPH to enforce social distancing and mask requirements at high school-level and adult recreational sporting events, the intent of this First Amended Jefferson County Public Health Order 20-009 is to eliminate spectators at all Colorado High School Activities Association (CHSAA) sanctioned sporting events in Jefferson County, at all non-CHSAA-sanctioned and/or high school-level club sporting events, and at all adult recreational and league (non-professional) sporting events.

To eliminate the potential for increased spread of COVID-19 at bars and restaurants, the intent of this First Amended Jefferson County Public Health Order 20-009 is to require licensees for on-premises consumption, such as restaurants, bars, and similar venues, to cease selling alcoholic beverages at 10:00 P.M.

All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and creates an immediate menace to public health.

ORDER

Hereby finding it is essential that the COVID-19 virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health, and because the risk of the rapid spread necessitates quick action to protect all members of the community, especially including our members most vulnerable to COVID-19 and also health care providers, I find it necessary to issue this **MITIGATION ORDER** (“Order” or “JCPHO 20-009”).

Consistent with the Governor’s Executive Order, CDC’s guidance, and pursuant to the authority granted the Executive Director of Jefferson County Public Health in C.R.S. §§ 25-1-506(3)(b) and 25-1-509(1)(c), the following is ordered:

1. Unless exempted below, all indoor events in Jefferson County are limited to 25 people within their usable space, calculated using the Distancing Space Calculator, excluding staff. Unless exempted below, all outdoor events in Jefferson County are limited to 75 people within their usable space, calculated using the Distancing Space Calculator, excluding staff. Regardless of whether the event is indoors or outdoors, if the event is a seated event, the event organizer is not required to calculate the usable space and may have the maximum number of attendees permitted by this Order so long as 6 feet of distance between non-household members can be maintained throughout the event. This means that indoor events are limited to 25 people and outdoor events are limited to 75 people. An indoor event may not utilize more than one room to increase the capacity for attendees at its event beyond the 25-person limit. Similarly, outdoor events may not create separate activities or areas to increase the number of attendees beyond the 75-person limit. While separate events may occur in separate rooms of the same facility, there shall be no intermingling within those groups to create a larger indoor event than is allowed under this Order. All events shall continue to comply with the requirements set forth in Appendix I of PHO 20-35, as amended from time to time.

For purposes of this First Amended JCPHO 20-009, an event is an activity which falls under the definition of “Indoor Event” or “Outdoor Event” in PHO 20-35 Section IV that is not expressly excluded by this First Amended JCPHO 20-009. Nothing in this Order shall be construed to affect the gathering limits set forth in PHO 20-35. However, if an individual wishes to have a gathering in excess of 10 people from 2 households, then that gathering must adhere to the events requirements in Appendix I of PHO 20-35 and the additional requirements of this Order.

Indoor Events are defined by PHO 20-35 as “activities like receptions, events, concerts, indoor markets, indoor malls, non-critical auctions, theaters, trade shows, or other indoor venues *not covered in other sections listed in this* [Public Health Order 20-35].” Outdoor Events are defined as “events such as outdoor receptions, events, fairs, rodeos, non-critical auctions, concerts, outdoor markets, or other outdoor venues *not covered in any other section in this* [Public Health Order 20-35]. This does not include activities covered under delineated sectors in this Order such as Restaurants, Houses of Worship, or Outdoor Guided Tours.”

2. Nothing in this First Amended JCPHO 20-009 should be construed to affect other businesses or activities that are not defined as “events” under PHO 20-35 and which are otherwise specifically regulated by PHO 20-35. Businesses and activities which follow either indoor or outdoor events guidance as required by PHO 20-35, but which are not events involving social gatherings, are not subject to this First Amended JCPHO 20-009. Critical Businesses and Critical Government Functions, as defined in PHO 20-35 Section IV are not subject to this PHO 20-35. However, if a business or Critical Government Function not otherwise subject to this Order hosts a social event, that event is subject to the terms of this Order.

For purposes of clarity, the following businesses and activities are not subject to the

capacity limits provided in paragraph 1 of this Order. If a business or activity does not fit within the definition of an “event” then it is not subject to this First Amended JCPHO 20-009 unless otherwise provided herein.

- a. Arcades – Arcades will continue to be open to 50% capacity or a maximum of 50 people per room, whichever is fewer, in accordance with CDPHE’s guidance on arcades. However, if the arcade hosts an event, then the event is subject to the requirements of this Order.
- b. Gyms and Recreation Centers – Gyms and recreation will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Appendix J of PHO 20-35. However, if the gym or recreation center hosts an event, then the event is subject to the requirements of this Order.
- c. Houses of Worship and Life Rites – Houses of worship and life rites will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Section III.L of PHO 20-35. However, if there is a reception, after-party, or other type of celebration following a life rite ceremony, then it is an event subject to the requirements of this Order.
- d. Non-Critical Retail – Non-Critical Retail will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Appendix C of PHO 20-35. However, if the non-critical retailer is hosting an event (e.g. cooking demonstration, book signing, or any type of gathering), then the event is subject to the requirements of this Order.
- e. Organized recreational sports, including youth, adult, and high school-level leagues (Recreational Sports) – Recreational Sports will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Section III.O and Appendix J of PHO 20-35. While spectators are no longer permitted at adult and high-school level sporting events, including those sanctioned by CHSAA, as provided in paragraphs 4 and 5 of this Order, the number of players permitted to participate in the sporting event will continue to be governed by PHO 20-35. Spectators may still attend youth recreational sports and must continue to comply with the requirements for indoor and outdoor events.
- f. Outdoor Guided Activities – Outdoor Guided Activities Institutions will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Appendix K of PHO 20-35. However, if the Outdoor Guided Activities hosts an event, the event is subject to the requirements of this Order.

- g. P-12 Schools – P-12 Schools, whether public, private, or charter, will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in PHO 20-35 as they apply regular school activities, such as classroom learning. However, any social events including, but not limited to, dances, fairs, and parent nights, are events which are subject to the requirements of this Order.
- h. Postsecondary Institutions – Postsecondary Institutions will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Section III.R of PHO 20-35. While Postsecondary Institutions must follow the requirements for Indoor Events in addition to the requirements in Section III.R of PHO 20-35, the capacity limits are not affected by this Order to the extent that they apply to regular educational activities such as classroom learning. However, any social events including, but not limited to, dances, fairs, and concerts, are events which are subject to the requirements of this Order.
- i. Real Estate Open Houses – Real Estate Open Houses will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Appendix E of PHO 20-35.
- j. Restaurants – Restaurants will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Section III.J and Appendix H of PHO 20-35, with the exception that they must cease selling alcoholic beverages at 10:00 P.M. per paragraph 6 of this First Amended JCPHO 20-009. However, if a restaurant hosts an event, the event is subject to the requirements of this Order.
- k. Retail Malls and Markets. Retail Malls and Markets, both indoor and outdoor, will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the requirements set forth in Appendix C of PHO 20-35. While Retail Malls and Markets must follow the requirements for indoor or outdoor events in addition to the requirements set forth in Appendix C of PHO 20-35, the capacity limits are not affected by this Order. However, if the mall or market hosts an event (e.g. fashion show; Santa Claus), then the event is subject to the requirements of this Order.
- l. Theaters – Theaters, including movie theaters, will continue to be subject to the capacity limits that correspond to Jefferson County’s level on the Safer at Home Dial and the indoor events requirements in Appendix I of

PHO 20-35. However, if the theater is hosting an event, then the event is subject to the requirements of this Order.

- m. Youth Camps. Youth Camps will continue to be subject to the capacity limits that correspond to Jefferson County's level on the Safer at Home Dial and the requirements set forth in Appendix L of PHO 20-35.
3. This First Amended JCPHO 20-009 applies to activities which constitute events, regardless of the venue. For example, if a House of Worship hosts a reception following a life rite such as a wedding, that reception will be subject to the requirements of this First Amended JCPHO 20-009, however the life rite itself will continue to be subject *only* to the requirements of PHO 20-35.
4. Jefferson County's level on the Safer at Home Dial can be found here: <https://covid19.colorado.gov/data/covid-19-dial/covid-19-dial-dashboard>
5. Because this First Amended JCPHO 20-009 prohibits designating multiple activities or areas, there is no need for event hosts to submit a plan for large events to JCPH for approval, as no event can exceed the capacity limit of 25 people indoors and 75 people outdoors. Thus, Jefferson County Public Health Order 20-007 (JCPHO 20-007) is no longer necessary and is hereby rescinded effective immediately. All events previously approved under JCPHO 20-007 must revise the event to comply with these new capacity limits or cancel the event.
6. No spectators are permitted at CHSAA-sanctioned sporting events and non-CHSSA-sanctioned and/or high school-level club sporting events, regardless of whether such sporting events are held at public, private, charter schools, or otherwise.
7. No spectators are permitted at adult recreational and league sports. This Order does not impact professional sporting events approved by CDPHE.
8. All on-premise licensees licensed under Articles 3, 4, and 5 of Title 44 of the Colorado Revised Statutes must cease alcohol beverage sales to end consumers for on-premises consumption and for takeout between 10:00 P.M. and 7:00 A.M. each day.

Along with CDPHE, JCPH is tasked with protecting the health and welfare of citizens of Jefferson County by investigating and controlling cases of epidemic and communicable disease. This Order is necessary to control the transmission of disease to others. Immediate issuance of this Order is necessary for the preservation of public health, safety, or welfare. JCPH will attempt to seek voluntary compliance through education, technical assistance, and warning notices. However, this Order may be enforced by any appropriate legal means.

This Order has the effect of law. Pursuant to C.R.S. §§ 25-1-114.1 and 25-1-516, it is unlawful for any person to fail to comply with this Order. Any person who fails to comply with this Order may also be subject to a fine of up to one thousand dollars (\$1,000.00)

per violation and imprisonment in the county jail for up to one year. For violations of this Order, JCPH may seek a court order in Colorado state district court to enforce this Order and/or to restrain or enjoin any violation of this Order.

Any business open to the public that hosts an event with the number of attendees in excess of those permitted by this First Amended JCPHO 20-009, permits spectators at a CHSAA-sanctioned sporting event, non-CHSAA-sanctioned and/or high school-level club sporting event, or adult recreational or league sporting event, or sells alcoholic beverages to end consumers after 10:00 P.M. in violation of the provisions of this Order may be subject to the suspension or revocation of its license by the appropriate licensing authority as provided by law.

Preemption and Conflicts. This Order is in addition to all executive orders issued by the Governor of Colorado and all public health orders and guidance documents issued by CDPHE. If there is conflict between this Order and any executive order, CDPHE public health order or local public health order, the most restrictive order applies.

Because this This First Amended JCPHO 20-009 clarifies the intent of the original Order, this First Amended JCPH 20-009 is effective immediately upon signature of the Executive Director of JCPH, and will continue until midnight on November 30, 2020, or until it is extended, rescinded, superseded, or amended in writing by the Executive Director of Jefferson County Public Health or the Jefferson County Board of Health.

If any provision of this Order, or its application to any person or circumstance, is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

Issued by:



Mark B. Johnson, MD, MPH
Executive Director
Jefferson County Public Health

October 30, 2020
Date