THIRD EXTENSION AND AMENDMENT OF EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19
EHR-2020-004-D(ii)
PHASED REOPENING: PHASE TWO

WHEREAS, a state of emergency continues to exist in Montana and Gallatin County due to the global outbreak of the COVID-19 Novel Coronavirus;

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and can easily spread from person-to-person;

WHEREAS, the Centers for Disease Control and Prevention (CDC) identifies the potential public health threat posed by COVID-19 both globally and in the United States as “high” and has advised that person-to-person spread of the COVID-19 will continue to occur globally, including within the United States, Montana, and Gallatin County, Montana;

WHEREAS, the daily 7-day rolling average of COVID-19 cases reported in the United States reached a high point of the pandemic in mid-January, with an average of more than 240,000 cases reported each day;

WHEREAS, the death toll of people infected with COVID-19 in the United States surpassed an average of 3,200 deaths per day in mid-January as calculated using a 7-day rolling average;

WHEREAS, hospital and health care facilities in several regions of the United States have reached or exceeded patient capacity, creating staffing and resource shortages and imperiling the quality of care of the healthcare system;

WHEREAS, the number and rate of deaths in Gallatin County has increased through the autumn and winter, and at least 47 people diagnosed COVID-19 have died in Gallatin County, the large majority occurring since October 1, 2020;

WHEREAS, recent scientific evidence estimates that more than half of all COVID-19 cases are spread by people with no symptoms of the disease, a characteristic of the virus that allows it to spread more rapidly and readily;

WHEREAS, uncontrolled spread of COVID-19 in the community leads to increased hospitalizations and deaths and makes it difficult or impossible to prevent spread in nursing homes, assisted living facilities, and other institutions that care for people at high risk;
WHEREAS, hospitals and health care settings in Gallatin County and Montana typically experience higher numbers of sick and hospitalized individuals during winter months due to a variety of illnesses, a factor that increases the risk that facilities will exceed patient and staffing capacity during a surge in COVID-19 cases;

WHEREAS, the virus that causes COVID-19 spreads more readily in certain environments including: indoor areas, during social interactions when people are in close proximity to others; when people are not wearing face coverings; and when people are exercising or raising their voices in a loud setting in a manner that produces respiratory droplets that spread the disease;

WHEREAS, COVID-19 in Gallatin County has spread most rapidly among those aged 18-29 years old, an age group that more often frequents bars and restaurants after 10:00 p.m.;

WHEREAS, a significant proportion of COVID-19 cases detected among staff who work in nursing homes and other long-term care facilities during the summer of 2020 were in people age 18-29;

WHEREAS, scientific evidence produced by the U.S. Centers for Disease Control & Prevention has demonstrated that people diagnosed with COVID-19 are twice as likely to have visited a restaurant or bar in the past two weeks compared to people who had not been diagnosed with COVID-19;

WHEREAS, the circumstances of the outbreak will exceed the capacity of the services, personnel, equipment, supplies and facilities of Gallatin County if proactive measures are not instituted to mitigate and limit the spread of COVID-19 infections in the community;

WHEREAS, during the course of the pandemic, former Montana Governor Steve Bullock issued directives requiring the closure of non-essential businesses, providing social distancing requirements, and limiting non-essential travel;

WHEREAS, the Gallatin City-County Board of Health (Board) has adopted emergency health rules similarly restricting the operation of certain businesses in Gallatin County due to the COVID-19 pandemic;

WHEREAS, on April 22, 2020, Governor Bullock issued a directive providing guidance and conditions for the phased reopening of businesses in Montana, beginning with Phase One;

WHEREAS, the April 22nd Directive recognized the importance of individual responsibility, through good hygiene and strict adherence to social distancing, to fight against new infections, and it emphasizes the continued need to protect those most vulnerable to complications from COVID-19;

WHEREAS, the April 22nd Directive allowed for implementation of the phased reopening on a county-by-county basis and directs local officials to “coordinate on a regional basis and continue to assess the conditions in their jurisdictions.” Further, the Directive allowed local public health authorities to adopt “more restrictive approaches based on local need”;
WHEREAS, the duration of each phase of reopening must be regularly evaluated by public health and emergency management professionals using the best available epidemiological data for the community. As explained in the Directive, factors that must be considered in moving from one phase to the next include the ability to: monitor new cases adequately and conduct appropriate contact tracing to prevent further spread; treat all patients safely, both COVID-19 patients and those with other health conditions; screen and test all people with COVID-19 symptoms; and maintain sufficient levels of personal protective equipment;

WHEREAS, the April 22nd Directive appropriately recognized that negative indicators in the factors listed above “may result in the need to re-implement certain restrictions or take other protective measures;”

WHEREAS, on May 19, 2020, Governor Bullock issued a directive establishing conditions for the second phase of the phased reopening of Montana;

WHEREAS, similar to the April 22nd Directive for Phase One, the May 19th Directive for Phase Two encouraged local officials to “coordinate on a regional basis and continue to assess the conditions in their jurisdictions” and recognized that local public health authorities may adopt “more restrictive approaches based on local need”;

WHEREAS, on May 28, 2020, the Board approved EHR 2020-004, which adopted the guidelines and conditions provided in the Governor’s May 19th Directive for the second phase of reopening and applied them to businesses in Gallatin County;

WHEREAS, EHR 2020-004 also allowed for the imposition of the criminal penalties provided at § 50-2-124, MCA, in addition to the civil remedies available under § 50-2-123, MCA;

WHEREAS, on June 9, 2020, the Board adopted EHR-2020-004-A, which amended EHR-2020-004 consistent with guidance issued by the Montana Department of Public Health and Human Services (DPHHS), extending the hours of operation for restaurants, breweries, distilleries, bars, and casinos until 12:30 a.m. and allowing open seating at bars and counters in these establishments if strict compliance with social distancing and social protocols is maintained;

WHEREAS, pursuant to Section 5.2 of Chapter 1, Gallatin City-County Health Code, an emergency local health rule expires ninety days after its adoption;

WHEREAS, on August 27, 2020, through the adoption of EHR-2020-004-B, the Board readopted and extended EHR-2020-004-A for an additional ninety-day period, ending on November 25, 2020;

WHEREAS, on November 6, 2020, through the adoption of EHR-2020-004-C, the Board amended EHR-2020-004-A to limit certain group gatherings to no more than 25 people and to limit certain establishments, including bars, restaurants, bowling alleys, coffee shops, and gyms, to operating at 50 percent capacity;

WHEREAS, the Board also readopted and extended EHR-2020-004-A for an additional ninety-days, ending on February 4, 2021;
WHEREAS, the Board adopted the restrictions on group sizes and certain establishment operations because Gallatin County was experiencing a significant increase in the number of laboratory-confirmed cases of COVID-19, and public health authorities expected the surge in cases to increase during the winter months;

WHEREAS, the surge in COVID-19 cases also had outstripped the ability of Health Department staff to fully identify, contact, and monitor individuals potentially exposed to the virus;

WHEREAS, in addition, hospital administrators in Montana and neighboring states had warned that the growth rate of COVID-19 cases had pushed some intensive care units to capacity and could cause hospitals to ration care;

WHEREAS, the number of confirmed COVID cases in Gallatin County declined in mid and late December 2020;

WHEREAS, the decrease in cases is due to a combination of factors, including the more restrictive measures adopted through EHR-2020-004-C; less case testing during the holidays in late November and December; and the absence of Montana State University students who returned home during the winter break;

WHEREAS, on January 13, 2021, newly elected Governor Greg Gianforte issued a “Directive Implementing Executive Order 2-2021,” effective January 15, 2021, which implicitly repealed the requirements established by former Governor Bullock regarding the phased reopening of businesses in Montana;

WHEREAS, the January 13th Directive does not impose any specific restrictions on businesses operating during the pandemic, but instead encourages businesses to “make reasonable efforts to develop and implement appropriate policies based on industry best practices during this emergency”;

WHEREAS, the January 13th Directive does provide that, when “no such industry practices exist, such policies should be developed and implemented in accordance with federal, state, and local regulations and guidance regarding: 1) Social distancing; 2) Temperature checks and/or system screening; 3) Testing, isolating, and contract tracing, in collaboration with public health authorities; 4) Sanitation; 5) Use of disinfection of common and high-traffic areas; [and] 6) Teleworking”;

WHEREAS, the January 13th Directive also continues the statewide mask mandate, requiring that individuals wear a face covering at all times in any indoor space open to the public, unless certain exceptions apply, such as a medical condition precluding the safe wearing of a face covering;

WHEREAS, the January 13th Directive expressly recognizes that local boards of health may adopt more restrictive rules in stating, with emphasis added: “In the interest of uniformity of laws and to prevent the spread of disease, all inconsistent local government health ordinances or orders are preempted by this Directive, but only to the extent they are less restrictive”;

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WHEREAS, an incidence rate greater than 25 cases per 100,000 population has been identified by the Harvard Global Health Institute as the highest "red zone" risk level beyond which a locality may tip into uncontrolled spread\(^1\);

WHEREAS, cases increased in early and mid-January 2021, with the 7-day rolling average of cases per 100,000 residents in Gallatin County reported as 65.9 per 100,000 on January 7, 2021, and 75.2 cases per 100,000 on January 14, 2021;

WHEREAS, cases have since decreased, with the 7-day rolling average of cases per 100,000 residents reported as 50.4 cases on January 21, 2021, and as 35.3 cases per 100,000 residents as of January 29, 2021;

WHEREAS, the number of confirmed cases in Gallatin County remains above the highest "red zone" risk level identified by the Harvard Global Health Institute, and is expected to increase during the winter and spring months, especially with the return of MSU students for the spring semester;

WHEREAS, as of January 5, 2021, the seven-day average test positivity rate in Gallatin County was 11.5%;

WHEREAS, the seven-day rolling average test positivity rate also has decreased and was reported as 8.4% on January 12, 2021; 6% on January 19, 2021; and 5% reported on January 26, 2021;

WHEREAS, the World Health Organization recommends a test positivity rate below 5% as a criteria for opening businesses, and, according to public health experts, a positivity rate above 10% may mean more testing is necessary to avoid missing a significant number of cases in the community;

WHEREAS, the cumulative number of confirmed COVID-19 cases among individuals in the 20 to 29 age group continues to increase and outpace case numbers reported among other age groups;

WHEREAS, as of January 29, 2021, the cumulative total of confirmed COVID-19 cases in the 20-29 age group was 3,631 cases, compared to 1,894 cases in the age 30 to 39 age group; 1,401 cases in the 40 to 49 age group; 1,058 cases in the 50 to 59 age group; and 1,513 cases for those ages 60 and above;

WHEREAS, a continued increase in COVID-19 cases will stress healthcare facilities and providers throughout Montana, and it will stress the capacity and capability of the facilities and providers in Gallatin County unless measures are continued to reduce the spread of the virus;

WHEREAS, the slow of the virus also is necessary to the continued vitality of the local economy to avoid business closures, as well as to the physical and mental wellbeing of the community;

WHEREAS, the Board therefore desires to readopt and extend EHR-2020-004-A, as amended through EHR-2020-004-B and EHR-2020-004-C, for up to an additional ninety-days, ending on May 5, 2021;

WHEREAS, the Board, however, desires to modify the closing time required by EHR-2020-004-C for certain establishments so that bars, restaurants, bowling alleys, coffee shops, and gyms may stay open each day until 2:00 a.m., rather than closing each day at 10:00 p.m.;

WHEREAS, the Board made oral findings during its February 4, 2021 meeting in support of revising the closing time to 2:00 a.m., which findings are incorporated herein by this reference;

WHEREAS, this amendment and extension are subject to similar criteria identified through EHR-2020-004-C, such that the rule may be revoked or modified prior to the expiration of the 90-day period if warranted by the epidemiological and resource indicators identified below;

WHEREAS, the Board also desires to amend EHR-2020-004-A to clarify that the more restrictive requirements established through EHR-2020-004-A, as amended by EHR-2020-004-B and EHR-2020-004-C, continue to apply in Gallatin County, notwithstanding any conflict with the Governor’s January 13th Directive, any subsequent Directive, or any guidance issued by a State agency;

WHEREAS, pursuant to § 50-2-116(1)(f), MCA, the Gallatin City-County Board of Health (Board) has the duty to “identify, assess, prevent, and ameliorate conditions of public health . . . ”;

WHEREAS, § 50-1-101(2), MCA, defines a “condition of public health importance” as “a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community;”

WHEREAS, the Board also has the duty pursuant to § 50-2-116(1)(g), MCA, to “protect the public from the introduction and spread of communicable disease or other conditions of public health importance, through: (i) epidemiological tracking and investigation; (ii) screening and testing; (iii) isolation and quarantine measures; (iv) diagnosis, treatment, and case management; (v) abatement of public health nuisances; (vi) inspections; (vii) collecting and maintaining health information; (viii) education and training of health professionals; or (ix) other public health measures as allowed by law”;

WHEREAS, pursuant to § 50-2-118, MCA, a local health officer in carrying “out the purpose of the public health system . . . shall . . . (2) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and cancelling events,” and “(5) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated”;

WHEREAS, per Chapter 1, Section 5 of the Gallatin City-County Health Code, the Board may adopt an Emergency Local Health Rule when it finds the rule: (1) “must be adopted to deal with an emergency situation affecting the public, health, safety, or welfare;” (2) “the emergency
cannot be averted or remedied by any other administrative act;” and (3) at least two-thirds of the Board votes to approve the rule;

WHEREAS, per § 50-2-116, MCA, COVID-19 is a condition of public health importance and, in order to protect the public from the further introduction and spread of COVID-19 in Gallatin County, the guidance and conditions established through EHR-2020-004-A, as amended by EHR-2020-004-B and EHR-2020-004-C, for the second phase of the phased reopening of Gallatin County must be extended for up to an additional 90-days; and

WHEREAS, for the foregoing reasons, the Board finds, pursuant to Chapter 1, Section 5 of the Gallatin City-County Health Code, that EHR-2020-004-A, as amended by EHR-2020-004-B and EHR-2020-004-C, must be amended and extended to deal with an emergency situation affecting the public health, safety, or welfare, and this emergency cannot be averted or remedied by any other administrative act.

NOW, THEREFORE, EFFECTIVE IMMEDIATELY, EMERGENCY LOCAL HEALTH RULE 2020-004-A, as amended by EHR 2020-004-B and EHR-2020-00C, is further amended and extended as follows:

1. The portion of EHR-2020-004-A concerning the applicability of the Phase One and All-Phases Guidance is amended as follows, with additions underlined and deletions in strike-through:

   1. Except where specifically modified by this Emergency Local Health Rule 2020-004-C(D)(ii), the provisions of EHR-2020-003, EHR-2020-003-A, and the related guidance applicable to all phases and to Phase One remain in effect.

   2. To the extent this emergency local health rule conflicts with the Governor’s January 13, 2021 Directive, any subsequent Directive that is less restrictive than this rule, or any state directive or guidance issued by a State agency that is less restrictive than this rule, the more restrictive requirement shall control. This emergency local health rule shall control.

2. The portion of EHR-2020-004-A, as amended by EHR-2020-004B and EHR-2020-004-C, concerning individuals and employers is amended as follows, with additions underlined and deletions in strike-through:

   **Phase Two: Individuals and Employers**

   1. The below guidelines apply to individuals and businesses during Phase Two. Individuals and businesses also must follow the Phase Two guidelines provided in the attached Appendix A, to the extent such guidelines do not conflict with this EHR-2020-004-C(D)(ii).

   2. Vulnerable individuals should continue to adhere to the stay-at-home guidance.
3. All businesses and government offices may operate, provided they adhere to strict physical distancing and the conditions in this Emergency Local Health Rule, the Phase Two Guidelines provided in the attached Appendix A (to the extent such guidelines do not conflict with this EHR-2020-004-CD(ii)), and all other Emergency Local Health Rules and guidance remaining in effect.

4. Businesses must follow CDC sanitation protocols. Businesses that provide services where social distancing is difficult and that provide services necessary to daily living (such as grocery stores and pharmacies) must comply with face covering requirements for staff and the public.

5. Restaurants, coffee shops, bars, bowling alleys, breweries, distilleries and casinos remain in the same operational status as Phase One, but may operate at 50 percent capacity, must close between the hours of 10:00 p.m.-2:00 a.m. and 4:00 a.m. (except when providing carry-out or delivery services), may allow sitting at bars and counters only in strict compliance with social distancing and sanitation protocols, and must restrict persons at tables to six or less. These businesses must continue to maintain strict physical distancing and must otherwise adhere to the reopening guidelines in compliance with Appendix A and C, attached.
   A. The restriction requiring 6-persons or less at a table does not apply to persons younger than 18 who are present with their parent or guardian.
   B. Except when providing carry-out or delivery services, these businesses must close their doors and have all patrons out between the hours of 10:00 p.m.-2:00 a.m. and 4:00 a.m. Breweries and distilleries shall follow existing laws on closing time.
      i. A patron who is not obtaining carry-out services and who does not leave a restaurant, coffee shop, bar, bowling alley, brewery, distillery, or casino between the hours of 10:00 p.m.-2:00 a.m. and 4:00 a.m. or other closing time provided by law, is in violation of this Emergency Health Rule.
      ii. An owner, operator, or employee of a restaurant, coffee shop, bar, bowling alley, brewery, distillery, or casino who does not close and have no patrons within the business during the hours of 10:00 p.m.-2:00 a.m. and 4:00 a.m. or other closing time provided by law, except when providing carry-out or delivery services, is in violation of this Emergency Health Rule.
   C. These businesses may allow patrons to sit at counters and bars in strict compliance with the guidelines in Appendix C, attached.
   D. An owner, operator, or employee of a restaurant, coffee shop, bar, brewery, bowling alley, distillery, or casino who does not comply with the guidelines provided in Appendices C, attached, is in violation of this Emergency Health Rule.
3. EHR-2020-004-A, as amended by EHR-2020-004-B, EHR-2020-004-C, and this EHR-2020-004-D(ii), is extended up to an additional ninety (90) days, ending on May 5, 2021.

4. EHR-2020-004-D(ii) will remain in effect during the extended 90-day period unless revoked or modified earlier based on the following epidemiological and resource indicators:
   a. The seven-day average of new case incidence rate lowers to 25 cases per day per 100,000 population for a period of at least two consecutive weeks; and
   b. Positivity rates for COVID-19 tests in Gallatin County falls below 5% for at least two consecutive weeks; and
   c. The capacity of local hospitals to admit both COVID-19 and non-COVID patients for necessary care is maintained; and
   d. There is no significant diminishment in testing resources or test analysis turn-around time that affects the timely isolation of positive cases;
      OR
   e. Case incidence trends higher, hospital or resource status worsens, or other epidemiological and resource indicators necessitate more restrictive requirements to control community spread.

5. All other provisions of EHR 2020-004-A, not amended by this EHR-2020-004-D(ii), remain in full force and effect.

6. The entirety of the reopening guidelines for Phase Two, as amended by this EHR-2020-004-D(ii), are attached hereto as Exhibit 1 and incorporated herein by this reference.

DATED this 4th day of February, 2021.

Becky Franks, Chair
Gallatin City-County Board of Health

ATTEST:

Eric Semerd, Clerk & Recorder
EXHIBIT 1
EHR-2020-004-D(ii)
PHASED REOPENING: PHASE TWO

Phase-One and All-Phases Guidance to Continue Except Where Modified by this Rule

1. Except where specifically modified by this Emergency Local Health Rule 2020-004-D(ii), the provisions of EHR-2020-003, EHR-2020-003-A, and the related guidance applicable to all phases and to Phase One remain in effect.

2. To the extent this emergency local health rule conflicts with the Governor’s January 13, 2021 Directive, any subsequent Directive that is less restrictive than this rule, or any guidance issued by a State agency that is less restrictive than this rule, this emergency health rule shall control.

Progression Between Phases

1. The approach to reopening Gallatin County will occur in phases, continuing under this Rule with Phase Two.

2. The duration of each phase will be regularly evaluated in close consultation with public health and emergency management professionals. Factors considered in moving from one phase to the next include:
   A. The ability for public health professionals to monitor new cases adequately and conduct contact tracing in order to prevent spread of the disease.
   B. The ability of hospitals to treat all patients safely, both COVID-19 patients and those with other health conditions.
   C. The ability to test all people with COVID-19 symptoms using appropriate diagnostic testing.
   D. The maintenance of sufficient levels of personal protective equipment and the ability to maintain sufficient levels in the future.

3. Metrics used to monitor and assess epidemiological progress and risk, and to guide future decisions related to reopening other businesses, or closing businesses currently open, will include the:
   A. Number of COVID-19 cases, hospitalizations, and deaths in Gallatin County and Montana;
   B. Volume of diagnostic testing available and utilized and the percentage of tests that are positive;
   C. Staffing capacity and workload demands to conduct case investigations and contact tracing in a thorough and effective manner;
   D. Whether business owners and the public comply with public health rules and recommendations designed to limit spread of the disease;
   E. Data indicating known sources (location) of new infections in the community; and
F. Wastewater sampling data measuring viral load in community wastewater treatment systems.

4. Negative indicators in the metrics in ¶ 3 above may result in the amendment of this Rule to re-implement certain restrictions or take other protective measures.

**Guidance Applicable to All Phases**

1. **Individuals should continue to practice good hygiene** by adhering to the following guidelines:
   A. Wash your hands with soap and water or use hand sanitizer, especially after touching frequently used items or surfaces.
   B. Avoid touching your face whenever possible.
   C. Sneeze or cough into a tissue, or the inside of your elbow.
   D. Disinfect frequently used items and surfaces as much as possible.
   E. Use non-medical face coverings while in public, especially in circumstances that do not readily allow for appropriate physical distancing (e.g., grocery/retail stores, pharmacies, public transportation).

2. **People who feel sick should stay at home:**
   A. Do not go to work or school.
   B. Contact and follow the advice of your medical provider.
   C. Follow local health department guidance on isolation and quarantine.

3. **Employers should:**
   A. Develop and implement appropriate policies, in accordance with federal, state, and local regulations and guidance, and informed by industry best practices, regarding:
      i. Social distancing and protective equipment.
      ii. Temperature checks and/or symptom screening.
      iii. Working with public health officials in efforts to test, isolate, quarantine, and pursue contact tracing in order to slow spread of the disease.
      iv. Sanitation.
      v. Use and disinfection of common and high-traffic areas.
   B. Monitor workforce for indicative symptoms. Do not allow people with symptoms of COVID-19 to work.
   C. Collaborate with public health officials when implementing policies and procedures for workforce contact tracing following an employee’s COVID-19 positive test result.
   D. Encourage voluntary participation of employees in any surveillance testing designed to provide community-wide early warning by local public health officials.

**Phase Two: Permissible Group Size of 25**

1. Except as provided at Subsection 1(b) below, all physical group gatherings are limited to no more than 25 individuals, regardless of the ability to physically distance. This restriction applies to both indoor and outdoor events.
a. Group events include, but are not limited to, weddings, receptions, conventions, parties, meetings, fairs, festivals, and concerts.

b. Group gatherings at the following locations are excluded from the 25-person limit:
   i. Houses of worship, but subject to strict physical distancing protocols between non-household members;
   ii. K-12 schools, such as in classrooms or at school-sponsored events;
   iii. Institutions of higher education, such as in classrooms or at university-sponsored events;
   iv. Organized youth events that can be socially distanced, such as after-school programs or youth athletics;
   v. Retail businesses;
   vi. Government offices and operations;
   vii. Gyms, fitness studios, and indoor recreational facilities, subject to applicable capacity limits described below;
   viii. Construction sites;
   ix. Food service establishments that serve a population that depends on the establishment as one of its sole food sources, such as a university dining hall; cafeteria in K-12 schools; cafeteria in a hospital or healthcare facility; dining areas in a crisis shelter or similar institution; airport concessionaires; and at any facility necessary for the response to an emergency; and
   x. Places of assembly that can serve socially distanced groups of 6 or fewer people and where the inherent nature of the event allows predictable and manageable social interactions through a structured physical layout, such as at museums and sit-down theaters, may operate at 50% capacity with advance approval of the Gallatin City-County Health Department. These venues must adhere to strict physical distancing guidelines set forth for group gatherings and follow CDC sanitation protocols.

2. All events and group gatherings must strictly comply with physical distancing of at least 6 feet for non-household members and comply with face covering requirements.

3. Physical distancing requirements for groups and gatherings do not apply to household members.

Phase Two: Individuals and Employers

1. The below guidelines apply to individuals and businesses during Phase Two. Individuals and businesses also must follow the Phase Two guidelines provided in the attached Appendix A, to the extent such guidelines do not conflict with this EHR-2020-004-D(ii).

2. Vulnerable individuals should continue to adhere to the stay-at-home guidance.
3. All businesses and government offices may operate, provided they adhere to strict physical distancing and the conditions in this Emergency Local Health Rule, the Phase Two Guidelines provided in the attached Appendix A (to the extent such guidelines do not conflict with this EHR-2020-004-D(ii)), and all other Emergency Local Health Rules and guidance remaining in effect.

4. Businesses must follow CDC sanitation protocols. Businesses that provide services where social distancing is difficult and that provide services necessary to daily living (such as grocery stores and pharmacies) must comply with face covering requirements for staff and the public.

5. Restaurants, coffee shops, bars, bowling alleys, breweries, distilleries and casinos remain in the same operational status as Phase One, but may operate at 50 percent capacity, must close between the hours of 2:00 a.m. and 4:00 a.m. (except when providing carry-out or delivery services), may allow sitting at bars and counters only in strict compliance with social distancing and sanitation protocols, and must restrict persons at tables to six or less. These businesses must continue to maintain strict physical distancing and must otherwise adhere to the reopening guidelines in compliance with Appendix A and C, attached.
   A. The restriction requiring 6-persons or less at a table does not apply to persons younger than 18 who are present with their parent or guardian.
   B. Except when providing carry-out or delivery services, these businesses must close their doors and have all patrons out between the hours of 2:00 a.m. and 4:00 a.m. Breweries and distilleries shall follow existing laws on closing time.
      i. A patron who is not obtaining carry-out services and who does not leave a restaurant, coffee shop, bar, bowling alley, brewery, distillery, or casino between the hours of 2:00 a.m. and 4:00 a.m. or other closing time provided by law, is in violation of this Emergency Health Rule.
      ii. An owner, operator, or employee of a restaurant, coffee shop, bar, bowling alley, brewery, distillery, or casino who does not close and have no patrons within the business during the hours of 2:00 a.m. and 4:00 a.m. or other closing time provided by law, except when providing carry-out or delivery services, is in violation of this Emergency Health Rule.
   C. These businesses may allow patrons to sit at counters and bars in strict compliance with the guidelines in Appendix C, attached.
   D. An owner, operator, or employee of a restaurant, coffee shop, bar, brewery, bowling alley, distillery, or casino who does not comply with the guidelines provided in Appendices C, attached, is in violation of this Emergency Health Rule.

6. Gyms, indoor group fitness classes, indoor recreational facilities, pools, spas, and hot tubs can operate at 50 percent capacity but only if they can adhere to strict physical distancing, exercise frequent sanitation protocols, and adhere to the guidelines provided in Appendix B, attached.
A. An owner, operator, or employee of a gym, fitness studio, or public accommodation, who does not comply with the guidelines provided in Appendix B, attached, is in violation of this Emergency Health Rule.

7. Places of assembly, such as indoor and outdoor concert venues, festivals, and fairs, must operate with reduced capacity with 25 or fewer patrons in compliance with Appendix B, attached, and must adhere to strict physical distancing guidelines set forth for group gatherings and follow CDC sanitation protocols.

A. An owner, operator, or employee of a place of assembly who does not comply with the guidelines provided in Appendix B, attached, is in violation of this Emergency Health Rule.

8. Child-care facilities can increase capacity consistent with the guidelines contained in the Governor’s April 1, 2020 Directive on childcare and the DPHHS Information for Child Care, “Frequently Asked Questions: COVID-19,” and if strict physical distancing guidelines can be implemented; however, the 24-person cap per facility no longer applies effective June 1, 2020.

9. Employers should continue to permit telework as much as possible and where feasible, but refer to guidelines for Phase One where telework is not possible.

10. Outdoor recreation remains in the same operational status as Phase One.

Scope and Enforcement

1. Violations of this Rule shall be enforced pursuant to Sections 50-2-118, 50-2-123 and 50-2-124, MCA, which state:

50-2-118. Powers and duties of local health officers. In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representative shall:

(5) pursue action with the appropriate court if this chapter or rules adopted by the local health board or department under this chapter are violated.

50-2-123. Compliance order authorized. If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

50-2-124. Penalties for violations. (1) A person who does not comply with
rules adopted by a local board is guilty of a misdemeanor. On conviction, the person shall be fined not less than $10 or more than $200.

(2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than $10 or more than $500 or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs.

2. EHR-2020-004-A, as amended by this EHR-2020-004-D(ii), is extended up to an additional ninety (90) days, ending on May 5, 2021.

3. EHR-2020-004-D(ii) will remain in effect during the extended 90-day period unless revoked or modified earlier based on the following epidemiological and resource indicators:
   a. The seven-day average of new case incidence rate lowers to 25 per 100,000 population for a period of at least two weeks; and
   b. The capacity of local hospitals to admit both COVID-19 and non-COVID patients for necessary care is maintained; and
   c. There is no significant diminishment in testing resources or test analysis turn-around time that affects the timely isolation of positive cases;
   OR
   d. Case incidence trends higher, hospital or resource status worsens, or other epidemiological and resource indicators necessitate more restrictive requirements to control community spread.

4. If any provision of this Rule, in whole or in part, is found to be invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining provisions of this Rule.
General Business Reopening Guidelines

**PHASE ONE: ALL SETTINGS**

- Health assessments must be conducted for all employees at the beginning of each shift.
- In establishments where customers wait in a line, non-household customers should remain physically distanced.
- Waiting areas where adequate physical distancing cannot be maintained must be closed.
  - Customers should be encouraged to call for a reservation or an appointment, or establishments should use an online wait listing application.
- Physical distancing of 6 feet must be maintained between non-congregate customers, this may require:
  - A reduction in capacity;
  - A reduction of seating in service and waiting areas;
  - Management of waiting areas and waiting lines; or
  - Systems that reduce the amount of contact time between customers and staff.
Appendix A - Reopening Directive

General Business Reopening Guidelines
Continued

PHASE TWO: ALL SETTINGS
• Non-congregate group size has increased from 10 people to 50 people.
• All other provisions remain the same as Phase One for general business operations.

PHASE THREE: ALL SETTINGS
• Return to normal operations.
Appendix A - Reopening Directive

Restaurant / Bar / Brewery / Distillery / Casino Guidelines

ALL PHASES

• A specific cleaning plan must be implemented, and employees must be trained in proper sanitation practices. Materials will be available on the Montana Department of Public Health and Human Services (DPHHS) food and consumer services website.

• All surfaces occupied must be cleaned between customers, including tables, chairs, booths, and highchairs.

• Table items including, condiments, menus, napkins, and décor, should be removed from the table unless they can be adequately cleaned between customers.

• Menus must be cleaned between customers.

• Growlers and refillable or reusable containers must be cleaned prior to being refilled.

• Gaming machines must be adequately cleaned between customers.
Appendix A - Reopening Directive

Restaurant / Bar / Brewery / Distillery / Casino Guidelines Continued

PHASE ONE: RESTAURANTS

- Capacity must be limited to 50% of normal operating capacity to allow for adequate group spacing.
- Tables must be limited to six people per table.
- Establishments must provide for 6 feet of physical distancing between groups and or tables by:
  - Increasing table spacing, removing tables, or marking tables as closed;
  - Providing for a physical barrier between tables; or
  - Back-to-back booth seating provides adequate separation.
- In-house dining for quick service restaurants should remain closed, if all guidelines can’t be met, including the cleaning of every table between customers.
- Sitting or standing at bars or counters is not allowed.
- In bars, drinks and food must be served to customers at a table.
Appendix A - Reopening Directive

Restaurant / Bar / Brewery / Distillery / Casino
Guidelines Continued

PHASE ONE: RESTAURANTS CONTINUED

• Self-service buffets must be closed.
• Drink refills are not allowed.
• Self-service cups, straws and lids should be behind a counter and handed to customers
• Self-service condiments should be eliminated.
• Gaming machines that are operational must be separated by 7-foot center to center. Machines must be placed out of service if adequate spacing cannot be assured.
**PHASE TWO: RESTAURANTS**

- Capacity may be increased to 75% of normal operating capacity.
- Tables must be limited to 10 people per table.
- Establishments must continue to provide for physical distancing between groups and or tables but may increase capacity.
- In-house dining for quick service restaurants should remain closed if all guidelines can't be met, including the cleaning of every table between customers.

**PHASE THREE: RESTAURANTS**

- Continue to practice social distancing when practical.
- Establishments should begin to resume normal occupancy while continuing to follow the guidelines for all facilities.
Appendix A - Reopening Directive

Outdoor Recreation Guidelines

PHASE ONE AND TWO: RECREATION GUIDELINES

- Public lands, fishing access sites, and parks are encouraged to continue to provide outdoor recreation opportunities for local and regional users provided that users can adhere to strict social distancing guidelines and facilities follow frequent sanitizing protocols. Areas that cannot practicably implement social distancing requirements or sanitation needs will remain closed. Limited campground offerings, group-use facilities and playgrounds, may be opened at the discretion of local and state managers. Local, state and federal officials are strongly encouraged to coordinate on all reopening decisions. Guides and outfitters may offer services consistent with any ongoing quarantine travel restrictions provided they adhere to social distancing guidelines and sanitation protocols. Visitors should check the status of any closures and restrictions before traveling.

PHASE THREE: RECREATION GUIDELINES

- Campground, group-use facilities, playgrounds and visitor centers are fully open.
Personal Care / Services Guidelines

PHASE ONE: PERSONAL CARE (SALONS, MASSAGE, BODY ART, ETC.)

- Operations that require close personal contact for an extended period result in exposing staff and customers to greater levels of risk. These situations require additional safety and health precautions.

- Screen customers prior to appointment for symptoms of fever, shortness of breath or a cough. Customers that have any of these symptoms must be rescheduled.

- Utilize a face mask for staff and for customers when practical.

- Stylist / artist / service-provider and customer would be a “station” that would be 6 feet away from other “stations”.

- Provide for 6 feet of physical distancing between stations, this may require:
  - A reduction in capacity;
  - Increasing spacing, removing stations, or marking stations as closed;
  - Providing for a physical barrier between stations;
  - A reduction of seating in service and waiting areas; or
  - Systems that reduce the amount of contact time between customers and staff.
Appendix A - Reopening Directive

Personal Care / Services Guidelines Continued

PHASE TWO: PERSONAL CARE (SALONS, MASSAGE, BODY ART)
• Establishments should continue provide for physical distancing between stations.

PHASE THREE: PERSONAL CARE (SALONS, MASSAGE, BODY ART)
• Continue to practice physical distancing when practical.
• Establishments may resume normal occupancy while continuing to follow the guidelines for all facilities.
Appendix B

Amended Phase Two Guidance for Pools, Spas, Hot Springs, and Hot Tubs at Licensed Public Accommodations (Hotels, Motels, Bed and Breakfasts, Tourist Homes, etc.)

Public Accommodation Pools, Spas, Hot Springs, and Hot Tubs (collectively referred to herein as “pool”) are allowed to operate with reduced capacity of 50% of normal bather load and strict compliance with social distancing requirements.

The CDC has indicated that properly maintained pool water inactivates the virus. It is critical that pools that have shut down during this time or reduced maintenance follow proper re-opening procedures and sampling of chemical parameters to ensure water is safe for use, prior to opening to the public. Operators should work with their Certified Pool Operator and/or local/state sanitarian if questions arise regarding re-opening.

If a facility has had a confirmed COVID-19 case they must follow the CDC’s facility environmental cleaning procedures for deck areas, seating, locker rooms, and other areas of the establishment frequented by swimmers.

Public Accommodation Pools (Pools at Hotels, Motels, Bed and Breakfasts, Tourist Homes, etc.):

- Front desk/gate attendant must track occupancy, incoming and outgoing, to ensure maximum occupancy does not exceed 50% capacity of normal bather load;

- Signage must be posted with the following or substantially similar wording. Signs shall be positioned for effective visual observation by accommodation guests, such as on the entry way door:
  - “Guests with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using the pool.”;

- No congregating in waiting areas; patrons must adhere to the establishment’s procedures to ensure social distancing, such as appropriately spaced line or rules that allow appropriate social distancing;

- Locker rooms must remain closed, except for showering before and after swimming. Since only registered guests are allowed to use the pool, individuals should change in their rooms;

- Social distancing must be applied in all common areas;

- 6 foot spacing between unassociated swimmers (i.e. not family members) must be maintained whenever possible;
Whenever possible, 6 foot spacing must be maintained between groups of no more than 10 (i.e. family groups and unrelated individuals must maintain 6 foot separation);

- Space deck tables and chairs to facilitate 6 foot spacing;

- Where possible, use buoys and floating pool ropes to mark off lanes or areas of pool for separation of large swimming areas;

- Where possible, mark stairs and walkways with directional arrows to keep in/out traffic separated.

Amended Phase Two Guidance for Gyms, Fitness Studios, Indoor Recreational Facilities, Gym Pools, and Places of Assembly

Guidance for Gyms and Fitness Studios

Gyms, fitness studios, and indoor recreational facilities contribute to the health and wellness for many Montanans. As such, and in recognition of the continued progress toward recovery that Montana has made, these facilities are allowed to operate at 50% capacity with sanitization and social distancing requirements met.

In the event a confirmed COVID-19 case is associated with a facility, the facility must be thoroughly cleaned in accordance with the CDC’s facility environmental cleaning procedures for workout areas, seating, locker rooms, and other areas of the establishment frequented by patrons.

- Facility must have a dedicated staff available during operating hours to wipe down frequently touched areas on a regular basis and monitor facility’s zones to ensure that users are wiping down equipment properly.

- Train workers on symptom awareness and proper handwashing technique.

- Signage must be posted with the following or substantially similar wording:
  - “Patrons with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using the gym”
  - Signs shall be positioned for effective visual observation by guests, such as at the front desk and in locker rooms.

- Front desk must track occupancy to ensure facilities stay at or below 50 percent capacity.

- Hand sanitizer must be made available at front desk and at stations throughout the workout area.
• Approved sanitizer for cleaning equipment after use must be provided at stations throughout the workout areas along with disposable towels. Reusable towels shall not be used to clean equipment.

• Post signs throughout workout area reminding patrons to wipe equipment after each use.

• Masks must be worn by all staff.

• Masks must be worn by guests.

• Six-foot distance must be maintained between equipment. Cardio studios must limit guests to every other piece of equipment to achieve this.

• Guests using free weights shall maintain six feet of separation except when a spotter is necessary. In this instance, workout groups shall be limited to two people.

• Sitting areas must be closed for use.

• Food vendors must follow applicable COVID-19 procedures for restaurants and retail food service. Vendors should be encouraged to use single-service items whenever possible, especially for condiments and similar foods.

• Social distancing must be maintained in dressing rooms and other common areas. No congregating in these areas may be allowed.

• After closing, establishments must clean using an EPA approved disinfectant. Twenty-four-hour establishments must close from 11:30 pm to 12 am so that proper disinfection can happen.
  o Facility must develop a checklist to ensure that no equipment is being missed during disinfection. Checklist should include large items, such as treadmills and smaller items, such as weights and bands.

• Frequently touched surfaces must be cleaned and sanitized regularly throughout the day and disinfected each night after closing.

• Personal training sessions may be offered with strict adherence to social distancing guidelines and mask requirements.

• Indoor group classes may be offered but should allow social distancing of six feet between participants.

• Additional time between group classes must be provided so that a designated gym employee can disinfect any equipment and other cleanable surfaces before the next class begins.
**Guidance for Pools at Gyms**

Gym pools are allowed to operate with reduced capacity of 50% of normal bather load and basic compliance with social distancing requirements.

The CDC has indicated that properly maintained pool water inactivates the virus. It is critical pools that have shut down during this time or reduced maintenance follow proper re-opening procedures and sampling of chemical parameters to ensure water is safe for use, prior to opening to the public. Operators should work with their Certified Pool Operator and/or local/state sanitarian if questions arise regarding re-opening.

In the event a confirmed COVID-19 case is associated with a facility the facility must clean in accordance with CDC’s facility environmental cleaning procedures for workout areas, seating, locker rooms, and other areas of the establishment frequented by swimmers.

**Gym Pools:**

- Train workers on symptom awareness and proper handwashing procedures.

- Pool classes may continue; if:
  - All social distancing requirements must be observed during class; and
  - Any equipment used can be easily cleaned and disinfected between users.

- Youth swim lessons may be offered in-line with previous guidance for Phase 1, which includes youth activities should avoid gathering in groups of more than 10 people in circumstances that do not readily allow for appropriate physical distancing.

- Front desk/gate attendant must track occupancy, incoming and outgoing, to ensure maximum occupancy does not exceed 50% capacity of normal bather load.

- Signage must be posted with the following or substantially similar wording.
  - “Members with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using this facility.”
  - Signs shall be positioned for effective visual observation by members, such as on the entry way door.

- No congregating in waiting areas; patrons must adhere to procedures and processes implemented by facilities to ensure appropriately spaced lines and social distancing

- Locker rooms must be monitored by a designated staff member to ensure they are not becoming crowded and that social distancing is being observed

- Signage must be posted on the locker room door with the following or substantially similar wording, “Observe social distancing while using this facility. No loitering in common areas.”
• Social distancing must be applied in all common areas

• 6-foot spacing between unassociated members must be maintained (i.e. not family members) in the pool whenever practical.

• 6-foot spacing must be maintained between groups of no more than 10 (i.e. family groups and unrelated individuals must maintain 6-foot separation) in the pool.

• Space pool deck tables and chairs to facilitate a 6-foot distance.

• Where possible, use buoys and floating pool ropes to mark off lanes or areas of pool for separation of large swimming areas.

• Where possible, mark stairs and walkways with directional arrows to keep in/out traffic separated.

Amended Guidance for Places of Assembly (e.g. museums, theaters, indoor and outdoor concert venues, etc.)

In the event a confirmed COVID-19 case is associated with a facility, the facility must clean in accordance with CDC’s facility environmental cleaning procedures for areas of the establishment frequented by patrons.

• Except as provided below, maximum number of attendees is 25 persons while maintaining 6 feet between non-family member groups.

• Certain places of assembly, such as museums and sit-down theaters, may obtain advance permission from the Gallatin City-County Health Department to operate at 50% capacity in order to serve socially distanced groups of 6 or fewer people and where the inherent nature of the event allows predictable and manageable social interactions through a structured physical layout.

• Signage must be posted with the following or substantially similar wording:
  o “Patrons with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using this facility.”
  o Signs shall be positioned for effective visual observation by patrons, such as on the entry way door.

• Increase cleaning and sanitizing of frequently touched surfaces, including door handles, chairs and tables.

• Keep social distancing of at least 6 feet between non-family member groups or immediate party.
• Food vendors must follow applicable COVID-19 procedures for restaurants and retail food service. Vendors should be encouraged to use single-service items whenever possible, especially for condiments and similar foods.

• Facilities must try to control customer flow in a manner that maximizes social distancing such as signage or ropes and directing flow in one direction.

• Provide hand sanitizer or hand washing stations throughout the venue whenever possible.

• Each venue must create and implement a written COVID-19 response plan.

• Increase cleaning and sanitizing of restrooms to no less than every two hours whenever possible.

• Provide clear plastic shielding between workers and attendees whenever possible, such as event cashiers and food vendors.

• If possible, do not use tables. Tables should be covered with single-use material and discarded between users, showings, performances or every two hours, whichever provides maximum spread protection.

• Train workers on COVID-19 symptom awareness and proper handwashing procedures.

Additional Measures that Apply to Theaters (Live and Movie)

• Increase cleaning time period between events, performances and showings. Ensure that commonly touched surfaces such as arm rests and railings are cleaned frequently.

• Ushers must monitor and enforce social distancing practices in theaters and encourage additional distance between guests as appropriate.
  o Ushers must limit the number of people in lines to no less than 6 feet between families or immediate party.
Appendix C

Amended Phase Two Guidance for Restaurants, Coffee Shops, Bowling Alleys, Bars, Breweries, Distilleries and Casinos (Bar Seating, Capacity & Hours of Operation)

Bar seating can be accommodated and be protective of public health. This guidance is intended to assist with the safe reopening of bar seating in restaurants, coffee shops, bowling alleys, breweries, distilleries, bars, and casinos during Phase 2 in Gallatin County. The required time of closure at these establishments is from 2:00 a.m. until 4:00 a.m., except for carry-out and delivery services. In order to open seating at a bar the following social distancing and sanitation protocols must be followed, unless, an equally protective measure utilizing spacing, or physical barriers, has been proposed in place of a listed requirement and has been approved by the Gallatin City-County Health Department.

Requirements
1. Maintain six feet of social distancing between patrons
2. Frequently clean and disinfect commonly touched services
3. Eliminate shared or community items
4. Operate at 50% capacity
5. Limit tables to six people or less
   *This limit does not apply to persons younger than 18 who are present with their parent or guardian

Implementation measures:

Social Distancing
- No bar seating within 6 feet of a well or taps, an area where drinks are passed to servers, ice machines, or other areas used to prepare or serve food or beverages;
- Bars stools must be spaced 6 feet apart;
- All patrons must have a place to sit; No standing and mingling allowed at the bar or elsewhere;
- Keep all barstools 6 feet apart. If a group of 6 or less comes in and requests to be seated together, a staff member can group seats together and then re-space to 6ft once the group leaves;
- If 6ft cannot be maintained between patrons and servers/staff using well areas or taps, a physical barrier or closing wells may be used to protect servers/staff;
  o The barrier must be at least 36 inches high and offer enough protection to prevent employee exposure to droplets from anyone seated within 6 feet of either side of the serving area;
  o Wells taken out of use should be marked with a sign to remind staff.
- There may be a designated area at the bar, away from other costumers, wells, taps, and prep-stations where patrons may place and receive orders. 6 feet of social distancing should be maintained by all patrons of separate parties and only one customer may use
this space at a time. Patrons should grab their drink or order and then return to their seats. (see above if 6ft cannot be maintained)

Clean and Disinfect
- Disinfect barstools and counter space between patrons;
- No reusing drink coasters unless they can be disinfected between patrons;
- No refilling glasses, new glass is needed for each order;
- No shake-a-day unless dice and cup can be disinfected in-between patrons.

Eliminate Community Items
- No community peanuts or other foods are allowed unless they can be served in individual containers.

**Poker Rooms:**

Poker rooms are allowed in Phase 2 following the same requirements above for bar seating.

All establishments should work with the Gallatin City-County Health Department on guidelines and best practices.