FOURTH EXTENSION AND AMENDMENT OF EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19
EHR-2020-004-E
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 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, 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 May 19, 2020, former Governor Bullock issued a directive establishing conditions for the second phase of the phased reopening of Montana, including a limitation on group sizes greater than 50 people;

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 for Gallatin County, including the 50-person group size restriction;

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, pursuant to Section 5.2 of Chapter 1, Gallatin City-County Health Code, EHR-2020-004 was effective only for an initial ninety-day period from its adoption;

WHEREAS, as a result, the Board has extended and amended EHR-2020-004 throughout the COVID-19 pandemic as necessitated by current epidemiological and resource indicators to limit the spread of COVID-19 in the community;

WHEREAS, on November 6, 2020, through the adoption of EHR-2020-004-C, the Board restricted indoor and outdoor group gatherings to no more than 25 people, with certain delineated exceptions;

WHEREAS, the Board adopted the group-size restriction 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, on February 12, 2021, newly elected Governor Greg Gianforte issued a “Directive Implementing Executive Order 2-2021,” which became immediately effective and repealed the requirements established by former Governor Bullock for the phased reopening of businesses in Montana;

WHEREAS, the February 12th Directive does not impose any specific restrictions on group sizes, but provides that “public gatherings or events should be managed in a way that accommodates the [CDC] social distancing guidelines”;

WHEREAS, the February 12th 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”;

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;

WHEREAS, since the 25-person group limitation was established by EHR-2020-004-C, the number of COVID-19 cases in Gallatin County have decreased but remained fairly steady from late January through early March 2021, with the 7-day rolling average of cases ranging from a low of 23 cases to a high of 35 cases per 100,000 residents.

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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 seven-day rolling average test positivity rate in Gallatin County also has decreased but remained fairly constant from late January through early March 2021, with the 7-day rolling average test positivity rate ranging from a low of 4.6% to a high of 5.8%;

WHEREAS, local hospitals in Bozeman and Big Sky have maintained their capacity to admit both COVID-19 and non-COVID-19 patients for necessary care through February and into March 2021;

WHEREAS, there also has not been any significant diminishment in testing resources or test analysis turn-around time affecting the timely isolation of positive cases in February and into March 2021;

WHEREAS, based on the above epidemiological and resource indicators, the Board desires to amend the Phase Two restrictions to increase the allowed size of certain indoor and outdoor events and group gatherings;

WHEREAS, the Board also desires to readopt and extend EHR-2020-004-A, as amended, for up to an additional ninety-days, ending on June 10, 2021;

WHEREAS, it is necessary for the Board to continue the mitigation measures established through EHR-2020-004-A, as amended, to limit the spread of COVID-19 in the community, especially due to the confirmed presence of the more contagious coronavirus variants;

WHEREAS, this amendment and extension are subject to the criteria identified by EHR-2020-004-C and EHR-2020-004-D(ii), such that the rule may be revoked or modified prior to its expiration if warranted by the epidemiological and resource indicators identified below;

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 the guidance and restrictions contained in this EHR-2020-004-E are necessary to protect the public from the further introduction and spread of COVID-19 in Gallatin County; 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, EHR-2020-004-C, and EHR-2020-004-D(ii), must be further 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, EHR-2020-004-C, and EHR-2020-004-D(ii), 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:

   **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), as amended, 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 February 12, 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.

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2. The portion of EHR-2020-004-A concerning group sizes is amended as follows, with additions underlined and deletions in strike-through:

**Phase Two: Permissible Events and Group Sizes of 25**

1. Except as provided at Subsection 4(b)Section 3 below, all physical events and 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 as follows:

   **A. Indoor Events and Group Gatherings:**
   
i. All indoor events and group gatherings are limited to no more than 150 people. The number of people at an event includes attendees, staff, volunteers, and others on site at any one time.

   ii. For indoor events and group gatherings with 50 to 150 people:
   
   a) All participants must be seated at tables at least six feet apart with no more than six people per table and placed in an orientation that allows adequate space for physical distancing between tables. The limit of six people per table does not apply to persons younger than 18 who are present with their parent or guardian; or
   
   b) During retail-like events, such as trade shows, event sponsors must ensure predictable and manageable social interactions through a structured physical layout, controls for ingress and egress, and a flow of foot traffic that allows attendees to maintain strict 6-foot physical distancing.

   iii. Regardless of the event or group gathering size, at no time shall the number of attendees at an indoor event exceed 50% of the capacity for the room being used for the event or gathering, as determined by the governmental fire agency with jurisdiction.

   **B. Outdoor Events and Group Gatherings:**
   
i. All outdoor events and group gatherings are limited to no more than 250 people. The number of people at an event includes attendees, staff, volunteers, and others on site at any one time.

   ii. For outdoor events and group gatherings with 50 to 250 people:
   
   a) All participants must be able to maintain strict physical distancing of at least 6 feet between individuals and family/household groups; and
   
   b) During retail-like events, such as trade shows, event sponsors must ensure predictable and manageable social interactions through a structured physical layout, controls for ingress and egress, and a flow
of foot traffic that allows attendees to maintain strict 6-foot physical distancing.

iii. For those outdoor events or group gatherings with more than 50 people, event sponsors must at all times avoid unstructured events or activities (such as dance floors) that allow unpredictable or unmanageable social interactions that do not allow six feet of distance between attendees.

iv. Event organizers or venue operators sponsoring or hosting events or group gatherings of more than 150 people that do not meet an exclusion in Section 3 below must submit operations plans that outline protective measures and environmental controls to reduce risk of disease transmission to the Environmental Health Division of the Gallatin City-County Health Department at least 30 days prior to the event or group gathering to assess compliance with this Rule.

a2. Events and group gatherings include, but are not limited to, weddings, receptions, conventions, parties, meetings, fairs, festivals, parades, trade shows, and concerts.

b3. Events and group gatherings at the following locations are excluded from the 25-person group-size limits:

iA. Houses of worship, but subject to strict physical distancing protocols between non-household members;

iB. K-12 schools, such as in classrooms or at school-sponsored events;

iiiC. Institutions of higher education, such as in classrooms or at university-sponsored events;

ivD. Organized youth events that can be socially distanced, such as after-school programs or youth athletics; however, spectators are considered a separate and distinct event from the youth activity and are subject to the group-size limitations of this Rule;

vE. Retail businesses, that ensure predictable and manageable social interactions through a structured physical layout, controls for ingress and egress, and a flow of foot traffic that allows customers to maintain strict 6-foot physical distancing;

viE. Government offices and operations;

viiG. Gyms, fitness studios, and indoor recreational facilities, subject to applicable capacity limits described below;

viiiH. Construction sites;

ixI. 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; cafeterias 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
Museums, sit-down theaters, and outdoor competition venues with established seating arrangements 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.

24. 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.

35. Physical distancing requirements for groups and gatherings do not apply to household members of the same household group.

3. The portion of EHR-2020-004-A concerning individual and employer guidelines 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 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(iii)), 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 Appendix 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.

[Sections 8 through 10 are renumbered but otherwise remain unchanged.]

4. EHR-2020-004-A, as amended by EHR-2020-004-B, EHR-2020-004-C, EHR-2020-004-D(ii), and this EHR-2020-004-E, is extended up to an additional ninety (90) days, ending on June 10, 2021.

5. EHR-2020-004-E 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.

6. All other provisions of EHR 2020-004-A, not amended by this EHR-2020-004-E, remain in full force and effect.

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

DATED this 12th day of March, 2021.

Becky Frahks, Chair
Gallatin City-County Board of Health

ATTEST:

Eric Semrad, Clerk & Recorder

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EXHIBIT 1
EHR-2020-004-E
PHASED REOPENING: PHASE TWO

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

1. Except where specifically modified by Emergency Local Health Rule 2020-004, as amended, 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 February 12, 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 Events and Group Sizes

1. Except as provided at Section 3 below, all physical events and group gatherings are limited as follows:
   
   A. Indoor Events and Group Gatherings:
      
      i. All indoor events and group gatherings are limited to no more than 150 people. The number of people at an event includes attendees, staff, volunteers, and others on site at any one time.
      
      ii. For indoor events and group gatherings with 50 to 150 people:
          
          a) All participants must be seated at tables at least six feet apart with no more than six people per table and placed in an orientation that allows adequate space for physical distancing between tables. The limit of six people per table does not apply to persons younger than 18 who are present with their parent or guardian; or
          
          b) During retail-like events, such as trade shows, event sponsors must ensure predictable and manageable social interactions through a structured physical layout, controls for ingress and egress, and a flow of foot traffic that allows attendees to maintain strict 6-foot physical distancing.
      
      iii. Regardless of the event or group gathering size, at no time shall the number of attendees at an indoor event exceed 50% of the capacity for the room being used for the event or gathering, as determined by the governmental fire agency with jurisdiction.

   B. Outdoor Events and Group Gatherings:
      
      i. All outdoor events and group gatherings are limited to no more than 250 people. The number of people at an event includes attendees, staff, volunteers, and others on site at any one time.
      
      ii. For outdoor events and group gatherings with 50 to 250 people:
          
          a) All participants must be able to maintain strict physical distancing of at least 6 feet between individuals and family/household groups; and
          
          b) During retail-like events, such as trade shows, event sponsors must ensure predictable and manageable social interactions through a structured physical layout, controls for ingress and egress, and a flow of foot traffic that allows attendees to maintain strict 6-foot physical distancing.
      
      iii. For those outdoor events or group gatherings with more than 50 people, event sponsors must at all times avoid unstructured events or activities (such as dance floors) that allow unpredictable or unmanageable social interactions that do not allow six feet of distance between attendees.
      
      iv. Event organizers or venue operators sponsoring or hosting events or group gatherings of more than 150 people that do not meet an exclusion in Section 3 below must submit operations plans that outline protective measures and environmental controls to reduce risk of disease transmission to the Environmental Health Division of the Gallatin City-County Health Department at least 30 days prior to the event or group gathering to assess compliance with this Rule.
2. Events and group gatherings include, but are not limited to, weddings, receptions, conventions, parties, meetings, fairs, festivals, parades, trade shows, and concerts.

3. Events and group gatherings at the following locations are excluded from the group-size limits:
   A. Houses of worship, but subject to strict physical distancing protocols between non-household members;
   B. K-12 schools, such as in classrooms or at school-sponsored events;
   C. Institutions of higher education, such as in classrooms or at university-sponsored events;
   D. Organized youth events that can be socially distanced, such as after-school programs or youth athletics; however, spectators are considered a separate and distinct event from the youth activity and are subject to the group-size limitations of this Rule;
   E. Retail businesses, that ensure predictable and manageable social interactions through a structured physical layout, controls for ingress and egress, and a flow of foot traffic that allows customers to maintain strict 6-foot physical distancing;
   F. Government offices and operations;
   G. Gyms, fitness studios, and indoor recreational facilities, subject to applicable capacity limits described below;
   H. Construction sites;
   I. 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; cafeterias 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
   J. Museums, sit-down theaters, and outdoor competition venues with established seating arrangements 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 face covering requirements.

3. Physical distancing requirements for groups and gatherings do not apply to members of the same household group.

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.

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, 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 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 Appendix 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. 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.

8. 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.

9. 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 EHR-2020-004-B, EHR-2020-004-C, EHR-2020-004-D(ii), and this EHR-2020-004-E, is extended up to an additional ninety (90) days, ending on June 10, 2021.

3. EHR-2020-004-E 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.
Appendix A

General Business Reopening Guidelines for Phase Two

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 must 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.

Phase Two Outdoor 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 Two Personal Care/Services (Salons, Massage, Body Art, etc.) Guidelines

- 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.
- Personal care/service providers and customers must wear Face Coverings in indoor settings; however, customers may remove their Face Coverings when the services are not
possible without removal of the customer’s Face Covering, such as when receiving a
facial massage, facial grooming, facial piercing, etc.

• Screen customers prior to appointment for COVID-19 symptoms. Customers that have
any symptoms must be rescheduled.

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

• Provide for 6 feet of physical distancing between stations by:
  o A reduction in capacity;
  o Increasing spacing, reducing stations, or marking stations as closed;
  o A reduction of seating in service and waiting areas; or
  o Systems that reduce the amount of contact between customers and staff.
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 CDCs 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, chills, headache, sore throat, new loss of taste or smell, 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 6 (i.e. family groups and unrelated individuals must maintain 6 foot separation);
  *This limit does not apply to persons younger than 18 who are present with their parent or guardian

- 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, and Gym Pools**

**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, chills, headache, sore throat, new loss of taste or smell 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.

• Guest 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 unless seating is spaced at least six feet apart and can be continuously maintained.

• 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 12am 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 must 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:
  o All social distancing requirements must be observed during class; and
  o 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.
  o “Members with fever, shortness of breath, a cough, chills, headache, sore throat, new loss of taste or smell or other COVID-19 symptoms must refrain from using this facility.”
  o 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 6 (i.e. family groups and unrelated individuals must maintain 6-foot separation) in the pool.
  *This limit does not apply to persons younger than 18 who are present with their parent or guardian

• 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 Phase Two Guidance for Museum, Sit-down Theaters, and Outdoor Competition Venues**

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.

• Facilities must 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, chills, headache, sore throat, new loss of taste or smell 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. Capacity not to exceed 50% and must ensure customer groups maintain a 6 feet from other customer groups.
4. Customers must be able to maintain 6 feet of distance from other customer groups of customers in waiting areas.
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
6. In-house dining for quick service restaurants should remain closed if all guidelines cannot be met, including the cleaning of every table between customers.

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 6 feet once the group leaves;
- If 6 feet 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;
  - 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;
- 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 6 feet cannot be maintained)
- Establishments must provide for 6 feet of physical distancing between 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.

**Clean and Disinfect**
- All surfaces occupied must be cleaned between customers, including tables, chairs, booths, and highchairs;
- 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.
- Menus must be cleaned between customers.
- Growlers and refillable or reusable containers must be cleaned prior to being refilled.

**Food and Drink Service**
- Self-service buffets are allowed if non-associated customers maintain at least 6 feet from other customers and the food is served using a method to reduce contamination from shared serving utensils.
- Customers may order and pick up food and drinks at the counter or bar if there is a clearly designated space located 6 feet away from seated customers, wells, taps, and prep stations. Only one customer may use this space at a time, and they must immediately return to their table or seat once they pick up their order. If these requirements cannot be met, then drinks and food must be served to customers at a table.

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

**Games and Entertainment**
- Bar games are allowed if 6-foot distancing between non-associated groups and seated customers can be maintained at all times.
- Live entertainment is allowed if distance and all other requirements can be met throughout the duration of the performance.
- Commonly touched surfaces of bar game equipment must be sanitized frequently.
- Dance floors must remain closed.
- Gaming machines must be adequately cleaned between customers.
• Establishments are encouraged to lower music levels in order that patrons can converse without raising their voices or moving together to hear each other.
• Gaming machines that are operational must be separated by 7-feet center to center. Machines must be placed out of service if adequate spacing cannot be assured.

**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.