

FILED

NOV 18 2020

CLERK ELKHART
CIRCUIT COURT

Elkhart County Health Department

Public Health Order No. 06-2020

Elkhart County COVID-19 Mitigation Directives

The outbreak of a new coronavirus continues to cause the disease called COVID-19. COVID-19 is having a direct impact on the health and safety of Elkhart County residents. Elkhart County is continuing its efforts to reduce its COVID-19 positivity rate and prevent an increased resurgence and spread of COVID-19. The State of Indiana, in Executive Order 20-48 (dated November 13, 2020), recognized that a county or other political subdivisions may need to impose its own requirements to address the specific COVID-19 needs of its community. Elkhart County has seen unprecedented levels of positive COVID-19 cases, record setting positivity rates, overburdened hospitals, and adversely impacted schools systems and businesses. In order to protect public health, restrictions must be established to help curb the spread of COVID-19 and protect our vulnerable populations.

With this understanding, I hereby Order the following, effective immediately. This Public Health Order No. 06-2020 is independent of the State of Indiana's Executive Orders.

I. Scope and Duration

On November 19, 2020, at 12:01 a.m. all individuals, businesses, and entities in the County of Elkhart must adhere to the directives of this Public Health Order No. 06-2020. As of 11:59 PM on November 18, 2020, Public Health Order No. 03-2020 is hereby rescinded by the Elkhart County Local Health Officer. This Order will remain in effect until rescinded by the Elkhart County Local Health Officer. Prior to rescinding this Order, the Health Officer intends to examine the applicable COVID-19 data impacting Elkhart County and the surrounding areas and the status of alternative efforts to combat the spread of COVID-19. This Order is independent of and may continue beyond the current Indiana State Executive Orders addressing similar matters. To the extent a conflict exists between this Order and any other public health order issued by the Elkhart County Health Department, the provisions of this Order control. If any provision of this Order, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Order are hereby declared severable.

II. Definitions

A. **COVID-19 Response Plan** means the plan created and publicly posted by all business and entities to address measures to prevent the spread of COVID-19. All COVID-19 Response Plans must include the measures taken to provide Online and Remote Access to the public, outline all Sanitation Measures adopted by the business or entity, outline all Social

Distancing Measures adopted by the business or entity, outline the Staff and Volunteer Screening measures adopted by the business or entity, identify whether staff or volunteers may be working remotely, identify whether special business hours have been established for vulnerable populations, outline the face covering requirements for the business or entity, and identify all other efforts the business or entity is taking to prevent the spread of COVID-19.

B. **Face Covering** means a cloth, without holes, which covers the nose and mouth and is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face.

C. **Face Shield** means a mask, typically made of clear plastic, which covers the face from the forehead to the chin and goes around the sides to the front of the ears.

D. **Gathering or Meeting** means an event, assembly, or convening that brings together multiple people, individually or from separate households, in a single space indoors or outdoors, at the same time and in a coordinated fashion where a significant purpose is to interact with others — such as a wedding, family reunion, party, barbecue, picnic, club, banquet, or conference.

E. **Online and Remote Access** means establishing, when possible, a means by which members of the public may choose to participate in the services offered or purchase the goods offered by a business or entity online, with remote access, or by outside pick up services. Online and Remote Access includes posting online whether a facility is open, its current COVID-19 restrictions, how best to reach the facility, and how to obtain services or goods by phone or remotely.

F. **Sanitation Measures** includes washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands or otherwise making physical contact. Sanitation Measures includes having hand sanitizer, and sanitizing products, readily available for employees and customers, frequently cleaning and disinfecting of work areas, and even more frequent cleaning of high-touch areas.

G. **Social Distancing Measures** means establishing a means to and maintaining at least six feet of distance from other individuals or, in the event six feet of distance is not possible, use of a physical barrier (e.g. plexiglass) to separate individuals or members of a single household from others. For purposes of this definition, Face Coverings and Face Shields do not qualify as a physical barrier. Social Distancing Measures includes designating with signage, tape or by other means, six feet of spacing for employees, customers, clients, or members to maintain appropriate distance.

H. **Special or Seasonal Event** means an assembly or convening of multiple people from separate households in a single space, indoors or outdoors, at the same time but where the main purpose is not necessarily for individuals to interact with others outside of one's household but to attend a single event and/or events of limited duration — such as weekly summer concerts or movies-in-the-park, fairs, festivals, carnivals, parades, graduation ceremonies, community holiday celebrations, conventions, fundraisers, sport or racing competitions, shows, special or seasonal markets, or other entertainment events.

I. **Staff and Volunteer Screening** means identifying and implementing measures to appropriately screen staff and volunteers for COVID-19 symptoms and address the appropriate quarantine procedures for close contacts of COVID-19 positive individuals.

III. **Requirements for All Businesses and Entities in Elkhart County**

For purposes of this Order, except as outlined in Sections III.C and D below, all businesses and entities situated or operating in the County of Elkhart are covered by directives in this Order and include any for-profit, non-profit or educational entity, regardless of the nature of the service, the function it performs, or its corporate or entity structure.

So long as the requirements, restrictions, and prohibitions specified in this Order are complied with, businesses and other entities in the County of Elkhart are allowed to be open and operate.

Businesses and entities in the County of Elkhart include, but are not limited to, retail, restaurants, professional services, personal services, cultural and entertainment, public amusement, gyms, exercise and fitness centers, sports and athletic activities, outdoor activities, child care, day camps, adult care, education, health care providers and operations, financial and insurance, social services, charitable and religious, laundry, hotels and motels, manufacturing and production, trades, shipping and delivery, transportation, industrial, labor infrastructure, media, and governmental.

A. **Creation of Effective COVID-19 Response Plan.** All businesses and entities in the County of Elkhart will create or update their existing COVID-19 Response Plan to ensure compliance with this Order and ensure that the contents of the plan meet the definition of a COVID-19 Response Plan.

B. **Implementation of COVID-19 Response Plan.** All businesses and entities in the County of Elkhart must actively implement, maintain, and ensure compliance by staff, volunteers, and the public with:

- i. the Online and Remote Access options for the public outlined in their COVID-19 Response Plan;
- ii. the Sanitation Measures set forth in their COVID-19 Response Plan;
- iii. the Social Distancing Measures set forth in their COVID-19 Response Plan;
- iv. the Staff and Volunteer Screening measures set forth in their COVID-19 Response Plan;
- v. the face covering requirements provided by Public Health Order 05-2020 and, to the extent more restrictive, the face covering requirements in effect, at any given time, by the Governor's executive orders.

C. Educational Institutions

For all educational institutions serving any K-12 level grades that have submitted a COVID-19 reopening plan that has been reviewed by the Elkhart County Health Department without objection, such educational institutions will be considered in compliance, during regular school hours or while engaged in education setting purposes or transportation of students, with the requirements in Section III.A and B above if they comply with the procedures outlined in their respective COVID-19 reopening plan or, if stricter, the requirements set forth in any current Executive Orders issued by Governor Holcomb. Apart from regular school hours and the education setting (i.e. extracurricular activities), all educational intuitions serving any K-12 level grades must follow the procedures set forth in Section V below.

D. Personal Services and Health Care Providers

Personal service businesses, including spas, salons, barber shops, tattoo parlors, massage parlors, dental offices, medical offices, chiropractic care, and similar facilities must meet all of the requirements set forth in Section III.A and B above except that:

1. a business employee and a customer may be within six feet of each other and make physical contact only for the period of time necessary and to the extent necessary for the specific services to be provided; and
2. the customer may remove their face covering only for the period of time necessary and to the extent necessary for the specific services to be provided.

E. Inspection and Enforcement for Business and Entity Requirements. The Elkhart County Health Department, or its designated agents, may conduct inspections of business and entities to ensure proper compliance with the directive identified in Section III of this Order. The Elkhart County Health Department, or its designated agents, may initiate enforcement actions, in

accordance with the incremental steps set forth in Section VII of this Order, against businesses or entities failing to comply with the restrictions and directives set forth in this Order.

IV. Additional Clarification for Restaurants, Bars, Entertainment Venues, and Other Establishments Providing In-Person Food and Drink Service

Restaurants, bars, taverns, nightclubs, entertainment venues, and other establishments providing in-person food or drink service must adhere to all of the directives set forth in Section III.A and B. As a part of these requirements, such businesses and entities must ensure that:

1. all patrons remain seated while consuming food or drink or when otherwise remaining on the premises;
2. ensure face coverings are worn, as required by Public Health Order 05-2020, by all persons at all times except while consuming food or drink, or when seated to eat or drink; and
3. ensure that the arrangement of all tables and chairs set up for individuals, households, or parties are separated by physical barriers or achieve and maintain six feet of separation between the different individuals, households, or parties.

V. School Sponsored Events, Extracurricular Activities, and Co-Curricular Activities

All educational institutions serving any K-12 level grades must ensure that all extracurricular and co-curricular activities and school sponsored events occurring in Elkhart County comply with whichever of the following is most restrictive:

1. the restrictions and directives set forth in Governor Holcomb's Executive Order 20-48 or such future Executive Order issued by Governor Holcomb and in effect at the time; or
2. attendance at such activities and events is limited to the lesser of (1) the maximum number permitted to ensure all guest attendees from separate households can achieve and maintain six feet of separation during the entire activity or event, (2) 25% of the maximum capacity for the facility space being utilized, or (3) participants, support personnel, and a maximum of 4 guest attendees per participant.

All educational institutions serving any K-12 level grades must also ensure that all activities and events comply with their COVID-19 reopening plan reviewed by the Elkhart County Health Department without objection.

VI. Gatherings, Meetings, and Special or Seasonal Events

Except to the extent that greater restrictions are in place under Governor Holcomb's Executive Order 20-48 or such future Executive Order issued by Governor Holcomb and in effect at the time, the following directives apply:

A. Gatherings and Meetings

All public and private Gatherings or Meetings (outside a single household, living unit, or religious service), whether familial, social, governmental, philanthropic, or otherwise, may have up to 25 people provided Social Distancing Measures can be achieved and maintained, Sanitation Measures are implemented at the site where the Gathering or Meeting occurs, and the requirements of Public Health Order No. 05-2020 can be achieved and maintained. A host of the Gathering or Meeting is encouraged to ensure a health screening process for attendees is instituted.

Gatherings or Meetings scheduled to occur on or after November 22, 2020, and where the total attendance is expected to exceed 25 people for the Gathering or Meeting, must have a COVID-19 Safety Plan ("Plan") approved by the Elkhart County Health Department before proceeding. Every Plan submitted to the Elkhart County Health Department must be submitted by completing the COVID-19 Safety Plan Review Request ("Review Request") form located at www.elkhartcountyhealth.org, as amended from time to time. Every Plan must be organized in the format set forth in the Review Request and contain all of the information identified in the Review Request, including compliance with Social Distancing Measures and Sanitation Measures.

B. Special or Seasonal Events

All Special or Seasonal Events may have up to 25 people provided Social Distancing Measures can be achieved and maintained, Sanitation Measures are implemented at the site where the Special or Seasonal Event occurs, and the requirements of Public Health Order No. 05-2020 can be achieved and maintained. A host of the Special or Seasonal Event is encouraged to ensure a health screening process for attendees is instituted.

All Special or Seasonal Events scheduled to occur on or after November 22, 2020, with a total attendance that is expected to exceed 25 people for Special or Seasonal Events, must have a Plan approved by the Elkhart County Health Department before proceeding. Every Plan submitted to the Elkhart County Health Department must be submitted by completing the Review Request form located at www.elkhartcountyhealth.org, as amended from time to time. Every Plan must be organized in the format set forth in the Review Request and contain all of the information identified in the Review Request, including compliance with Social Distancing Measures and Sanitation Measures.

C. Plan Submission Timeline

For Gatherings or Meetings or Special or Seasonal Events scheduled to occur between November 22, 2020, and November 24, 2020, that have already submitted a Plan to the Elkhart County Health Department or now need to submit a Plan, the person(s) in charge of the Gathering or Meeting or Special or Seasonal Event will need to complete a Review Request and provide any

additional information to supplement the Plan required by the Elkhart County Health Department as soon practicable, but at least 72 hours in advance of the event, when possible.

For Gatherings or Meetings or Special or Seasonal Events scheduled to occur between November 25, 2020, and December 10, 2020, that have not already submitted a Plan to the Elkhart County Health Department, a Review Request and final approvable Plan must be submitted as soon as practicable but at least 7 days in advance of the Gathering or Meeting or Special or Seasonal Event.

For Gatherings or Meetings or Special or Seasonal Events scheduled to occur between December 11, 2020, and December 18, 2020, that have not already submitted a Plan to the Elkhart County Health Department, a Review Request and final approvable Plan must be submitted as soon as practicable but at least 14 days in advance of the Gathering or Meeting or Special or Seasonal Event.

For Gatherings or Meetings or Special or Seasonal Events scheduled to occur on or after December 18, 2020, a Review Request and Plan must be submitted at least 21 calendar days in advance of the Gathering or Meeting or Special or Seasonal Event. If the Elkhart County Health Department requires modification to the Plan, then the final Review Request and final approvable Plan, incorporating all modifications required by the Elkhart County Health Department, must be submitted at least 10 calendar days in advance of the Gathering or Meeting or Special or Seasonal Event.

For clarity, the timelines set forth above are currently more restrictive than those set forth in Governor Holcomb's Executive Order 20-48, regardless of color designation, and thus must be followed.

D. Violations of this Section V of Public Health Order 06-2020

Each of the following constitutes a violation of Section V of this Public Health Order 06-2020:

1. hosting a Gathering or Meeting or Special or Seasonal Event in violation of a current Executive Order issued by Governor Holcomb;
2. engaging in a Gathering or Meeting or Special or Seasonal Event that does not meet the requirements of this Order;
3. hosting or otherwise operating a Gathering or Meeting or Special or Seasonal Event with over 25 people without submitting a Review Request and Plan to the Elkhart County Health Department;
4. hosting or otherwise operating a Gathering or Meeting or Special or Seasonal Event after the Elkhart County Health Department has denied your Plan; or

5. hosting or otherwise operating a Gathering or Meeting or Special or Seasonal Event that does not comply with the steps and procedures outlined in a Plan approved by the Elkhart County Health Department.

Each separate improper or noncompliant action will constitute a separate and distinct violation. For example, each instance where (1) a step or procedure of an approved Plan is not complied with or (2) a social distancing requirement, sanitation measure, or Public Health Order No. 05-2020 requirement is not complied with will constitute a separate violation. The Elkhart County Health Department or its designated agents may perform random visits at Gatherings and Meetings and Special or Seasonal Events to ensure compliance. Upon identifying a violation, the prior approval of a Plan may be immediately revoked requiring a Gathering and Meeting or Special or Seasonal Event to immediately stop. The Elkhart County Health Department, or its designated agents, may initiate additional enforcement actions, in accordance with the incremental steps set forth in Section VII of this Order, against business or entities failing to comply with the restrictions and directives set forth in this Order.

VII. Intent and Incremental Enforcement Steps

The intent of this Order is to mandate that all people in Elkhart County, whether engaged in work activities, social activities, or everyday activities follow the directives outlined herein, to prevent the spread of COVID-19. This Order is necessary to slow the spread of COVID-19 throughout Elkhart County and protect public health.

To ensure compliance with this Order, the Elkhart County Health Department, or its designated agents, may conduct inspections of business and entities. The Elkhart County Health Department, or its designated agents, may initiate enforcement actions, in accordance with the incremental steps set forth below, against business or entities failing to comply with the directives set forth in this Order.

Upon identifying a violation, the enforcement representative will follow the following incremental enforcement steps:

1. unless one has already been issued by a law enforcement officer pursuant to a separate order or ordinance, issue a written warning outlining the type of noncompliance and providing action steps to come into compliance;
2. if noncompliance persists following the written warning, issue a citation of noncompliance and order the business to take action steps to obtain compliance;
3. if a business entity continues noncompliance despite the compliance order, the Health Officer may pursue either or both of the following courses of action:
 - a. issue an order to close the business entity;
 - b. refer the matter to legal counsel to enforce the citation and order in a circuit or superior court under Indiana Code § 16-20-1-26, with such penalties including, but not limited to, suspension or revocation of a license; appropriate remedial actions; vacation of a property; inspections; penalties up to \$2,500.00 per violation, with

each noncompliant action constituting a separate and distinct violation; entering a judgment; and imposing court costs and fees.

Signed and issued November 18, 2020, in Elkhart County, Indiana.

Lydia Mertz, MD

Dr. Lydia Mertz, Elkhart County
Local Health Officer