State of Wisconsin
Department of Health Services
Tony Evers, Governor
Andrea Palm, Secretary

EMERGENCY ORDER #3

LIMITING PUBLIC GATHERINGS

The State of Wisconsin is in the midst of a deadly, uncontrolled, and exponentially growing spike in cases of COVID-19. The State is the nation's COVID-19 hot spot, and intervening measures are necessary to slow the rampage of illness and death caused by the virus.

Without a vaccine, the only tools to slow the spread of COVID-19 are wearing a face covering in public, staying at least six feet away from other people when you leave your home, washing your hands regularly, and staying home as much as possible. Without using these simple but vital life-saving tools, Wisconsin will suffer from unnecessary illness and death.

During the first three months of the pandemic (March-May), when Wisconsin's mass gathering bans and Safer at Home orders were in place, Wisconsin experienced a total of 20,000 cases of COVID-19. However, after the Legislature sued to end Safer at Home, which the Wisconsin Supreme Court ended on May 13, 2020, the spread of the virus rapidly accelerated. Wisconsin's next 20,000 cases occurred over six weeks and the subsequent 20,000 occurred in only three weeks.

Wisconsin is now a COVID-19 hotspot. It had the third highest number of new cases in the past seven days (17,641 cases), with only California and Texas having more new cases (and 6.8 times and 5 times the population, respectively). Wisconsin is also third in the nation in new cases per 100,000 residents (303 cases per 100,000 residents in the past seven days), with only North Dakota and South Dakota having higher rates. Compared to neighboring states that have statewide mitigation efforts in place, Wisconsin's increase in cases (17,641) over the last 7 days is more than double both Minnesota's increase (7,093 cases) and Michigan's increase (6,878 cases) (New York Times, October 5, 2020).

Wisconsin must use all its tools, including keeping people physically apart and wearing face coverings, to slow this dangerous spike. The consequences of failing to act could be devastating and deadly. Because of the time period between infection, diagnosis, and the development of serious symptoms, hospitalizations and deaths lag behind case counts. Wisconsin is now experiencing increases in

both of these serious indicators because of the steep rise in cases of COVID-19 over the past month.

Hospital capacity strains in some parts of the state are at record high levels. The State of Wisconsin is divided into seven healthcare emergency readiness coalition regions (HERC regions), which coordinate how public health, healthcare institutions, and first responder agencies respond to health emergencies and catastrophic events.

As of September 29, every HERC region in the state has very high disease activity level (i.e., greater than 350 cases per 100,000 population during the past two weeks). On July 29, 2020, while all of the HERC regions had a high disease activity level (i.e., greater than 100 cases and less than 350 cases per 100,000 population during the past two weeks), none of the HERC regions were experiencing a very high disease burden.

This high level of disease activity is now manifesting itself with increased hospitalizations. On September 3rd, there were 293 patients hospitalized with COVID-19 in Wisconsin. One month later, on October 3rd, this number had more than doubled to 692 patients across the state and more than quadrupled in the Fox Valley, Northeast, Northwest, Northcentral, and Western regions of the state. Hospital leaders in Green Bay, Appleton, Neenah, and Wausau are reporting ICU's at capacity, transfers of patients to other facilities, and critical staffing shortages.

Over the past six months, significant gains have been made in the care for patients with COVID-19; however, despite these gains, the disease continues to take the ultimate toll for too many Wisconsinites. On September 4th, the average number of newly reported deaths among patients with COVID-19 over the past seven days was six. By October 4th, this average had doubled to fourteen. In the first six months of the COVID-19 pandemic, 1,242 deaths were reported across the state. In comparison, during the 2019-2020 influenza season, there were 183 deaths from influenza in our state. Assuming deaths increase at the same rate, COVID-19 would rank as the sixth leading cause of death in Wisconsin in 2020 behind only heart disease, cancer, unintentional injuries, lower respiratory disease, and stroke.

While the current death rate for COVID-19 is 1.1% of all cases, the risk of death increases with age. In Wisconsin, 23% of people in their nineties, 14% of people in their eighties, and 5% of people in their seventies who contract COVID-19 die. The lower overall mortality rate is a reflection of the disproportionate representation of the disease in younger populations where 55% of all Wisconsin COVID-19 cases have been diagnosed in people under age 40 and 92% in people under age 70.

For these reasons, I, Andrea Palm, Department of Health Services Secretary-designee, in fulfilling my constitutional duty under Article I, Section I, as part of the government instituted by the people to secure the rights of all people to life, liberty, and the pursuit of happiness, the Laws of this State including Section 252.02(3) of the Wisconsin Statutes, and consistent with *Wisconsin Legislature v. Palm,* 2020 WI 42, order the following:

1. **Definitions.**

   a. **Public gathering** means an indoor event, convening, or collection of individuals, whether planned or spontaneous, that is open to the public and brings together people who are not part of the same household in a single room.

      i. Places that are **open to the public** include, but are not limited to:

         1. Rooms within a business location, store, or facility that allow members of the public to enter.

         2. Ticketed events where tickets are available for free or for purchase by any individual or by any individual within a specific class of people.

      ii. Places that are **not open to the public**, and therefore are not part of the definition of a public gathering and are not limited by this order, include, but are not limited to:

         1. Office spaces, manufacturing plant, and other facilities that are accessible only by employees or other authorized personnel.

         2. Invitation-only events that exclude uninvited guests.

         3. Private residences. Except, a residence is considered open to the public during an event that allows entrance to any individual; such public gatherings are limited to 10 people.

2. **Public gatherings limited.**

   a. Public gatherings are limited to no more than 25% of the total occupancy limits for the room or building, as established by the local municipality.

   b. For indoor spaces without an occupancy limit for the room or building that is established by the local municipality, such as a

private residence, public gatherings are limited to no more than 10 people.

c. The following are exempt from limitations on public gatherings:

i. Child care settings, including all licensed and certified child care providers who provide care for any age or ages of children up to 13 years of age or children with disabilities up to 19 years of age; Head Start and Early Head Start programs; programs providing before or after school care or virtual learning support during the school day.

ii. Placements for children in out-of-home care, including but not limited to residential care centers, group homes, foster homes, and shelter care; overnight service providers for homeless and runaway youth.

iii. 4K-12 schools.

iv. Institutions of higher education.

v. Health care and public health operations, which includes: hospitals; medical facilities; clinics; ambulatory surgery centers for response to urgent health issues or related COVID-19 activities; manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing disinfecting or sterilization supplies, and tissue and paper towel products; dental offices; pharmacies; public health entities, including those that compile, model, analyze, and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); healthcare information technology companies; organizations collecting blood, platelets, plasma, and other necessary materials; obstetricians, gynecologists, and midwife practices; eye care centers, including those that sell glasses and contact lenses; home health agencies and providers; mental health and substance abuse providers; detoxification and alcohol or drug treatment programs and facilities; syringe access programs, and naloxone distribution programs; other healthcare facilities and suppliers and providers of any related or any ancillary healthcare services; entities that transport and

dispose of medical materials and remains; personal care agencies; hospices; allied health providers; veterinary care; acupuncturists; massage therapists; chiropractors; and adult family homes.

vi. Human services operations, which includes: long-term care and assisted living facilities, as long as the facility follows all current DHS Recommendations for Prevention of COVID-19 in Long-Term Facilities and Assisted Living Facilities and all applicable U.S. Centers for Disease Control Recommendations; residential settings and shelters for adults, seniors, children, victims of domestic abuse, people with disabilities, people with substance use disorders, or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, or developmental disabilities, seniors, adults, or children; adult day care, adult day services, and supportive home care; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, vocational services, or rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, social services, or other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, or developmental disabilities, or otherwise needy individuals.

vii. Public Infrastructure operations, which includes: food production, food distribution and fulfillment centers, food storage facilities; construction; building management and maintenance; airports and airport operations; utilities operation and maintenance, including water, sewer, gas, and electric (including power generation, distribution, production of raw materials, and Wisconsin Department of Natural Resources-certified and registered drinking water and wastewater testing laboratories); Wisconsin Home Energy Assistance, Low Income Home Energy Assistance Program, and Public Benefits Energy Assistance Program offices, customer service centers, and public intake centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems.

viii. State and local government operations and facilities, including polling locations.

ix. Churches and other places of religious worship.

x. Political rallies, demonstrations, and other speech protected by the First Amendment.

xi. State facilities under the control of the Wisconsin Supreme Court and the Wisconsin Legislature.

xii. Federal facilities under the control of the federal government.

3. **Public heath directives and orders.** All individuals are strongly encouraged to take personal responsibility for following public health guidance from local health officials, the Department of Health Services, and the Center for Disease Control. Individuals must follow all directives and orders issued by local or state authorities regarding measures to combat COVID-19, including any local or state orders regarding wearing face coverings.

ENFORCEMENT AND APPLICABILITY

4. **Tribal Nations.**

   a. These restrictions do not apply to activities by Tribal members within the boundaries of their Tribal reservations and federal land held in trust for any one of the eleven federally recognized Tribes in Wisconsin, but Tribal members may be subject to restrictions by Tribal authorities.

   b. Non-tribal members should be respectful of and avoid non-essential travel to Tribal territory.

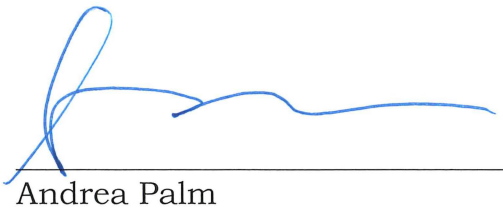
   c. Wisconsin's local governments shall coordinate, collaborate, and share information with the Tribal Nations in their region.

5. **Local Orders.** Local governments may issue orders that are more restrictive than the provisions in this order.

6. **Enforcement.** This order is enforceable by civil forfeiture. Wis. Stat. § 252.25; *Legislature v. Palm*, 2020 WI 42.

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

8. **Duration.** This order shall become effective at 8:00 a.m. on October 8, 2020. This order shall remain in effect for two incubation periods of COVID-19, which will end November 6, 2020.



10/06/2020

Andrea Palm
Secretary-designee
Department of Health Services
State of Wisconsin

Date