

CASE NO. 20-2125

IN THE
United States Court of Appeals

FOR THE FOURTH CIRCUIT

THE REDEEMED CHRISTIAN CHURCH OF GOD
(VICTORY TEMPLE) BOWIE, MARYLAND

Plaintiff - Appellee,

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Defendant - Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION
No. 8:19-cv-03367-DKC

BRIEF OF APPELLANT

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JURISDICTIONAL STATEMENT

The United States District Court for the District of Maryland may not have possessed subject-matter jurisdiction over this action pursuant to 42 U.S.C. § 2000cc-2(a) and 28 U.S.C. § 1331 to the extent that the court applied an unconstitutionally broad definition of “land use regulation” under the Religious Land Use and Institutionalized Persons Act. The United States Court of Appeals for the Fourth Circuit has jurisdiction pursuant to 28 U.S.C. § 1291. This appeal is taken from a final order dated October 2, 2020, and was timely filed on October 16, 2020.

QUESTIONS PRESENTED

1. Did the district court err in concluding that a legislative amendment of the Prince George’s County 2008 Water and Sewer Plan constitutes a “land use regulation” subject to review under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc, *et seq.*?
2. Did the district court err in concluding that Appellant failed to establish compelling state interests to deny Appellee’s application?
3. Did the district court err in concluding that the County’s denial was not the least restrictive means available to achieve the compelling state interests?

STATEMENT OF THE CASE

This case involves a legislative amendment to the Prince George’s County 2008 Water and Sewer Plan (“Water and Sewer Plan”) proposed by Appellee to

upgrade the water and sewer category designation of certain property in Prince George's County, Maryland. On May 7, 2019, the County Council of Prince George's County ("County Council") voted to deny Appellee's application on the basis that it failed to comply with the policies and criteria set forth in the Water and Sewer Plan.

On November 22, 2019, Appellee filed a Complaint for Preliminary and Permanent Injunctive Relief and Damages in the United States District Court for the District of Maryland against Prince George's County, Maryland (the "Appellant"). JA0008-19. The sole count in the Complaint alleges that Appellant's vote to maintain the Property's current water and sewer category designation violates the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc *et seq.* JA0017-18.

On December 16, 2019, Appellant filed a Motion to Dismiss the Complaint. JA0003; *see also The Redeemed Christian Church of God (Victory Temple) Bowie, Maryland v. Prince George's County, Maryland*, No. 8:19-cv-03367-DKC, Doc. 12. On February 6, 2020, the trial court issued a Memorandum Opinion and Order denying the Appellant's Motion to Dismiss. JA0003, 0020, 0021-35. The Appellant filed an Answer to the Complaint on February 20, 2020 (JA0003), which was amended on May 6, 2020. JA0036-43. The parties agreed to bifurcate Appellee's damages claim from its liability and injunctive relief claim and proceed on an

expedited schedule. *The Redeemed Christian Church of God*, No. 8:19-cv-03367-DKC at Doc. 25.

A bench trial was conducted on June 23-25, 2020 before the Honorable Deborah K. Chasanow.¹ JA0005. On September 9, 2020, the District Court issued a Memorandum Opinion and Order concluding that Appellant violated RLUIPA. JA2412–42. On October 2, 2020, the District Court issued an order granting Appellee permanent injunctive relief and staying all further proceedings pending appeal.² JA2443-46. On October 16, 2020, Appellant noted the instant appeal. JA2447-48.

STATEMENT OF FACTS

On or about February 2, 2018, Appellee purchased four connected parcels of land totaling 28.73 acres located at 14403 Mount Oak Road, Bowie, Maryland, for the proposed construction of a 60,000 square-foot, two-story church with a seating capacity of 1,200–2,000 people and a paved parking lot with 750 parking spaces (the “Property”). JA0104, 0484, 0525, 0744, 1497-1507. The western end of the

¹ Restrictions in place as a result of the global COVID-19 pandemic required the trial to be held via video on www.zoomgov.com. JA0005.

² On December 3, 2020, Appellant filed a Motion to Stay Judgment or Suspend Injunction Pending Appeal. JA0007. Appellant requested that the district court stay its order granting Appellee’s request for an injunction or temporarily suspend the injunction pending the outcome of this appeal in order to preserve the status quo. *The Redeemed Christian Church of God*, No. 8:19-cv-03367-DKC at Doc. 70. That request remains pending before the district court. *See* JA0007.

Property lies along Church Road, and the northern end of the property lies along Mount Oak Road. JA2410-11.

I. Appellee’s Application for a Legislative Amendment to the Water and Sewer Plan.

The Property is designated in the Water and Sewer Plan as “Category 5,” which means that the Property is inside the County’s general sewer envelope but “should not be developed until water and sewer lines are available to serve the proposed development.” JA0044, 0071, 1111, 1113. Properties in Category 5 are not currently serviced by public water and sewer, and require redesignation to Category 4 prior to the further development review process in order to obtain public water and sewer facilities. JA1113-14.

After purchasing the Property, Appellee applied for a legislative amendment pursuant to Chapter 6, § 6.3, of the Water and Sewer Plan in order to upgrade the Property’s designation from category 5 to category 4. JA0044, 1113-14, 1275. Property designated as category 5 is only redesignated as category 4 by way of a legislative amendment to the Water and Sewer Plan. JA1113-14, 1275. The Water and Sewer Plan charges the County Council with reviewing and voting on proposed amendments. JA1275. “In order for the County to approve a particular category change, the project must meet the policies and criteria listed in Section 2.1.4” of the Water and Sewer Plan. JA1277. Among the pertinent criteria in § 2.1.4 are financial concerns such as whether approval will unduly burden taxpayers (JA1116), as well

as planning-related policies such as “traffic impacts [and] road construction needs.” JA1117. An “application’s proposal may be rejected if the policies and criteria listed in Section 2.1.4 are not met.” JA1115, 1276.

On March 12, 2019, the County Council introduced CR-18-2019 (the “Resolution”), which included Appellee’s proposal and seven others. JA0068-73. Although some agencies initially recommended granting Appellee’s application as part of their preliminary review of the amendment, the Bowie City Council (“City Council”) unanimously voted to recommend its denial. JA0525-27. Bowie’s City Council based its decision on “the negative impact that a large church and parking lot will have on the surrounding community, especially on Church Road where improvements are desperately needed between MD 214 and Woodmore Road/Mount Oak Road.” JA0525. The City Council also explained that the County has approved significant improvements to Church Road, but those improvements have not been funded. JA0525-27. *See also* JA2439 (acknowledging a \$9.5 million capital improvement plan for Church Road that has not yet been funded).

On April 16, 2019, the County Council held a public hearing on the Resolution. JA0662-714. Ms. Shirley Branch, who is the Water and Sewer Plan Coordinator for the County Department of Permitting, Inspections and Enforcement (JA2774-76), attended the hearing and indeed attends virtually all public hearings on Water and Sewer Plan amendments. JA2790:23–2791:10. She testified at trial

that unlike the usual hearings on amendments throughout the years that are sparsely attended, this hearing “was standing room only. They were overflowing into the lobby area of the County Administration Building.” JA2793:13–2794:24. Having attended such hearings in the past, Ms. Branch testified that such a turnout was “very unusual.” *Id.*

Although the Resolution under review included eight different proposals, 34 out of the 36 witnesses who testified at the public hearing addressed only Appellee’s proposal. *See generally* JA0662-714. Twenty-one of those residents opposed the proposal. *Id.* Numerous residents described Mount Oak Road and Church Road—the roads adjacent to the subject property—as dangerous. *See, e.g.*, JA0664, 0667-68, 0670, 0676. They explained that the state of disrepair of these roads causes them to be hazardous, which results in frequent automobile accidents, property damage and danger to motorists and residents alike. *Id.*

On April 23, 2019, the Transportation, Infrastructure, Energy and Environment Committee (“Transportation Committee”) conducted a hearing on the Resolution. JA0723-751. The Chair of the County Council and a Member of the Transportation Committee, Todd M. Turner, testified about Appellee’s proposal. JA0740-745. Chairman Turner explained that the County Council must consider applications in light of policy considerations codified in § 2.1.4 of the Water and Sewer Plan. JA0742. *See also* JA1113-15, 1275-76. Chairman Turner noted that

“pursuant to Section 6.3 [of the Water and Sewer Plan], which governs the legislative amendment process itself, ... an application’s proposal may be rejected if the policies and criteria listed in Section 2.1.4 are not met.” JA0743. *See also* JA1275-76.

Turning his attention to the record, Chairman Turner found “compelling reasons to maintain the current water and sewer category for the subject property pursuant to §§ 2.1.4 and 6.5 of the [Water and Sewer] Plan.” JA0743. Chairman Turner specifically addressed the following:

These include, but are not limited to, and I would direct you directly to the testimony that’s in the record from the hearing last week related to traffic impacts, the environmental impacts, the economic impact, the fiscal impact, potential pollution, air pollution, lack of infrastructure, including for stormwater management, potential impact on the quality of life, inconsistency with the General and Area Master Plans, no demonstration of hardship by this applicant, and, additionally, the City of Bowie’s position.

Id.

Ultimately, Chairman Turner determined that Appellee’s application was inconsistent with County and City Plans, which “direct[] that this area is for low-density residential development.” JA0743-44. Furthermore, Chairman Turner found that there was “substantial testimony” indicating that a 60,000 square-foot building with seating capacity for 1,200—2,000 persons and 750 parking spaces, “particularly in an area where we have a history of speeding and accidents along Mt. Oak and Church Roads[,] would also unduly burden the community.” JA0744. He acknowledged the Bowie City Council’s recommendation to deny the proposal as

well. *Id.* Chairman Turner also acknowledged the fact that denying Appellee's application now would not preclude Appellee from developing the property in the future, and stated that "more work needs to be done amongst all the stakeholders involved in this process, whether it's the church, the surrounding communities, the City of Bowie and the County." *Id.* The Transportation Committee unanimously voted to retain the Property's current category 5 designation. JA0744-45.

On May 7, 2019, the County Council conducted the Final Reading of Resolution CR-18-2019. JA0655-60. At the hearing, Deni L. Taveras, a member of the County Council, presented the Committee Report. JA0656-57. In reference to Appellee's application, Councilmember Taveras cited the Transportation Committee's hearing, the County Council's public hearing and comments from the City of Bowie. JA0657. Councilmember Taveras explained that there were concerns regarding the proposal's "impact on traffic and parking on Church Road and in the surrounding neighborhoods." *Id.* All eleven members of the County Council unanimously voted to retain the property's current category 5 designation. JA0658-60.

II. Trial Evidence Regarding Traffic Safety on the Roadways Immediately Surrounding the Property.

As noted above, twenty-one witnesses testified about traffic safety on the roads surrounding the proposed development during the public hearing before the County Council. JA0662-714. The record of their entire testimony was admitted

into evidence at trial. *Id.* Appellant also called three of these residents to testify at trial before the district court. The residents live on Mount Oak and Church Road—the two roads adjacent to the Property—and use those roads in their daily lives. They personally witnessed the roads’ unsafe conditions, and are among those most impacted by exacerbation of an already strained infrastructure.

Ms. Jnatel Sims testified that her home is adjacent to the Property on Mount Oak Road. JA2410 (indicating Ms. Sims’s property with yellow highlighting), 2855:2–24. Mr. James Albert testified that his home is adjacent to the Property on Church Road. JA2411 (indicating Mr. Albert’s property with yellow highlighting), 2868:2–2869:12. Ms. Carrie Bridges testified that she volunteers with the South Bowie Boys and Girls Club, which regularly hosts children and their families for sporting events at a local park on Church Road less than a quarter-mile from the Property. JA2902:8–2904:4.

The evidence at trial established that Mount Oak Road is a “two-lane thoroughfare, one lane going each way.” JA2856:3–11. It is curved and heavily trafficked without any designated shoulders or sidewalks. JA2856:3–16. Cars “frequently, regularly go above the speed limit on Mount Oak Road.” JA2864:1–16. Church Road is also two lanes, with one lane going each way. JA2856:21–2857:3, 2874:9–15. It does not have any designated shoulders or sidewalks. JA2857:4–9, 2874:20–2875:6. Church Road is “a harrowing road,” “an unforgiving

road” and “very dangerous.” JA2856:23—2857:3. It is “hilly,” has “low points,” “varying elevations” and “blind spots,” “numerous turns and curves” and is “a very challenging road to navigate.” JA2856:23—2857:3, 2874:12–15. The “road is deteriorating” and its condition was described as “terrible.” JA2874:12—2875:6. Cars frequently exceed the speed limit on Church Road as well. JA2864:5–16.

Ms. Sims lives along Mount Oak Road, immediately next to the Appellee’s property. JA0663, 2410, 2855:11–24, 2857:10–12. She has a six-foot-tall metal fence on her property line that has been struck by vehicles losing control along Mount Oak Road numerous times. JA2857:14—2858:24. She estimated that it had been struck “five or six” times, but explained, “I’m sorry to say I’ve lost count. That’s just how many times my property has been struck.” JA2857:23—2858:2. *See also* JA0663-65.

She has also “witnessed the results of accidents along Mount Oak Road,” including “a number of accidents where cars have flipped over and been placed in the gully” on her neighbor’s property along Mount Oak Road. JA2858:3–11. Ms. Sims testified that the accidents that she witnessed occurred at various times of the day and in various weather conditions. JA2859:17—2860:12. “It [has] sometimes been when it’s very clear and dry road conditions. It’s been when there has been snow on the ground.... [I]t’s really been in different seasons ... there is no particular thing I can point out. It’s really been varied.” *Id.* She further testified:

I don't need a traffic study to tell me that the current infrastructure that is Mount Oak Road ... won't support an additional increase in traffic that the proposed development would have brought with it.

My understanding is that the proposed development included, I think it was a 750-car capacity parking lot. And so 750 people, at a minimum, driving vehicular traffic along Mount Oak Road would definitely bring an increase in traffic, and based on my own experience with vehicular traffic running into my fence at different times of the day, on different occasions, I didn't need a traffic study or traffic engineer to tell me that increased traffic would result in my property potentially getting damaged even more.

JA2861:3—2862:4. Ms. Sims testified that she can look out her window and see the traffic on Mount Oak Road. JA2864:1–4. She further testified that based on “common sense,” she can see “what happens and what has happened to [her] property over the last almost 10 years due to vehicular traffic coming along Mount Oak Road.” JA2862:21—2863:2. She is “educated about the dangerous condition of Mount Oak Road based on the fact that [she is] an almost 10-year resident here and ha[s] seen a number of accidents along this road.” JA2863:9–13.

Mr. Albert lives along Church Road next to the Property on a registered historical property known as Mullikin's Delight (Historic Site 74A-010). JA2411, 2867:7–12, 2868:2—2869:12. Mullikin's Delight is “believed to be one of the oldest continuously lived-in residence[s] in Prince George's County. It was built in 1698”

and is “322 years old.” JA0669, 2869:14–25. Mr. Albert purchased the property in 2001. JA2869:20.

Mr. Albert also testified about traffic problems both at trial and the public hearing before the County Council. Mr. Albert travels Church Road daily (or, at least he did before the COVID-19 pandemic). JA2873:21—2874:11. He has personally witnessed “well over a dozen” accidents on Church Road near his property, which is adjacent to the Property. JA2411, 2875:8–18. With respect to the severity of these accidents, Mr. Albert testified:

Absolutely, with high confidence, most [passengers of the vehicles] get taken away by ambulance. On two occasions by helicopter. It has been very rare that anyone has walked away from the ... accident scenes that we’ve witnessed.

JA2877:10–13. Moreover, he has personally witnessed numerous accident scenes where vehicle passengers had to be cut from the vehicles using the “jaws of life.”

JA2877:18–23. He testified that “[i]t has been common” and “likely over half” of the accidents he witnessed required the “jaws of life” to pry the passengers from the vehicles. *Id.*

Mr. Albert testified that these accidents occur during the day, on weekends and Sundays. JA2884:21—2885:12. The weather conditions were “commonly dry” in all of the accidents he witnessed. *Id.* He could only remember one occasion when an accident occurred while there was snow on the ground. *Id.* Mr. Albert provided

several specific examples of accidents that he witnessed at the Property with photographs taken at the accident scenes:

- 1) Mr. Albert witnessed an accident in 2013 at approximately 4:00 or 5:00 pm directly in front of his driveway along Church Road. JA2327-2328 (photographs), 2876:12–21, 2892:7–18.
- 2) Mr. Albert witnessed an accident in 2016 directly in front of his driveway on Church Road. JA2329 (photograph), JA2878:18—2979:22, 2892:20—2893:2. It took place just after dinner. JA2878:18–22. The vehicle was traveling south on Church Road “and ended up on its side.” *Id.* One of the passengers was transported from the scene by emergency services. JA2879:2–6.
- 3) Mr. Albert witnessed an accident approximately two—three years prior to trial involving a car traveling northbound directly in front of his driveway on Church Road. JA2330–32 (photographs), 2879:11—2880:6, 2893:5–16. The passengers of the vehicle were transported from the scene by emergency services. JA2880:2–6.
- 4) Mr. Albert witnessed an accident involving a Bowie recycling truck approximately two years before trial. JA2333–2335 (photographs), 2880:25—2881:7, 2894:5–14. There was damage to the truck’s side, headlight, fender and body. JA2881:3–7. The wheels of the truck came off at the axle, and the truck had to be towed from the scene of the accident. JA2881:3–24.
- 5) Mr. Albert witnessed a vehicular accident in October 2018 on a Friday evening directly in front of his driveway on Church Road. JA2338–2340 (photographs), 2882:12—2884:3, 2895:1—10. The car was traveling southbound on Church Road, hit a telephone pole, and flipped over. JA2883:6–9. The car’s momentum broke the telephone pole; the car went through the telephone pole and flipped over. *Id.* A woman and her two young daughters were in the car. JA2883:10–13.

- 6) On Christmas day in 2019, a car drove off of the road and onto Mr. Albert's property where Mr. Albert had planted saplings as part of a stewardship plan for the Maryland Department of Natural Resources. JA2341–2342 (photographs), 2884:4–20. *See also* JA2870:1–8 (discussing the stewardship plan). The weather was “pleasant” at the time. JA2341:20.
- 7) A year before trial, Mr. Albert witnessed a car traveling northbound on Church Road crash directly in front of his property. JA2343–2347 (photographs), 2885:14–2886:3, 2886:14–2887:16, 2895:12–2896:5. The car was traveling northbound on Church Road, crossed onto oncoming traffic, veered off of the road, and crashed. JA2885:22–2886:3, 2886:14–23. The passenger was transported from the scene by emergency services. JA2886:24–2887:11.

The foregoing examples and photographs to which Mr. Albert testified at trial do not represent all of the accidents he witnessed in front of his driveway along Church Road right next to the Property. JA2887:18–21. In fact, they represent less than half. JA2887:22–2888:1, 2898:18–2899:1. As he testified: “We started losing count after about a dozen.” JA2887:22–2888:1. Mr. Albert himself was involved in an accident at the intersection of Mount Oak and Church Roads approximately five to six years ago. JA2889:4–10, 2889:12–13, 2889:21–22, 2890:15–2891:2.

Appellant also offered testimony from Ms. Bridges, who is the Basketball Commissioner and on the Board of Directors of the South Bowie Boys and Girls Club. JA2901:2–3. She has been involved with the Boys and Girls Club for ten years. JA2901:4–7. On Sundays, the Boys and Girls Club uses a field on Church

Road to host sporting and other events, including soccer games and football games. JA2902:8—2903:22, 2905:6–10. The fields are located just off Church Road less than a quarter-mile away from the Appellee’s proposed development. JA2902:8–12. Multiple games are played throughout the day on Sundays with hundreds of attendees, including dozens of children and their families. JA2902:22—2904:4.

When parking at the field is full, there is an overflow parking lot across the street at Tall Oaks Vocational High School, which also is located on Church Road in the immediate vicinity of the Property. JA2904:5–16. Children and their families must cross Church Road to get to the park from the high school. *Id.* There are no sidewalks for them to walk along. JA2913:6–25. There is, at most, a makeshift path or shoulder of sorts that they can walk along if they cross over Church Road to get there. *Id.*

Ms. Bridges testified that “the amount of traffic that we have to fight on a normal Sunday for the kids to get across the park or the families to get across the park is difficult enough.” JA2914:5–23. She expressed concern about building a structure that would bring in upwards of 750 more vehicles. *Id.* “I just do not think building a structure that can possibly bring that many vehicles at any given time, in conjunction with football parks that we have, and we have events there Monday through Sunday, is conducive.” *Id.*

Furthermore, Appellant introduced data tracking reports from the Bowie Police Department that reflect 1,108 serious car accidents in Bowie within three miles of the property since Appellee purchased the Property in 2018. JA2291-2326. Of those accidents, 39 involved pedestrians, 244 resulted in bodily injury or a fatality, and 864 resulted in significant property damage. *Id.* During the same period, the Prince George's County Police Department accident data reports further reflect that the County police responded to 1,081 traffic incidents within two miles of the Property. JA2260-2290.

SUMMARY OF THE ARGUMENT

Appellee's requested amendment to the Water and Sewer Plan did not involve a zoning or landmarking law and, thus, did not involve a land use regulation governed by RLUIPA. Federal law does not provide a uniform definition of "zoning law." Given that the concept of zoning is deeply rooted in state law, the State's definition of zoning should, at the very least, be highly persuasive in defining the term under RLUIPA. Under Maryland law, an amendment to a Water and Sewer Plan constitutes a comprehensive planning action, not a zoning law or the application of such a law. The distinction between planning and zoning is, indeed, reflected in the language and structure of the Water and Sewer Plan itself. As such, RLUIPA does not apply to the present case.

Even if RLUIPA does apply, the County Council's decision to maintain Appellee's current water and sewer designation constitutes the least restrictive means of furthering a compelling state interest. Mount Oak and Church Roads have significant traffic safety issues that will be exacerbated by the proposed development. Traffic safety constitutes a compelling government interest. Appellant presented overwhelming and largely uncontroverted evidence linking Appellee's application to its compelling interest, and Appellant was not required to present expert testimony to meet its burden. Furthermore, there were no less restrictive alternatives available to the County Council to further its compelling interest in traffic safety. Therefore, if RLUIPA applies, the County Council's decision passes strict scrutiny review.

STANDARD OF REVIEW

On appeal from a bench trial, this Court reviews the judgment under a mixed standard of review. *Butts v. United States*, 930 F.3d 234, 238 (4th Cir. 2019). The district court's legal conclusions are reviewed *de novo*. *Id.* The district court's findings of fact may be reversed if they are clearly erroneous. *Id.* Clear error review "is not toothless," and the trial court's findings "are not so sacrosanct as to evade review." *Id.* (internal quotation marks and citations omitted). *Heyer v. United States Bureau of Prisons*, 984 F.3d 347, 355 (4th Cir. Jan. 13, 2021). "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the

entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Butts*, 930 F.3d at 238 (internal quotation marks and citations omitted). The Fourth Circuit has identified four instances when factual findings may be reversed: “(1) they were derived under an incorrect legal standard, (2) they are not supported by substantial evidence, (3) they were made while ignoring substantial evidence supporting the opposite conclusion, and (4) they are contrary to the clear weight of the evidence.” *Heyer*, 984 F.3d at 355 (internal quotation marks and citations omitted).

ARGUMENT

Appellee alleged below that Appellant’s denial of an application to amend the Water and Sewer Plan violated the substantial burden provision of RLUIPA. JA2413. RLUIPA § 2000cc(a) provides that “[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution....” 42 U.S.C. § 2000cc. Under this provision, a government entity is prohibited from implementing “a land use regulation in a manner that imposes a substantial burden on” religious exercise. 42 U.S.C. § 2000cc(a)(1).

RLUIPA only applies to cases where a “substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or

practices that permit the government to make, individualized assessments of the proposed uses for the property involved.” 42 U.S.C. § 2000cc(a)(2)(c).

Appellee bore the burden below of “persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff’s exercise of religion.” 42 U.S.C. § 2000cc-2(b), *quoted in* Mem. Op., Mot. to Dismiss JA0025-26 (hereinafter cited as “Dismissal Mem. Op.”). Specifically, Appellee bore the burden of proving that the amendment was enacted pursuant to a zoning or landmarking law. *Prater v. City of Burnside, Ky.*, 289 F.3d 417, 433 (6th Cir. 2002), *cert. denied*, 537 U.S. 1018 (2002) (holding that “the Church may not rely upon RLUIPA unless it first demonstrates that the facts of the present case trigger one of the bases for jurisdiction provided in that statute,” and explaining that RLUIPA does not apply unless “the City acted pursuant to a zoning or landmarking law”) (citation omitted),

III. Appellee’s Requested Amendment to the Water and Sewer Plan Did Not Involve A Land Use Regulation.

This litigation does not involve the application of a zoning law, regulation, ordinance or variance thereto, but a legislative amendment to a county water and sewer plan. Relying in part on its prior decision denying Appellant’s motion to dismiss the complaint, the district court held that Appellant’s denial of the legislative amendment to this Water and Sewer Plan constituted a land use regulations under

RLUIPA. JA2429-31. Respectfully, the district court's decision is incorrect for the reasons that follow.

RLUIPA defines "land use regulation" as follows:

a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or option to acquire such an interest.

42 U.S.C. § 2000cc-5(6) (emphasis added).³ The "simple fact is that Congress chose to limit the application of RLUIPA to cases involving a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land...." *Faith Temple Church v. Town of Brighton*, 405 F.Supp.2d 250, 255 (W.D.N.Y. 2005).

Thus, RLUIPA's substantial burden provision applies to zoning or landmarking laws and the application of such laws. Appellant's denial of the application to amend the Water and Sewer Plan in this appeal does not constitute a "land use regulation" or the application thereof because such an amendment is neither a zoning nor a landmarking law. Insofar as Appellant's action did not

³ The district court suggested in a footnote that Appellant focused on zoning laws while "ignoring" that RLUIPA first refers to a land use regulation. JA2430 n.7. The court did not explain why a separate reference to land use regulation would somehow affect the outcome particularly in light of the fact that it is defined as either a zoning law or landmarking law, both of which were addressed.

constitute a zoning or landmarking law, Appellant equally did not apply a zoning or landmarking law. *See Second Baptist Church of Leechburg v. Gilpin Twp., Pennsylvania*, 118 Fed. App'x. 615, 617 (3d Cir. 2004) (reiterating that a “government agency implements a ‘land use regulation’ only when it acts pursuant to a ‘zoning or landmarking law’”) (internal quotation marks and citation omitted). Therefore, RLUIPA does not apply and the district court’s decision should be reversed.

A. Federal Law Does Not Provide A Uniform Definition of “Zoning Law” that Precludes On-Point State Law Definitions.

The question is whether the subject amendment concerns the application of a zoning law.⁴ In holding that the amendment to the Water and Sewer Plan at issue constitutes a zoning law, and the application thereof, the district court quoted the following from a decision of the United States District Court for the Middle District of Alabama:

It first bears noting that the precise definition of “zoning” is difficult to delineate. *Fortress Bible Church v. Feiner*, 694 F.3d 208, 216 (2d Cir. 2012). In general terms, zoning refers to the “legislative division of a region, esp[ecially] a municipality, into separate districts with different regulations within the districts for land use, building size, and the like.” *Zoning*, Black’s Law Dictionary (10th ed.

⁴ As discussed in Section IV, *infra* at 37, landmarking laws are not at issue in this case. Appellee did not assert in the district court that the subject amendment to the Water and Sewer Plan concerned a landmarking law.

2014); *cf.* Ala. Code § 11–52–70 (authorizing municipal corporations within Alabama to divide territory for different uses).

Dismissal Mem. Op., JA0028 (quoting *Martin v. Houston*, 196 F. Supp.3d 1258, 1264 (M.D. Ala. 2016) in turn quoting Black’s Law Dictionary, *Zoning* (10th ed. 2014)). The district court in this case did not explain how a general dictionary definition of zoning applies to the Water and Sewer Plan at issue in this case.

In addition, neither Appellee nor the district court suggested below that there is a uniform definition throughout the country regarding what constitutes a zoning law governed by RLUIPA. The Middle District of Alabama quoted by the district court implicitly recognized this fact when it acknowledged that a “the precise definition of ‘zoning’ is difficult to delineate.” *Martin*, 196 F. Supp.3d at 1264.

Thus, the district court cited only a very broad dictionary definition of “zoning,” not a zoning law. The court similarly did not explain how it considered an amendment of the instant Water Sewer Plan to fit within that broad definition. *See generally* Dismissal Mem. Op., JA0025–32; Mem. Op., JA2429–31. The general definition of “zoning” quoted by the district court represents only a starting point, and not an ending point in determining whether this Water and Sewer Plan constitutes a zoning law or whether amendments to it represent the application of such zoning laws.

Indeed, if a zoning law or regulation is so broadly defined as to encompass “any legislative division of a region ... into separate districts” with differing regulations (*i.e.*, the actual zoning laws), then virtually any state division of property regions constitutes a zoning law. Under this broad rubric, the division of property into counties with differing zoning regulations could itself constitute a “zoning law.” RLUIPA was not intended to cast the net of governed zoning laws so broadly as to encompass any division of regions within the statutory meaning of a zoning law or regulation. Without a meaningful distinction between comprehensive or communitywide planning functions and zoning regulations concerning individual parcels of land, the definition suggested by the district court would eviscerate RLUIPA’s statutory limitation to land use regulations.

Although the district court acknowledged that a “precise definition of ‘zoning’ is difficult to delineate,” it nevertheless discounted ample Maryland State law that more precisely defines and distinguishes zoning laws from the comprehensive planning process reflected in the Water and Sewer Plan. In this regard, the general rule that terms in federal statutes are defined with reference to federal law does not automatically apply to all cases. *Greenwood Trust Co. v. Com. of Mass.*, 971 F.2d 818, 828 (1st Cir. 1992) (citations omitted). The general rule exists for two reasons: (1) “application of state-law definitions may threaten the policies or interests which a federal statute is designed to serve,” and (2) “application of state-law definitions

may disrupt Congress’s desire for nationwide uniformity under a federal statute.” *Id.* Where those reasons do not apply, neither does the general rule. *Reconstruction Finance Corp. v. Beaver County, Pa.*, 328 U.S. 204, 208-09 (1946).

Neither the district court nor Appellee addressed whether these two reasons warrant the application of a general dictionary definition of zoning to decide that the Water and Sewer Plan represents a zoning law. By contrast, this Court has acknowledged “well settled law” recognizing zoning laws as quintessential matters of local concern. *See Fourth Quarter Properties IV, Inc. v. City of Concord, N.C.*, 127 Fed. App’x. 648, 656 (4th Cir. 2005) (citations omitted).

By way of example, the United States Supreme Court in *Reconstruction Finance Corp.* has also held that a State’s definition of “real property” must apply to define that term in a federal statute permitting local taxes on “real property” owned by government agencies. *Id.*, 328 U.S. at 208-10. In deciding how to define “real property,” the Court explained that Congress permitted States to tax real property and the States developed their own methods for doing so. *Id.* at 209. As such, there was no indication that Congress intended for its law to apply uniformly across the nation. *Id.* Rather, by using a term like “real property”—a concept “deeply rooted in state traditions, customs, habits, and laws”—Congress’s purpose was best served by applying the State definition of “real property.” *Id.* at 10. *See 1-77 Properties, LLC v. Fairfield County*, 288 Fed. App’x. 108 (4th Cir. 2008)

(holding that abstention is appropriate where the underlying dispute “revolves around a question of zoning law” in that “federal courts should not leave their indelible print on local and state land use and zoning law by entertaining these cases” (citation omitted)).

When Congress drafted RLUIPA, it did not intend for the term “zoning law”—a concept that is also deeply rooted in State law—to have a single uniform federal definition. Rather, the term is applied by reference to the State’s interpretation of its own local traditions, customs, habits, and laws particularly where federal law is generally silent on the point. To the extent that the district court applied a virtually unlimited definition of zoning to a land use regulation governed by RLUIPA, its decision is arguably unconstitutional as applied and the district court did not have subject matter jurisdiction over the RLUIPA challenge. The sole basis on which Appellee asserted subject matter jurisdiction in this litigation is federal question jurisdiction. (Compl., JA0009 ¶ 3). If RLUIPA’s application was unconstitutionally broad as applied here, then there is no federal question jurisdiction and thus no subject matter jurisdiction.

Not every regulation that concerns land constitutes a “land use regulation.” See *Faith Temple Church v. Town of Brighton*, 405 F.Supp.2d 250, 254-55 (W.D.N.Y. 2005). To construe legislative amendments of the Water and Sewer Plan so broadly as to be subject to RLUIPA “would go far beyond a mere broad

construction of the statute; it would add to the statute terms that—for whatever reason—Congress chose not to include.” *Id.* (citing *St. John's United Church of Christ v. City of Chicago*, 401 F. Supp.2d 887, 900 (N.D. Ill. 2005) (holding that “Plaintiffs’ contention that all condemnation proceedings are land use regulations dealing with zoning ... is not an attempt to construe the statute broadly but rather is an attempt to rewrite it”).

At a minimum, the State’s interpretation of its land use and zoning laws is highly persuasive regarding the definition of such zoning laws in the context of State actions under RLUIPA. *See St. John’s United Church of Christ v. City of Chicago*, 502 F.3d 616 (7th Cir. 2007) (looking to Illinois state law in order to distinguish takings from zoning and explaining that “before federal law ... starts interfering with the fundamental state power of eminent domain, it is likely that we would need a clear statement from Congress.”). A more precisely defined standard for zoning law, which takes into account State traditions, customs, habits, and laws does not threaten the policies or interests which RLUIPA is designed to serve. Indeed, it supports the policy that RLUIPA should only be applied to zoning laws in this context and not all laws that may affect property.

B. Under Maryland Law, Proposed Legislative Amendments to the Water and Sewer Plan Do Not Constitute Zoning Laws or the Application of Zoning Laws.

Under Maryland law, an amendment to a Water and Sewer Plan does not constitute the application of a zoning law or regulation. *Appleton Regional Community Alliance v. County Comm'rs of Cecil County*, 404 Md. 92, 98 (2008). In *Appleton*, the Court of Appeals of Maryland held that a proposed amendment to a County's water and sewer plan is not a zoning action and, therefore, falls outside of the scope of the statute providing judicial review of zoning actions. *Id.* at 99. The Court explained that when engaged in a zoning action, a local governmental body “exercises its discretion in deciding the permissible uses and other characteristics of a specific parcel or assemblage of land upon a deliberation of the unique circumstances of the affected land and its surrounding environs.” *Id.* at 100 (quoting *Maryland Overpak Corp. v. Mayor & City Council of Baltimore*, 395 Md. 16, 53 (2006)). The government “creates or modifies substantively the governing zoning classification or defines the permissible uses, building and lot sizes, population density, topographical and physical features, and other characteristics of a specific parcel or assemblage of parcels of land.” *Id.* at 100-01 (quoting *Maryland Overpak Corp.*, 395 Md. at 53). When a local government passes amendments to a water and sewer plan to address requested upgrades, it does “not address permissible uses of the [p]roperty directly,” and “nothing about the property's zoning status

change[s] as a result of the” decision. *Id.* at 101. Thus, such an action is “an exercise in planning, not zoning.” *Id.*

The Court emphasized the well-established distinction between “planning actions” and “zoning actions” as follows:

Plans are long term and theoretical, and usually contain elements concerning transportation and public facilities, recommended zoning, and other land use recommendations and proposals. Zoning, however, is a more finite term, and its primary objective is the immediate regulation of property use through the use of use classifications, some relatively rigid and some more flexible.

Id. at 101-02 (quoting *Mayor & Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 529-30 (2002)).

The Court also declined to classify amendments to a water and sewer plan as zoning actions merely because the amendments occur in small or incremental steps as a result of a recategorization request. In this regard, the Court explained the following:

“[A] County’s comprehensive water and sewerage plan has, by definition, a broad or comprehensive land use planning basis...” The purpose of the Plan is to “[p]rovide for the orderly expansion and extension” of water and sewer infrastructure. Maryland Code (1982, 2007 Repl. Vol.), Environmental Article, § 9–505(a)(1). It is quite possible that such “orderly ... extension” only will be accomplished incrementally and at the margin. Thus, merely because amendments to the Plan occur in small steps does not mean that the inherent planning process is transformed into a “zoning action.”

Id. at 104 (quoting *Gregory v. Board of County Comm'rs of Frederick County*, 89 Md. App. 635, 643 (1991)).

The Court similarly was unpersuaded that amendments to a water and sewer plan are zoning actions merely because they have an incidental impact on the use of the subject property. *Id.* at 104-05. The Court maintained that “Appellant’s comprehensive water and sewerage plan has, by definition, a broad or comprehensive land use planning basis,” and amendments thereto “are, by definition, comprehensive planning actions.” *Id.* at 104. Thus, the Court of Appeals concluded that a decision on a proposed amendment to a water and sewer plan does not constitute a zoning action, but is part of the County’s “comprehensive planning.” *Id.* at 101.

Initially, the district court in this case actually acknowledged that the “term ‘land use regulation’ or ‘zoning action’ is used in RLUIPA along with the concept that the government is making an ‘individualized assessment of the proposed use’ for the property that ‘limits or restricts a claimant’s use or development of land.’” Dismissal Mem. Op., JA0032 (citations not provided in original). However, the court did not address the underlying reasoning or distinctions drawn by the Court in *Appleton*, but held that the “sole issue in *Appleton* was whether the proposed water and sewer amendment was a ‘zoning action’ within the meaning of a Maryland statute outlining the availability of judicial review.” Dismissal Mem. Op., JA0029

(citing *Appleton*, 404 Md. at 98). Thus, the district court concluded that “Appleton does not suggest that planning actions are not also a form of zoning and subsequent cases suggest just that.” Dismissal Mem. Op., JA 0029-30 (citing *Appleton*, 404 Md. at 99).

The court’s attempt to distinguish a “zoning action” from the “application of zoning law” represents a distinction without difference. The *Appleton* Court extensively analyzed how zoning actions differ from comprehensive planning under a water and sewer plan. Based on that reasoning, the *Appleton* Court succinctly concluded that an amendment to a water and sewer is “an exercise in planning, not zoning.” *Id.* (emphasis added). That reasoning equally applies to a state actor’s application of a zoning law as it does to a state actor’s zoning action. Both the application of the law and action concerning that law reflect the threshold question of whether the conduct concerns a zoning law or some broader or distinguishable action, *i.e.*, a comprehensive planning action.

The *Appleton* Court explained that a zoning action concerns a local governmental body’s exercise of discretion in deciding the “permissible uses and other characteristics of a specific parcel or assemblage of land upon a deliberation of the unique circumstances of the affected land and its surrounding environs.” *Id.* at 100 (citation omitted). The application of zoning law involves precisely the same decision regarding the permissible use of a “specific parcel or assemblage of land

upon a deliberation of the unique circumstances of the affected land” pursuant to governing zoning ordinances and classifications. In the application of zoning law, a government body also creates or modifies the governing zoning classification or defines the permissible uses, building and lot sizes, population density, topographical and physical features, and other characteristics of a specific parcel or assemblage of parcels of land. *Id.* at 100-01 (quoting *Maryland Overpak Corp.*, 395 Md. at 53). The critical distinction analyzed in *Appleton* was the specific application of zoning laws to specific parcels of property, their unique characteristics and permissible uses under those zoning laws and regulation as opposed to the general community planning functions of water and sewer plans.

The fundamental, logical distinction between the application of zoning law—or zoning actions for that matter—and an amendment to a water and sewer plan is whether the action taken is specific to a particular parcel of property based on its unique characteristics or is part of more comprehensive community planning that is only incidentally related to a parcel. *Appleton*, 404 Md. at 101. To hold otherwise is essentially to conclude that any action by a local government concerning land—no matter how broad or whether it is related to overall community planning or not—constitutes a land use regulation.

By contrast, when a local government passes amendments to a water and sewer plan to address requested upgrades, it does “not address permissible uses of

the [p]roperty directly,” and “nothing about the property’s zoning status change[s] as a result of the” decision. *Id.* As the *Appleton* Court concluded, such an action is “an exercise in planning, not zoning.” *Id.* (emphasis added). The district court in this appeal overlooked the *Appleton* Court’s fundamental conclusion and the reasoning supporting it in an effort to distinguish between a zoning action and application of a zoning law.

Setting aside semantics of an “action” versus an “application” related to zoning laws, the logical distinction that the *Appleton* Court sought to establish is that a zoning law applies to specific parcels and specific property characteristics, and an amendment to a water and sewer plan concerns communitywide planning. That such amendments affect individual parcels of land does not convert their fundamental planning purposes into the application of zoning laws, regulations or ordinances. *See Appleton*, 404 Md. at 104. Such is the case here, where traffic impacts affecting the entire community were the principal consideration that led to denial of the requested amendment.

In cases decided by the district court and this Court previously, religious entities only maintained valid RLUIPA claims after being denied a water and sewer upgrade where zoning legislation was also at issue and brought the state conduct within RLUIPA’s ambit. *See Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548, 554 (4th Cir. 2013) (County denied church’s

application to develop property using private well and septic system based on amendment to zoning provisions bringing the claim within the purview of RLUIPA); *Reaching Hearts International v. Prince George's County*, 584 F.Supp.2d 766, 773-79, 785-86 (D. Md. 2008), *aff'd*, 368 Fed. App'x. 370 (4th Cir. 2010) (addressing RLUIPA claim under both a denial of an application for amendment of a water and sewer plan and a zoning ordinance that reduced the allowable net coverage for, essentially, the congregation's property alone).

1. The Amendment to the Water and Sewer Plan in question required the Prince George's County Council to enact a Legislative Amendment that does not concern the administrative application of zoning laws.

The language and structure of the Water and Sewer Plan itself reflects the comprehensive planning nature and purpose of the plan and amendments to it. The amendment at issue in this appeal reflects an entirely legislative process according to those comprehensive planning objectives, not an administrative application of existing zoning laws.

In this regard, Chapter Two of the Water and Sewer Plan identifies the criteria governing the County Council's consideration of proposed amendments. In voting on the proposed amendment at issue, the County Council was expressly required to ensure that the "[n]ew development shall not unduly burden the existing taxpayers." Water and Sewer Plan, § 2.1.4 at JA1116. Section 2.1.4 provides another critically

important, expressed criteria for the County Council's analysis of a proposed amendment to change a category designation:

Proposed development shall be analyzed for consistency with the General Plan, master/sector plans, and functional master plans as defined by Article 28 of the Maryland Annotated Code. This analysis shall include, but not be limited to, the impact of proposed developments and water and sewer extensions on land use, development patterns, historic sites and districts, public facilities, green infrastructure, and transportation system, including, but not limited to, traffic impacts, road construction needs, sidewalks, pedestrian trails and road connectivity in the surrounding neighborhoods.

Id., § 2.1.4 at JA1117 (emphasis added). In sum, the County Council must consider whether the development contemplated by the proposed amendment will unduly burden taxpayer residents of the community and specifically the “transportation system, including, but not limited to, traffic impacts, road construction needs, sidewalks, pedestrian trails and road connectivity in the surrounding neighborhoods.” *Id.* (emphasis added). The evidence below established that these traffic, safety, and road construction considerations were the precise grounds for the County Council's vote to deny the amendment.

Chapter Six of the Water and Sewer Plan governs amendments for various reasons, and expressly provides the following regarding the category change sought by Appellee:

Section 6.2 describes the Amendment Processes that includes both Legislative and Administrative

Amendments. The Legislative Amendment process, used to advance properties from Category 6 or 5 to Category 4, is further described in Section 6.3.

Water and Sewer Plan, Ch. 6 at JA1274. A landowner initiates the process for seeking the Legislative Amendment by submitting an application to the Prince George's County Department of Permitting, Inspections and Enforcement ("DPIE"). *Id.*, § 6.3 at JA1275-76 (Legislative Amendment Process). DPIE then "prepares and submits Legislative Amendments for the County Executive's review and recommendation," which recommendations are "then sent with an accompanying proposed Council Resolution for consideration by the County Council." *Id.* The County Council in turn "provides notice of the pending amendments to the public and County and State agencies prior to a public hearing." *Id.* As part of the legislative process, DPIE refers applications to M-NCPPC, County Department of Public Works and County Health Department for their comments, which must be returned to DPIE within 30 days. *Id.*, § 6.3.1 at JA1275 (Referral and Review Process).

Applications for Legislative Amendments are considered by the County Council during one of three legislative cycles throughout the year. *Id.*, § 6.3 at JA1275. The "introduction of a resolution for an Amendment, the public hearing and the County Council's final adoption must each occur at a full legislative session of the County Council." *Id.*, § 6.3.1 at JA1277. "After considering matters raised

at the public hearing and work session, the County Council acts on the proposed Legislative Amendments” by voting on the Resolution. *Id.*, § 6.3 at JA1275. Once the County Council votes, the Resolution is delivered to the Prince George’s County Executive for review and passage. *Id.* Thus, the process of a Legislative Amendment pursuant to § 6.3 bears all of the indicia of a legislative process, including submission to the County Council during one of its three legislative cycles, review and comment by relevant agencies, public hearings, an affirmative vote of the County Council and review by the County Executive. The County Council’s decision on the Legislative Amendment must consider the planning criteria and objectives set forth in Chapter Two of the Water and Sewer Plan. *Id.*, § 6.3 at JA1276, § 6.3.2 at JA1277.

By contrast, “administrative amendments” expressly follow a different process pursuant to § 6.4 the Water and Sewer Plan entitled the “Administrative Amendment Process.” *Id.*, § 6.4 at JA1278-80. Specifically, DPIE alone can approve administrative amendments without any legislative vote from the County Council. *Id.* Moreover, Administrative Amendments are submitted to DPIE on a monthly basis, not to the County Council during one of its legislative sessions. *Id.* No public hearing is required for an administrative amendment either. *Id.* Thus, the Administrative Amendment process is in stark contrast to the Legislative Amendment process followed by the County Council in this case.

The district court did not address the substantive distinctions between Appellant's legislative process in its planning capacity, but considered the argument unavailing based on two other applications presented on the same day as the instant amendment. *See* Mem. Op. at JA2431. Whether the County Council addressed other applications that could have been administratively approved does not change the Water and Sewer Plan's express requirement of a legislative amendment for the instant category change requested by this application. It is, therefore, clear under the express language of the Water and Sewer Plan and the authority on point that the amendment Appellee requested in this case was not a zoning law but a legislative action pursuant to Appellant's comprehensive planning functions.

IV. The Proposed Amendment Does Not Constitute a "Landmarking Law."

Denial of the proposed recategorization amendment does not constitute a "landmarking law." "Landmarking laws generally involve the regulation and restriction of certain areas as national historic landmarks, special historic sites, places and buildings for the purpose of conservation, protection, enhancement and perpetuation of these places of natural heritage." *Faith Temple Church v. Town of Brighton*, 405 F.Supp.2d 250, 254 (W.D.N.Y. 2005) (dismissing RLUIPA claim because eminent domain proceedings are not "land use regulations," and therefore RLUIPA is inapplicable) (citation omitted). Nothing of that nature is involved in

the present case, and Appellee did not assert an argument below that the proposed amendment constitutes a landmarking law.

V. The District Court’s Decision Regarding the Compelling Interests that Supported Appellant’s Denial of the Amendment Is Clearly Erroneous.

The district court acknowledged that traffic safety constitutes a compelling state interest sufficient to satisfy a strict scrutiny analysis, and that the “area surrounding the Mount Oak Road property does have traffic issues.” Mem. Op. at JA2437, 2439. Compelling interests are those that implicate “the government’s paramount interest in protecting physical or mental health, public safety, or public welfare.” *American Life League, Inc. v. Reno*, 47 F.3d 642, 655 (4th Cir. 1995) (citing *Sherbert v. Verner*, 347 U.S. 398, 403 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972)). “Traffic safety qualifies as a compelling government interest.” *Gbalazeh v. City of Dallas, Tx.*, No. 3:18-cv-0076-N, 2019 WL 1569345, *2 (N.D. Tx. 2019). See also *Roman Catholic Archdiocese of Kansas City in Kansas v. City of Mission Woods*, 337 F.Supp.3d 1122, 1139 (D. Kan. 2018) (citing *Murphy v. Zoning Comm’n of Town of New Milford*, 148 F.Supp.2d 173, 190 (D. Conn. 2001) (“There appears to be no dispute that local governments have a compelling interest in protecting the health and safety of their communities through the enforcement of the local zoning regulations.”) (citations omitted)).

Nevertheless, the district court discounted overwhelming and largely uncontroverted evidence in concluding that Appellant failed to “link its compelling

interest to the denial of [Appellee's] application for an amendment.” Mem. Op. at JA2439. This holding represents a mixed question of law and fact. To the extent the district court applied nonexistent or incorrect legal standards to the evidence offered, its decision is legally incorrect and reviewed *de novo*. *Heyer*, 984 F.3d at 355. Furthermore, the trial court abused its discretion in disregarding the evidence that established significant traffic safety problems with the roadways immediately surrounding this Property that will be exacerbated by a development of this size.

A. The Court's Remarks and Decisions Regarding the Evidence Constitute Errors of Law.

In response to the testimony regarding the traffic problems surrounding the property and that the proposed development will exacerbate those problems with more traffic, the district court held that Appellee “did not cause the current traffic issues and there is no reliable evidence that the activities of the church would exacerbate those issues.” Mem. Op. at JA2439-40. In this context, the trial court stated that Appellant did not provide a traffic study to support its contention. Mem. Op. at JA2441. The trial court's conclusion that a traffic study was necessary for a strict scrutiny analysis is legally incorrect. Similarly, the trial court's conclusion that Appellee did not cause the traffic problems is legally incorrect inasmuch as it is irrelevant to the question of whether Appellant had a compelling state interest to protect in its decision-making process. Whether or not Appellee caused the problem is not the question.

Although the question of admissibility of evidence is reviewed for an abuse of discretion, the question of whether expert testimony, such as a traffic study and testimony supporting it, is a question of law that is reviewed *de novo*. See *Galloway v. Horne Concrete Const.*, 524 Fed. App'x. 865, *5 (4th Cir. 2013) (explaining that whether a personal injury dispute necessitates expert testimony “involves an interpretation of state law,” which is reviewed *de novo*). In this regard, “an error of law made by a trial court constitutes an abuse of discretion.” *Id.* To the extent that the trial court’s opinion is based the fact that Appellant did not submit a traffic study, that decision is incorrect. Expert testimony is not required to satisfy strict scrutiny when the matter is one of common sense. See *Burson v. Freeman*, 504 U.S. 191, 211 (1992) (concluding that a “long history, a substantial consensus, and simple common sense show that some restricted zone around polling places is necessary to protect” the State’s asserted interest in the right to cast a ballot in an election that is free of intimidation and fraud) (quoted in *United States v. Carter*, 669 F.3d 411, 417 (4th Cir. 2012) (reiterating that “[e]ven when applying strict scrutiny ... the government may, in appropriate circumstances, carry its burden by relying solely on history, consensus, and ‘simple common sense’”). See also *Gbalazeh v. City of Dallas, Tx.*, No. 3:18-cv-0076-N, 2019 WL 1569345, at *5-6 (N.D. Tex. Apr. 11, 2019) (acknowledging a city’s compelling interest in traffic safety and holding that “a vivid imagination is not required to see how [roadside solicitation] could impede

the free and safe flow of traffic”); *Jones v. Conrad*, No. 5:10-cv-00355-BSM-JJV, 2013 WL 1290421, *4 n. 2 (E.D. Ark. Feb. 15, 2013) (providing that “[w]hile no expert testimony has been presented in this case, the obvious safety, discipline, and order concerns of the maximum security prison are compelling penological interests”).

It should also be noted that conducting a traffic study during the global COVID-19 pandemic would yield inaccurate and irrelevant evidence regarding the actual traffic that this area faces under ordinary circumstances. Discovery in this case commenced in February 2020, with the deadline for exchanging written discovery requests set for March 10, 2020. Maryland Governor Lawrence J. Hogan, Jr. publicly declared a state of emergency on March 6, 2020, which has been continuously renewed since that time. *See* Maryland State Proclamation: Declaration of State of Emergency and Existence of Catastrophic Health Emergency – COVID-19, issued March 5, 2020, and attached hereto as Addendum A-1.⁵ On March 12, 16, 19, 23, 30 and May 6, 2020, Governor Hogan then issued a series of Executive Orders which shut down all non-essential business, prohibited gatherings of more than 10 people, closed schools to in-person learning and sporting events, and required churches and other religious facilities to hold virtual services. *See*

⁵ The Court may take judicial notice of the contents of Public Proclamations and Executive Orders by government officials. *Democracy Forward Found. v. White House Office of Am. Innovation*, 356 F. Supp.3d 61, 69 (D.D.C. 2019).

generally A2—A7. These Executive Orders cancelled and prohibited virtually all business, events, gatherings, school and in-person religious services and any and all traffic associated with these events that could be measured as part of any traffic study. *Id.* Discovery in this case closed on May 8, 2020, while all of the prohibitions remained in place. *Id.* On May 14, 2020, the Prince George’s County Executive Angela D. Alsobrooks even signed a stay-at-home order for the County, extending Governor Hogan’s previous stay-at-home order. *See* Prince George’s County Government Office of the County Executive, Executive Order No. 8-2020 – Continued Declaration of a Local State of Emergency For Prince George’s County, Maryland, attached hereto as Addendum A-8. A traffic study under these extraordinary circumstances would represent useless evidence.

In sum, to the extent the district court required Appellant to present expert testimony pursuant to a traffic study or to proffer evidence that Appellee caused the traffic problems faced in the vicinity of the proposed development, those standards are legally incorrect and such requirements represents an abuse of discretion.

B. The Court Abused Its Discretion by Disregarding Overwhelming Evidence of an Existing Traffic Safety Problem that Will be Exacerbated by the Instant Legislative Amendment.

The district court also discounted overwhelming testimony and evidence regarding the unsafe conditions of these roadways and the simple, common-sense fact that introducing 750 more vehicles to the area on any given Sunday would

exacerbate that problem. Appellant produced undisputed evidence that Mount Oak Road and Church Road, which border two sides of the proposed development, are old, narrow country roads of predominantly two lanes without paved shoulders or sidewalks to accommodate pedestrians. JA2856:3–2857:9, 2874:9–2875:6. These roads have been beset with a rash of severe accidents resulting in bodily injuries and significant property damages at the very location of this Property. JA0663-665, 0669-70, 2345-63, 2857-62, 2873-90. The uncontroverted testimony from Mr. Albert—supported by photographs of the scene—alone established one dozen or more severe accidents, the majority of which required emergency response teams and vehicle passengers’ transport via ambulance to the local hospital. JA2345-63, 2873-90. Most of those accidents resulted in such severe damage to the vehicles that the passengers had to be cut from the vehicles using the “jaws of life.” JA2877:18–23. In at least two cases, a vehicle passenger’s injuries were so severe that the individuals were transported via helicopter. JA2877:10–13.

In addition to the witness testimony, the photographs admitted into evidence alone tell a fairly graphic and compelling story of simply how dangerous the roadways in this particular area are. JA2345-63. These photographs show overturned and totaled vehicles, various emergency response personnel and equipment called to the scenes, and the fact that accidents occur at all times of the day and in all weather conditions. JA2884:21—2885:12.

It is uncontroverted that all of these accidents occurred in the immediate vicinity of the Property where Appellee proposes to build a 60,000 square-foot structure to accommodate upwards of 2,000 parishioners and 750 vehicles. Further uncontroverted testimony established that a development of this size will exacerbate the traffic problem and the safety of vehicles and the hundreds of children and families from the local Boys and Girls Club that utilize the local ball fields a quarter mile down Church Road on Sundays throughout the year. JA2902–05, 2913–14. There was no meaningful dispute of the evidence presented.

Ms. Sims succinctly summarized the obvious fact that one does not “need a traffic study to tell me that the current infrastructure that is Mount Oak Road ... won’t support an additional increase in traffic that the proposed development would have brought with it.” JA2861:3—2862:4. *See also* JA0664. As Ms. Sims’s testimony confirmed along with the other witnesses testified both before the County Council during the public hearing and at trial, common sense dictates that introduction of 750 more vehicles generally traveling to and from the Property all at one time will exacerbate this problem:

My understanding is that the proposed development included, I think it was a 750-car capacity parking lot. And so 750 people, at a minimum, driving vehicular traffic along Mount Oak Road would definitely bring an increase in traffic, and based on my own experience with vehicular traffic running into my fence at different times of the day, on different occasions, I didn’t need a traffic study or

traffic engineer to tell me that increased traffic would result in my property potentially getting damaged even more.

JA2861:3—2862:4. *See also* JA2914:5–23 (Ms. Bridges’ testimony that “the amount of traffic that we have to fight on a normal Sunday for the kids to get across the park or the families to get across the park is difficult enough I just do not think building a structure that can possibly bring that many vehicles at any given time, in conjunction with football parks that we have, and we have events there Monday through Sunday, is conducive.”). This testimony represents an entirely common sense conclusion regarding a proposed development of this magnitude, and it does not require “a vivid imagination” to understand that the introduction of hundreds of additional vehicles into that mix presents a clear increased danger to an already dangerous area. It matters not whether the development is a church, a 60,000 square-foot retail establishment or business accommodating 750 vehicles at a time, or some other similar development. The risk to the safety of those traveling these roads remains the same, and that was the compelling interest that the County Council was required to address, and did in fact address, as part of contemplating this amendment. JA0743 (Chairman Turner discussing the “compelling reasons” to maintain the Property’s current water and sewer designation). The district court’s disregard of this largely uncontroverted evidence constitutes an abuse of discretion, and should be reversed.

C. Appellant Employed the Least Restrictive Means Available to It to Achieve the Compelling Interests Identified, and the District Court's Conclusion to the Contrary is Incorrect.

The government's conduct must be narrowly tailored to serve its compelling interest, which means that "no less restrictive alternative" would serve the government's purpose. *Antietam Battlefield KOA v. Hogan*, 461 F.Supp.3d 214, 237 (D. Md. 2020) (citation and internal quotation marks omitted), *appeal dismissed*, 2020 WL 6787532 (4th Cir. July 6, 2020). To meet this burden, the government does not need to refute any and all conceivable alternatives, short of the decision it made. *Hamilton v. Schriro*, 74 F.3d 1545 (8th Cir. 1996). "Justice Blackmun recognized the dilemma in a least restrictive means analysis: 'A judge would be unimaginative indeed if he [or she] could not come up with something a little less "drastic" or a little less "restrictive" in almost any situation, and thereby enable himself [or herself] to vote to strike legislation down.'" *Id.* (citation omitted).

Furthermore, the plaintiff bears a burden in this prong of the analysis. *Hamilton*, 74 F.3d at 1556. The plaintiff "must demonstrate what, if any, less restrictive means remain unexplored." *Id.* (holding that the plaintiff "failed to enlighten us as to any viable less restrictive means that may remain viable to the prison officials short of prohibiting the sweat lodge ceremony entirely"). If the plaintiff posits less restrictive alternatives, the plaintiff must also show "that the proposed less restrictive means would be equally effective in serving [the] State's

compelling interests.” *Antietam Battlefield KOA*, 461 F.Supp. 3d at 237-38 (citations omitted) (concluding that the plaintiff failed to show that allowing religious services and gatherings to continue subject to social distancing precautions would be equally as effective in serving the government’s compelling interest in slowing the spread of COVID-19).

The evidence shows that denying Appellee’s requested amendment was the least restrictive means available to further Appellant’s compelling interest in traffic safety. Appellee submitted an application, asking the County Council to upgrade its water and sewer designation. JA0044. In response, the County Council could only grant or deny the upgrade. *See id.* (requesting an upgrade from water and sewer category 5 to 4); *see also* Water and Sewer Plan, § 6.3 at JA1275 (entrusting the County Council with the responsibility of acting on proposed legislative amendments). Moreover, the County Council is required to evaluate the proposal in light of “traffic impacts, road construction needs, sidewalks, pedestrian trails and road connectivity in the surrounding neighborhoods.” *Id.*, § 2.1.4 at JA1117. It was also required to consider whether new development would “unduly burden the existing taxpayers.” *Id.*, § 2.1.4 at JA1116. To ignore these factors expressly required by the Water and Sewer Plan would be an abrogation of its express duty. *Id.*, § 6.3 at 1277 (“In order for the County to approve a particular category change, the project must meet the policies and criteria listed in Section 2.1.4[.]”).

Upon finding that the application did not meet these criteria under current circumstances, the County Council voted to deny the requested amendment. JA0717-22, 0745. There were no less restrictive means available to the County Council to further its compelling interest in traffic safety. *See Greater Bible Way Temple of Jackson v. City of Jackson*, 478 Mich. 373, 390 (Mich. 2007) (concluding that where the government is presented with a proposal that it can either accept or reject, when the government chose to reject the proposal, it was not presented with any less restrictive alternatives).

Appellant was not required to provide “traffic studies” to establish that approving Appellee’s requested upgrade would exacerbate existing traffic issues, and the trial court’s contrary conclusion constitutes an error of law. JA2440. The evidence shows, and the trial court found, that “[t]he area surrounding the Mount Oak Road property does have traffic issues.” JA2439. Also, Appellee’s proposed development would have capacity to seat 1,200 to 2,000 people. JA0741. Common sense dictates that adding thousands of people to travel along Mount Oak and Church Roads would exacerbate the existing traffic safety issue. Appellant was entitled to rely on common sense to meet its strict scrutiny burden, and the trial court erred as a matter of law in concluding otherwise. *See Burson*, 504 U.S. 191 (1992) (relying on “history, a substantial consensus, and simple common sense” to conclude that prohibiting solicitation of votes and distribution of campaign materials within 100

feet of the entrance of a polling place was narrowly tailored to further a compelling government interest); *Gbalazeh v. City of Dallas, Tx.*, No. 3:18-cv-0076-N, 2019 WL 1569345 (N.D. Tex. Apr. 11, 2019) (“A vivid imagination is not required to see how [roadside solicitation] could impede the free and safe flow of traffic.”). *See also Galloway v. Horne Concrete Constr.*, 524 F. App’x 865, 870 (4th Cir. 2013) (differentiating between the question of whether expert testimony is admissible, which is reviewed for abuse of discretion, and whether expert testimony is necessary, which is reviewed *de novo*).

Appellee failed to fulfill its burden to provide any less restrictive alternatives. *Hamilton*, 74 F.3d at 1556. At most, the trial court suggested that the Appellant could have granted Appellee’s application and permitted Appellee to participate in the development review process. JA2440-41. This solution, however, is untenable and effectively violates the County Council’s obligation to consider traffic safety during the legislation process in contravention of the express language of the Water and Sewer Plan. *Id.*, § 2.1.4 at JA1115-18, § 6.3 at JA1275-78. *See also County Council of Prince George’s County v. Dutcher*, 780 A.2d 1137, 1143-44 (Md. 2001) (holding that “under the statutory scheme established by the Regional District Act (“RDA”) for the regulation of subdivisions in Prince George’s County, the [County Council sitting as the] District Council has no authority and, therefore, no jurisdiction for immediate review of Planning Board actions on preliminary plans of

subdivision.”). The trial court rejected this argument on the grounds that the defendant in this litigation was the County, not the County Council, and the Planning Board consists of the members of the M-NCPPC from Prince George’s County. JA2441.

However, the Water and Sewer Plan requires the County Council to act on proposed amendments to the Plan in compliance with the legislative amendment process, which includes consideration of traffic safety among the criteria set forth in § 2.1.4. JA1115. Section 2.1.4 states that the proposed development plan shall be analyzed for consistency with the county’s General Plan, and this analysis “shall include, but not be limited to, the impact of proposed developments [on] infrastructure, and transportation system, including, but not limited to, traffic impacts, road construction needs, sidewalks, pedestrian trails and road connectivity in the surrounding neighborhoods.” JA1117. As such, the Plan would effectively be rewritten so as to forbid the County Council from addressing these specific requirements.

Finally, in concluding that strict scrutiny was not satisfied here, the trial court determined that Appellee “did not cause the current traffic issues.” However, the strict scrutiny analysis asks whether the government’s action (*i.e.*, CR-18-2019) furthers its compelling government interest (*i.e.*, traffic safety), not whether the plaintiff caused the compelling government interest. Moreover, the government

“need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns.” *Williams-Ulee v. Fla. Bar*, 575 U.S. 433, 449 (2015).

For all of the foregoing reasons, the trial court’s conclusion that Appellant’s denial of the application to amend the Water and Sewer Plan did not satisfy strict scrutiny review is incorrect and should be reversed.

CONCLUSION

For all of the foregoing reasons, Appellant respectfully requests that the decision of the district court be reversed. Appellant also respectfully requests oral argument be heard, pursuant to Local Rule 34(a), given the complex issues presented by this appeal.

Respectfully Submitted,

Date: February 16, 2021

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CERTIFICATE OF COMPLIANCE WITH RULE 32(G)(1)

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I certify that this Brief of Appellee is proportionately spaced and contains 12043 words excluding parts of the document exempted by Rule 32(a)(7)(B)(iii).

Date: February 16, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2021, the Brief of Appellant was served on all parties or their counsel of record through the CM/ECF system.

Date: February 16, 2021

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ADDENDUM TO BRIEF

- A-1 State of Maryland - Proclamation-COVID-19, dated March 5, 2020
- A-2 State of Maryland Executive Order - Prohibiting Large Gatherings and Events and Closing Senior Centers, dated March 12, 2020
- A-3 State of Maryland Executive Order – Amending and Restating the Order of March 12, 2020, dated March 16, 2020
- A-4 State of Maryland Executive Order – Amending and Restating the Order of March 16, 2020, dated March 19, 2020
- A-5 State of Maryland Executive Order – Amending and Restating the Order of March 19, 2020, dated March 23, 2020
- A-6 State of Maryland Executive Order – Amending and Restating the Order of March 23, 2020, dated March 30, 2020
- A-7 State of Maryland Executive Order – Amending and Restating the Order of March 30, 2020, dated May 6, 2020
- A-8 Prince George’s County Government Executive Order, dated May 14, 2020

STATE OF MARYLAND



Proclamation

Declaration of State of Emergency and
Existence of Catastrophic Health Emergency — COVID-19

- WHEREAS, an outbreak of disease (“COVID-19”) caused by the novel coronavirus occurred in Hubei province, China, in late 2019, and has currently been detected in more than 89 countries, including the United States;
- WHEREAS, COVID-19 is a severe respiratory disease, resulting in illness or death, caused by the person-to-person spread of the novel coronavirus, which was not previously found in humans;
- WHEREAS, the novel coronavirus, as a viral agent capable of causing extensive loss of life or serious disability, is a deadly agent;
- WHEREAS, the World Health Organization (“WHO”) and the Centers for Disease Control and Prevention (“CDC”) have declared the COVID-19 outbreak a “public health emergency of international concern”;
- WHEREAS, the Secretary of the U.S. Department of Health and Human Services has declared that COVID-19 creates a public health emergency;
- WHEREAS, the CDC has issued guidance to all state and local governments, and all citizens, recommending preparedness to prevent community spread and guard against the potential of a COVID-19 pandemic;
- WHEREAS, as of March 5, 2020, the CDC found that COVID-19 has infected individuals in 17 states, and resulted in a total of 177 confirmed and presumed positive cases in the United States;

WHEREAS, the transmission of the novel coronavirus in the state is a threat to human health in all of Maryland;

WHEREAS, the person-to-person spread modeled by the CDC and WHO indicates that extensive loss of life or serious disability is threatened imminently in all of Maryland because of the transmission in the state of novel coronavirus;

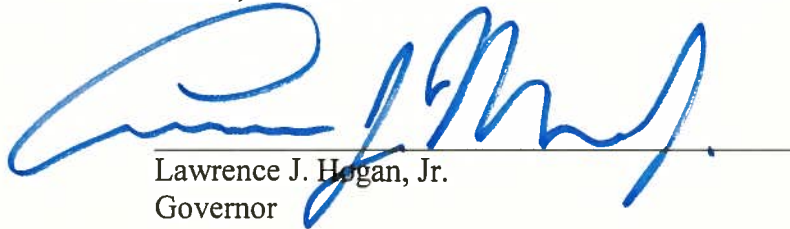
WHEREAS, COVID-19 is a public health catastrophe and public emergency;

WHEREAS, COVID-19 poses an immediate danger to public safety; and

WHEREAS, the impending threat to Maryland by COVID-19 is a catastrophic health emergency requiring the State to deploy resources and implement the emergency powers of the Governor to protect the health and safety of Marylanders;

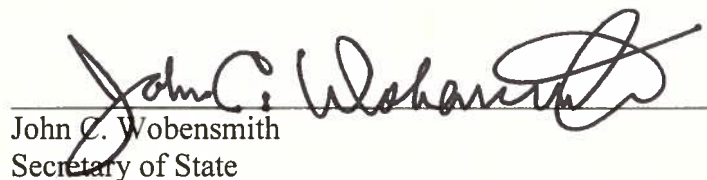
NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE MARYLAND CONSTITUTION AND THE LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, HEREBY PROCLAIM, EFFECTIVE IMMEDIATELY, THAT A STATE OF EMERGENCY AND CATASTROPHIC HEALTH EMERGENCY EXISTS WITHIN THE ENTIRE STATE OF MARYLAND.

Given Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 5th day of March, 2020.

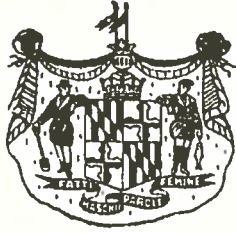


Lawrence J. Hogan, Jr.
Governor

ATTEST:



John C. Wobensmith
Secretary of State



The State of Maryland

Executive Department

ORDER OF THE GOVERNOR OF THE STATE OF MARYLAND

PROHIBITING LARGE GATHERINGS AND EVENTS AND CLOSING SENIOR CENTERS

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;
- WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed in several Maryland counties;
- WHEREAS, To reduce the spread of COVID-19, the U.S. Centers for Disease Control and Prevention and the Maryland Department of Health recommend canceling large gatherings and social distancing in smaller gatherings;
- WHEREAS, The currently known and available scientific evidence and best practices support limitations on large gatherings and social distancing to prevent exposures and transmissions, and reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;
- WHEREAS, To reduce the threat to human health caused by transmission of the novel coronavirus in Maryland, and to protect and save lives, it is necessary and reasonable that individuals in the state refrain from congregating;
- WHEREAS, To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19, and save lives, it is necessary to control and direct the movement of individuals in Maryland, including those on the public streets;

WHEREAS, It is further necessary to control and direct in Maryland the occupancy and use of buildings and premises, as well as places of amusement and assembly; and

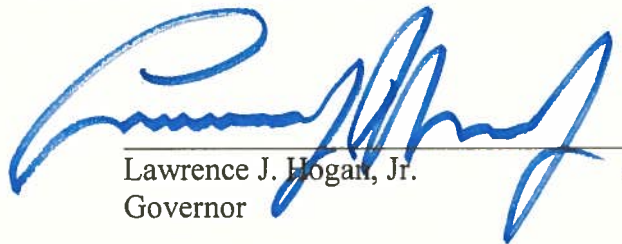
WHEREAS, the Coronavirus Response Team will continue to advise on related public health and emergency management decisions;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

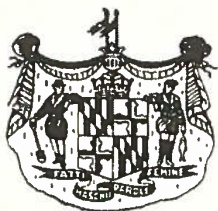
- I. Social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events (“large gatherings and events”) of more than 250 people are hereby prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers.
- II. Planned large gatherings and events must be canceled or postponed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- III. All senior citizen activities centers (as defined in Section 10-501(i) of Human Services Article of the Maryland Code) shall be closed beginning on Friday, March 13, 2020 until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- IV. Government Buildings and Facilities with Large Occupancy or Attendance
 - a. State and local government buildings and facilities with an expected occupancy or attendance of more than 250 people shall:
 - i. If the Maryland Department of Health releases recommendations regarding social distancing, promptly and conspicuously post a copy of such recommendations in the building or facility; and
 - ii. Provide all occupants and attendees with the capability to wash their hands.
 - b. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 250 people.
- V. Each law enforcement officer of the State or a political subdivision shall execute and enforce this Order.

- VI. A person who knowingly and willfully violates this Order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$5,000 or both.
- VII. This Order remains effective until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.
- VIII. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended.

ISSUED UNDER MY HAND THIS 12TH DAY OF MARCH, 2020, AND EFFECTIVELY IMMEDIATELY.



Lawrence J. Hogan, Jr.
Governor



The State of Maryland
Executive Department

ORDER
OF THE
GOVERNOR OF THE STATE OF MARYLAND

AMENDING AND RESTATING THE ORDER OF MARCH 12, 2020,
PROHIBITING LARGE GATHERINGS AND EVENTS AND CLOSING
SENIOR CENTERS, AND ADDITIONALLY CLOSING BARS,
RESTAURANTS, FITNESS CENTERS, AND THEATERS

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;
- WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed in several Maryland counties;
- WHEREAS, To reduce the spread of COVID-19, the U.S. Centers for Disease Control and Prevention and the Maryland Department of Health recommend canceling large gatherings and social distancing in smaller gatherings;
- WHEREAS, The currently known and available scientific evidence and best practices support limitations on large gatherings and social distancing to prevent exposures and transmissions, and reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;
- WHEREAS, To reduce the threat to human health caused by transmission of the novel coronavirus in Maryland, and to protect and save lives, it is necessary and reasonable that individuals in the state refrain from congregating;
- WHEREAS, To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19, and save lives, it is necessary to control and direct the movement of individuals in Maryland, including those on the public streets;

WHEREAS, It is further necessary to control and direct in Maryland the occupancy and use of buildings and premises, as well as places of amusement and assembly; and

WHEREAS, the Coronavirus Response Team will continue to advise on related public health and emergency management decisions;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

- I. The Order of the Governor of the State of Maryland, dated March 12, 2020, entitled “Prohibiting Large Gatherings and Events and Closing Senior Centers” is amended and restated in its entirety as set forth herein.
- II. Social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events (“large gatherings and events”) of more than 50 people are hereby prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers.
- III. Planned large gatherings and events must be canceled or postponed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- IV. All senior citizen activities centers (as defined in Section 10-501(i) of Human Services Article of the Maryland Code) shall be closed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- V. Restaurants and Bars.
 - a. This Order controls the occupancy and use of restaurants, bars, and other similar establishments that sell food or beverages for consumption on-premises in Maryland (“Restaurants and Bars”). This Order does not apply to food or beverage services in health care facilities, which are expressly excluded from the definition of “Restaurants and Bars”.
 - b. All Restaurants and Bars are hereby closed to the general public, effective as of 5:00 p.m. on March 16, 2020, except that, to the extent permitted by applicable law, and in accordance with any social-distancing recommendations of the Maryland Department of Health, food and beverages may be:

- i. sold if such food or beverages are promptly taken from the premises, i.e., on a carry-out or drive-through basis; and
- ii. delivered to customers off the premises.

VI. Fitness Centers.

- a. This Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Maryland (“Fitness Centers”).
- b. All Fitness Centers are hereby closed to the general public, effective as of 5:00 p.m. on March 16, 2020, except that the portion of any Fitness Center that is licensed or otherwise permitted by applicable law, regulation, or order to provide child care services may remain open to the general public for the purpose of continuing to provide such child care services.

VII. Theaters.

- a. This Order controls the occupancy and use of theatres in Maryland at which live performances occur or motion pictures are shown (“Theaters”).
- b. All Theaters are hereby closed to the general public, effective as of 5:00 p.m. on March 16, 2020.

VIII. Government Buildings and Facilities with Large Occupancy or Attendance.

- a. State and local government buildings and facilities with an expected occupancy or attendance of more than 50 people shall:
 - i. Promptly and conspicuously post in the building or facility a copy of the Maryland Department of Health recommendations for social distancing; and
 - ii. Provide all occupants and attendees with the capability to wash their hands.
- b. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 50 people.

IX. All bingo halls in Maryland are hereby closed to the general public, effective as of 5:00 p.m. on March 16, 2020.

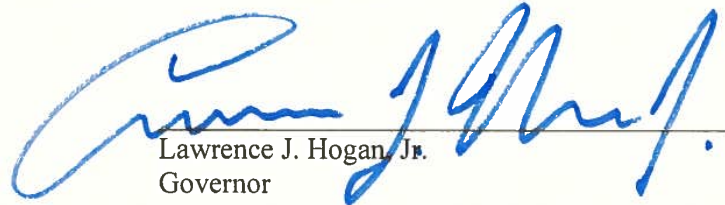
X. Each law enforcement officer of the State or a political subdivision shall execute and enforce this Order.

XI. A person who knowingly and willfully violates this Order is guilty of a misdemeanor

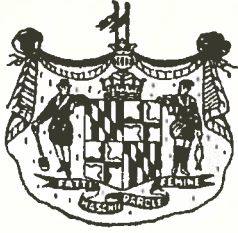
and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.

- XII. This Order remains effective until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.
- XIII. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended.
- XIV. The underlined paragraph headings in this Order are for convenience of reference only and shall not affect the interpretation of this Order.

ISSUED UNDER MY HAND THIS 16TH DAY OF MARCH, 2020, AND EFFECTIVELY IMMEDIATELY.



Lawrence J. Hogan, Jr.
Governor



The State of Maryland
Executive Department

ORDER
OF THE
GOVERNOR OF THE STATE OF MARYLAND
NUMBER 20-03-19-01

AMENDING AND RESTATING THE ORDER OF MARCH 16, 2020, PROHIBITING
LARGE GATHERINGS AND EVENTS AND CLOSING SENIOR CENTERS, AND
ADDITIONALLY CLOSING VARIOUS OTHER ESTABLISHMENTS

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;
- WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed in several Maryland counties;
- WHEREAS, To reduce the spread of COVID-19, the U.S. Centers for Disease Control and Prevention and the Maryland Department of Health recommend canceling large gatherings and social distancing in smaller gatherings;
- WHEREAS, The currently known and available scientific evidence and best practices support limitations on large gatherings and social distancing to prevent exposures and transmissions, and reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;
- WHEREAS, To reduce the threat to human health caused by transmission of the novel coronavirus in Maryland, and to protect and save lives, it is necessary and reasonable that individuals in the state refrain from congregating;
- WHEREAS, To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19, and save lives, it is necessary to control and direct the movement of individuals in Maryland, including those on the public streets;

WHEREAS, It is further necessary to control and direct in Maryland the occupancy and use of buildings and premises, as well as places of amusement and assembly; and

WHEREAS, the Coronavirus Response Team will continue to advise on related public health and emergency management decisions;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

- I. The Order of the Governor of the State of Maryland, dated March 12, 2020, entitled “Prohibiting Large Gatherings and Events and Closing Senior Centers,” as amended on March 16, 2020, and entitled “Amending and Restating the Order of March 12, 2020, Prohibiting Large Gatherings and Events and Closing Senior Centers, and Additionally Closing Bars, Restaurants, Fitness Centers, and Theaters,” is further amended and restated in its entirety as set forth herein.
- II. Social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events (“large gatherings and events”) of more than 10 people are hereby prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers.
- III. Planned large gatherings and events must be canceled or postponed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- IV. All senior citizen activities centers (as defined in Section 10-501(i) of the Human Services Article of the Maryland Code) shall remain closed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- V. Restaurants and Bars.
 - a. This Order controls the occupancy and use of restaurants, bars, and other similar establishments that sell food or beverages for consumption on-premises in Maryland (“Restaurants and Bars”). This Order does not apply to food or beverage services in health care facilities, which are expressly excluded from the definition of “Restaurants and Bars.”
 - b. All Restaurants and Bars shall remain closed to the general public, except that, to the extent permitted by applicable law, and in accordance with any social-distancing recommendations of the Maryland Department of Health, food and beverages may be:
 - i. sold if such food or beverages are promptly taken from the premises, i.e.,

on a carry-out or drive-through basis; or

ii. delivered to customers off the premises.

VI. Fitness Centers.

- a. This Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Maryland (“Fitness Centers”).
- b. All Fitness Centers shall remain closed to the general public, except that the portion of any Fitness Center that is licensed or otherwise permitted by applicable law, regulation, or order to provide child care services may remain open to the general public for the purpose of continuing to provide such child care services.

VII. Theaters.

- a. This Order controls the occupancy and use of theatres in Maryland at which live performances occur or motion pictures are shown (“Theaters”).
- b. All Theaters shall remain closed to the general public.

VIII. Malls.

- a. This Order controls the occupancy and use of shopping centers in Maryland that have one or more enclosed pedestrian concourses (“Enclosed Malls”).
- b. The following portions of Enclosed Malls are hereby closed to the general public, effective as of 5:00 p.m. on March 19, 2020:
 - i. pedestrian concourses and other interior common areas open to the general public, including without limitation, food courts; and
 - ii. retail establishments only accessible to the general public from enclosed pedestrian concourses or other interior areas.
- c. This paragraph VIII does not require closure of retail establishments attached to Enclosed Malls that are directly accessible from the outside.

IX. Other Recreational Establishments.

- a. This Order controls the occupancy and use of the following establishments in Maryland (“Recreational Establishments”):
 - i. bingo halls;
 - ii. bowling alleys;
 - iii. pool halls;
 - iv. amusement parks;

- v. roller and ice skating rinks; and
- vi. any other establishment not listed above that is subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code.

b. All Recreational Establishments are hereby closed to the general public, effective as of 5:00 p.m. on March 19, 2020 (or shall remain closed, if closed by a prior Order).

X. Government Buildings and Facilities with Large Occupancy or Attendance.

- a. State and local government buildings and facilities with an expected occupancy or attendance of more than 10 people shall:
 - i. Promptly and conspicuously post in the building or facility a copy of the Maryland Department of Health recommendations for social distancing; and
 - ii. Provide all occupants and attendees with the capability to wash their hands.
- b. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 10 people.

XI. Each law enforcement officer of the State or a political subdivision shall execute and enforce this Order.

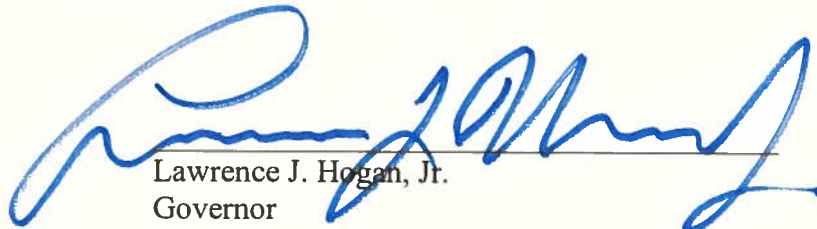
XII. A person who knowingly and willfully violates this Order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.

XIII. This Order remains effective until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.

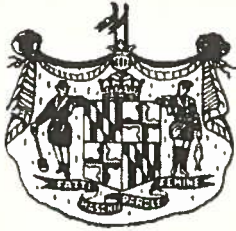
XIV. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended.

XV. The underlined paragraph headings in this Order are for convenience of reference only and shall not affect the interpretation of this Order.

ISSUED UNDER MY HAND THIS 19TH DAY OF MARCH, 2020, AND EFFECTIVELY IMMEDIATELY.



Lawrence J. Hogan, Jr.
Governor



The State of Maryland
Executive Department

ORDER
OF THE
GOVERNOR OF THE STATE OF MARYLAND
NUMBER 20-03-23-01

AMENDING AND RESTATING THE ORDER OF MARCH 19, 2020,
PROHIBITING LARGE GATHERINGS AND EVENTS AND CLOSING SENIOR
CENTERS, AND ADDITIONALLY CLOSING ALL NON-ESSENTIAL
BUSINESSES AND OTHER ESTABLISHMENTS

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, and renewed on March 17, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;
- WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed in several Maryland counties;
- WHEREAS, To reduce the spread of COVID-19, the U.S. Centers for Disease Control and Prevention and the Maryland Department of Health recommend canceling large gatherings and social distancing in smaller gatherings;
- WHEREAS, The currently known and available scientific evidence and best practices support limitations on large gatherings and social distancing to prevent exposures and transmissions, and reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;
- WHEREAS, To reduce the threat to human health caused by transmission of the novel coronavirus in Maryland, and to protect and save lives, it is necessary and reasonable that individuals in the state refrain from congregating;
- WHEREAS, To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19,

and save lives, it is necessary to control and direct the movement of individuals in Maryland, including those on the public streets;

WHEREAS, It is further necessary to control and direct in Maryland the occupancy and use of buildings and premises, as well as places of amusement and assembly; and

WHEREAS, the Coronavirus Response Team will continue to advise on related public health and emergency management decisions;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

- I. The Order of the Governor of the State of Maryland, dated March 12, 2020, entitled “Prohibiting Large Gatherings and Events and Closing Senior Centers,” as amended and restated on March 16, 2020, and further amended and restated on March 19, 2020 by Order Number 20-03-19-01, is further amended and restated in its entirety as set forth herein.
- II. Gatherings Large Than 10 Persons Prohibited.
 - a. Social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events (“large gatherings and events”) of more than 10 people are hereby prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers.
 - b. Planned large gatherings and events must be canceled or postponed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- III. Closure of Non-Essential Businesses, Generally.
 - a. This Order controls the occupancy and use of all businesses, organizations, establishments, and facilities that are not part of the critical infrastructure sectors identified by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (currently described at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>) (collectively, “Non-Essential Businesses”).
 - b. All Non-Essential Businesses are hereby closed to the general public, effective as of 5:00 p.m. on March 23, 2020 (or shall remain closed, if closed by a prior Order).

- c. All businesses, organizations, establishments, and facilities that are required to close pursuant to paragraph IV, pursuant to any other Order of the Governor of the State of Maryland or any other Order of a political subdivision, shall be and remain closed in accordance with paragraph IV or such other Order, as the case may be.

IV. Closure of Certain Specific Businesses, Organizations, and Facilities.

- a. Senior Centers. All senior citizen activities centers (as defined in Section 10-501(i) of the Human Services Article of the Maryland Code) shall remain closed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- b. Restaurants and Bars.
 - i. This Order controls the occupancy and use of restaurants, bars, and other similar establishments that sell food or beverages for consumption on-premises in Maryland (“Restaurants and Bars”). This Order does not apply to food or beverage services in health care facilities, which are expressly excluded from the definition of “Restaurants and Bars.”
 - ii. All Restaurants and Bars shall remain closed to the general public, except that, to the extent permitted by applicable law, and in accordance with any social-distancing recommendations of the Maryland Department of Health, food and beverages may be:
 - 1. sold if such food or beverages are promptly taken from the premises, i.e., on a carry-out or drive-through basis; or
 - 2. delivered to customers off the premises.
- c. Fitness Centers.
 - i. This Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Maryland (“Fitness Centers”).
 - ii. All Fitness Centers shall remain closed to the general public, except that the portion of any Fitness Center that is licensed or otherwise permitted by applicable law, regulation, or order to provide child care services may remain open to the general public for the purpose of continuing to provide such child care services.
- d. Theaters.
 - i. This Order controls the occupancy and use of theatres in Maryland at which live performances occur or motion pictures are shown (“Theaters”).

ii. All Theaters shall remain closed to the general public.

e. Malls.

i. This Order controls the occupancy and use of shopping centers in Maryland that have one or more enclosed pedestrian concourses (“Enclosed Malls”).

ii. The following portions of Enclosed Malls shall remain closed to the general public:

1. pedestrian concourses and other interior common areas open to the general public, including without limitation, food courts; and
2. retail establishments only accessible to the general public from enclosed pedestrian concourses or other interior areas.

iii. This paragraph IV.e does not require closure of retail establishments attached to Enclosed Malls that are directly accessible from the outside.

iv. Notwithstanding paragraph IV.e.ii, local governments may approve access by the general public to the following parts of Enclosed Malls:

1. retail establishments (a) that primarily sell groceries or pharmacy products, or (b) at which licensed professionals provide health care services; and
2. pedestrian concourses and other interior common areas, but solely to the extent necessary for the general public to access the retail establishments described in paragraph IV.e.iv.1.

f. Other Recreational Establishments.

i. This Order controls the occupancy and use of the following establishments in Maryland (“Recreational Establishments”):

1. bingo halls;
2. bowling alleys;
3. pool halls;
4. amusement parks;
5. roller and ice skating rinks;
6. all golf courses (public and private), miniature golf establishments, and driving ranges;
7. social and fraternal clubs, including without limitation, American Legion posts, VFW posts, and Elks Clubs; and
8. any other establishment not listed above that is subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code.

- ii. All Recreational Establishments are hereby closed to the general public, effective as of 5:00 p.m. on March 23, 2020 (or shall remain closed, if closed by a prior Order).

g. Other Miscellaneous Establishments.

- i. This Order controls the occupancy and use of the following establishments in Maryland:
 - 1. tattoo parlors;
 - 2. tanning salons;
 - 3. barber shops; and
 - 4. beauty salons and all other establishments that provide esthetic services, provide hair services, or provide nail services (as described in Title 5, Subtitle 2 of the Business Occupations Article of the Maryland Code).
- ii. The establishments listed in paragraph IV.g.i above are hereby closed to the general public, effective as of 5:00 p.m. on March 23, 2020.

V. Specific Exclusions. For avoidance of doubt, this Order does not require the closure of:

- a. Any federal, State, or local government unit, building, or facility;
- b. Any newspaper, television, radio, or other media service; or
- c. Any non-profit organization or facility providing essential services to low-income persons, including, without limitation, homeless shelters, food banks, and soup kitchens.

VI. Government Buildings and Facilities with Large Occupancy or Attendance.

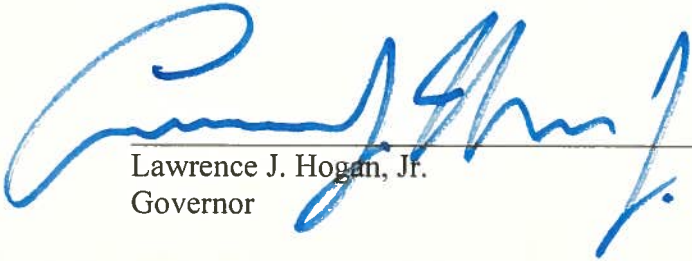
- a. State and local government buildings and facilities with an expected occupancy or attendance of more than 10 people shall:
 - i. Promptly and conspicuously post in the building or facility a copy of the Maryland Department of Health recommendations for social distancing; and
 - ii. Provide all occupants and attendees with the capability to wash their hands.
- b. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 10 people.

VII. General Provisions.

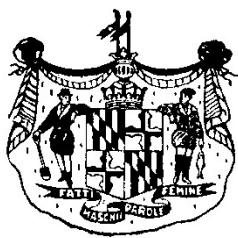
- a. Each law enforcement officer of the State or a political subdivision shall execute and enforce this Order.

- b. A person who knowingly and willfully violates this Order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.
- c. This Order remains effective until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.
- d. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended.
- e. The underlined paragraph headings in this Order are for convenience of reference only and shall not affect the interpretation of this Order.

ISSUED UNDER MY HAND THIS 23RD DAY OF MARCH, 2020, AND EFFECTIVELY IMMEDIATELY.



Lawrence J. Hogan, Jr.
Governor



The State of Maryland
Executive Department

ORDER
OF THE
GOVERNOR OF THE STATE OF MARYLAND
NUMBER 20-03-30-01

AMENDING AND RESTATING THE ORDER OF MARCH 23, 2020, PROHIBITING
LARGE GATHERINGS AND EVENTS AND CLOSING SENIOR CENTERS, AND
ALL NON-ESSENTIAL BUSINESSES AND OTHER ESTABLISHMENTS, AND
ADDITIONALLY REQUIRING ALL PERSONS TO STAY AT HOME

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, and renewed on March 17, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;
- WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed throughout Maryland;
- WHEREAS, To reduce the spread of COVID-19, the U.S. Centers for Disease Control and Prevention and the Maryland Department of Health recommend canceling large gatherings and social distancing in smaller gatherings;
- WHEREAS, The currently known and available scientific evidence and best practices support limitations on large gatherings and social distancing to prevent exposures and transmissions, and reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;
- WHEREAS, To reduce the threat to human health caused by transmission of the novel coronavirus in Maryland, and to protect and save lives, it is necessary and reasonable that individuals in the state refrain from congregating;
- WHEREAS, To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19,

and save lives, it is necessary to control and direct the movement of individuals in Maryland, including those on the public streets;

WHEREAS, It is further necessary to control and direct in Maryland the occupancy and use of buildings and premises, as well as places of amusement and assembly; and

WHEREAS, the Coronavirus Response Team will continue to advise on related public health and emergency management decisions;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

I. The Order of the Governor of the State of Maryland, dated March 12, 2020, entitled “Prohibiting Large Gatherings and Events and Closing Senior Centers,” as amended and restated on March 16, 2020, and further amended and restated on March 19, 2020 by Order Number 20-03-19-01, and further amended and restated on March 23, 2020 by Order Number 20-03-29-01, is further amended and restated in its entirety as set forth herein.

II. Stay-at-Home Order.

a. All persons living in the State of Maryland are hereby ordered, effective as of 8:00 p.m. on March 30, 2020, to stay in their homes or places of residences (“Homes”) except:

- i. to conduct or participate in Essential Activities (defined below);
- ii. staff and owners of businesses and organizations that are not required to close pursuant to paragraph IV or paragraph V below may travel:

1. between their Homes and those businesses and organizations; and
2. to and from customers for the purpose of delivering goods or performing services; and

iii. staff and owners of Non-Essential Businesses (defined below) may travel:

1. between their Homes and those Non-Essential Businesses for the purpose of engaging in Minimal Operations; and
2. to and from customers for the purpose of delivering goods.

b. As used herein, “Essential Activities” means:

- i. Obtaining necessary supplies or services for one's self, family, household members, pets, or livestock, including, without limitation: groceries, supplies for household consumption or use, supplies and equipment needed to work from home, laundry, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence;
- ii. Engaging in activities essential for the health and safety of one's self, family, household members, pets, or livestock, including such things as seeking medical or behavior health or emergency services, and obtaining medication or medical supplies;
- iii. Caring for a family member, friend, pet, or livestock in another household or location, including, without limitation, transporting a family member, friend, pet, or livestock animal for essential health and safety activities, and to obtain necessary supplies and services;
- iv. Traveling to and from an educational institution for purposes of receiving meals or instructional materials for distance learning;
- v. Engaging in outdoor exercise activities, such as walking, hiking, running, or biking, but only in compliance with paragraph III below and applicable social distancing guidance published by the U.S. Centers for Disease Control and Prevention ("CDC") and the Maryland Department of Health ("MDH");
- vi. Travel required by a law enforcement officer or court order; or
- vii. Traveling to and from a federal, State, or local government building for a necessary purpose.

III. Gatherings Large Than 10 Persons Prohibited.

- a. Social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events ("large gatherings and events") of more than 10 people are hereby prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers.
- b. Planned large gatherings and events must be canceled or postponed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.

IV. Closure of Non-Essential Businesses, Generally.

- a. This Order controls the occupancy and use of all businesses, organizations, establishments, and facilities that are not part of the critical infrastructure sectors identified by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (currently described at

<https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>) (collectively, “Non-Essential Businesses”).

- b. Subject to paragraph IV.c, all Non-Essential Businesses shall remain closed to the general public.
- c. Staff and owners may continue to be on-site at Non-Essential Businesses for only the following purposes (“Minimal Operations”):
 - i. Facilitating remote working (a/k/a/ telework) by other staff;
 - ii. Maintaining essential property;
 - iii. Preventing loss of, or damage to property, including without limitation, preventing spoilage of perishable inventory;
 - iv. Performing essential administrative functions, including without limitation, picking up mail and processing payroll;
 - v. Caring for live animals; and
 - vi. In the case of Non-Essential Businesses that are retail establishments, continuing to sell retail products on a delivery basis.
- d. All businesses, organizations, establishments, and facilities that are required to close pursuant to paragraph V, pursuant to any other Order of the Governor of the State of Maryland or any other Order of a political subdivision, shall be and remain closed in accordance with paragraph V or such other Order, as the case may be.

V. Closure of Certain Specific Businesses, Organizations, and Facilities.

- a. *Senior Centers.* All senior citizen activities centers (as defined in Section 10-501(i) of the Human Services Article of the Maryland Code) shall remain closed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- b. *Restaurants and Bars.*
 - i. This Order controls the occupancy and use of restaurants, bars, and other similar establishments that sell food or beverages for consumption on-premises in Maryland (“Restaurants and Bars”). This Order does not apply to food or beverage services in health care facilities, which are expressly excluded from the definition of “Restaurants and Bars.”
 - ii. All Restaurants and Bars shall remain closed to the general public, except that, to the extent permitted by applicable law, and in accordance with any social-distancing recommendations of MDH, food and beverages may be:

1. sold if such food or beverages are promptly taken from the premises, i.e., on a carry-out or drive-through basis; or
2. delivered to customers off the premises.

c. Fitness Centers.

- i. This Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Maryland (“Fitness Centers”).
- ii. All Fitness Centers shall remain closed to the general public, except that the portion of any Fitness Center that is licensed or otherwise permitted by applicable law, regulation, or order to provide child care services may remain open to the general public for the purpose of continuing to provide such child care services.

d. Theaters.

- i. This Order controls the occupancy and use of theatres in Maryland at which live performances occur or motion pictures are shown (“Theaters”).
- ii. All Theaters shall remain closed to the general public.

e. Malls.

- i. This Order controls the occupancy and use of shopping centers in Maryland that have one or more enclosed pedestrian concourses (“Enclosed Malls”).
- ii. The following portions of Enclosed Malls shall remain closed to the general public:
 1. pedestrian concourses and other interior common areas open to the general public, including without limitation, food courts; and
 2. retail establishments only accessible to the general public from enclosed pedestrian concourses or other interior areas.
- iii. This paragraph V.e does not require closure of retail establishments attached to Enclosed Malls that are directly accessible from the outside.
- iv. Notwithstanding paragraph V.e.ii, local governments may approve access by the general public to the following parts of Enclosed Malls:
 1. retail establishments (a) that primarily sell groceries or pharmacy products, or (b) at which licensed professionals provide health care services; and

2. pedestrian concourses and other interior common areas, but solely to the extent necessary for the general public to access the retail establishments described in paragraph V.e.iv.1.

f. Other Recreational Establishments.

- i. This Order controls the occupancy and use of the following establishments in Maryland (“Recreational Establishments”):
 1. bingo halls;
 2. bowling alleys;
 3. pool halls;
 4. amusement parks;
 5. roller and ice skating rinks;
 6. all golf courses (public and private), miniature golf establishments, and driving ranges;
 7. social and fraternal clubs, including without limitation, American Legion posts, VFW posts, and Elks Clubs;
 8. campgrounds; and
 9. any other establishment not listed above that is subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code.
- ii. All Recreational Establishments are hereby closed to the general public (including members, in the case of private clubs), effective as of 5:00 p.m. on March 30, 2020 (or shall remain closed, if closed by a prior Order).

g. Other Miscellaneous Establishments.

- i. This Order controls the occupancy and use of the following establishments in Maryland:
 1. tattoo parlors;
 2. tanning salons;
 3. barber shops; and
 4. beauty salons and all other establishments that provide esthetic services, provide hair services, or provide nail services (as described in Title 5, Subtitle 2 of the Business Occupations Article of the Maryland Code).
- ii. The establishments listed in paragraph V.g.i above shall remain closed to the general public.

VI. Specific Exclusions. For avoidance of doubt:

- a. This Order does not require the closure of, or prohibit the movement of any staff or volunteer traveling to, from, or in connection with their duties at any:

- i. Any federal, State, or local government unit, building, or facility;
- ii. Any newspaper, television, radio, or other media service; or
- iii. Any non-profit organization or facility providing essential services to low-income persons, including, without limitation, homeless shelters, food banks, and soup kitchens.

b. Paragraph II of this Order does not apply to:

- i. Persons whose homes or residences have become unsafe, such as victims of domestic violence; and
- ii. Persons who are experiencing homelessness, but governmental and other entities are strongly encouraged to make shelter available for such persons to the maximum extent practicable, in a manner consistent with the social distancing guidelines of the CDC and MDH.

VII. Government Buildings and Facilities with Large Occupancy or Attendance.

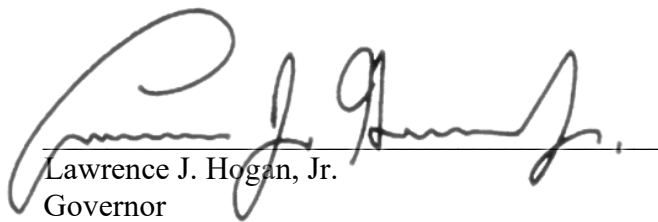
- a. State and local government buildings and facilities with an expected occupancy or attendance of more than 10 people shall:
 - i. Promptly and conspicuously post in the building or facility a copy of the MDH recommendations for social distancing; and
 - ii. Provide all occupants and attendees with the capability to wash their hands.
- b. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 10 people.

VIII. General Provisions.

- a. Each law enforcement officer of the State or a political subdivision shall execute and enforce this Order.
- b. A person who knowingly and willfully violates this Order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.
- c. This Order remains effective until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.
- d. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended.
- e. The underlined paragraph headings in this Order are for convenience of reference

only and shall not affect the interpretation of this Order.

ISSUED UNDER MY HAND THIS 30TH DAY OF MARCH, 2020, AND
EFFECTIVE IMMEDIATELY.



Lawrence J. Hogan, Jr.
Governor



The State of Maryland
Executive Department

ORDER
OF THE
GOVERNOR OF THE STATE OF MARYLAND

NUMBER 20-05-06-01

AMENDING AND RESTATING THE ORDER OF MARCH 30, 2020, PROHIBITING
LARGE GATHERINGS AND EVENTS AND CLOSING SENIOR CENTERS, AND
ALL NON-ESSENTIAL BUSINESSES AND OTHER ESTABLISHMENTS, AND
ADDITIONALLY REQUIRING ALL PERSONS TO STAY AT HOME

- WHEREAS, A state of emergency and catastrophic health emergency was proclaimed on March 5, 2020, and renewed on March 17, 2020, April 10, 2020, and May 6, 2020, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;
- WHEREAS, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed throughout Maryland;
- WHEREAS, To reduce the spread of COVID-19, the U.S. Centers for Disease Control and Prevention and the Maryland Department of Health recommend canceling large gatherings and social distancing in smaller gatherings;
- WHEREAS, The currently known and available scientific evidence and best practices support limitations on large gatherings and social distancing to prevent exposures and transmissions, and reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;
- WHEREAS, To reduce the threat to human health caused by transmission of the novel coronavirus in Maryland, and to protect and save lives, it is necessary and reasonable that individuals in the state refrain from congregating;
- WHEREAS, To protect the public health, welfare, and safety, prevent the transmission of the novel coronavirus, control the spread of COVID-19,

and save lives, it is necessary to control and direct the movement of individuals in Maryland, including those on the public streets;

WHEREAS, It is further necessary to control and direct in Maryland the occupancy and use of buildings and premises, as well as places of amusement and assembly; and

WHEREAS, the Coronavirus Response Team will continue to advise on related public health and emergency management decisions;

NOW, THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, INCLUDING BUT NOT LIMITED TO TITLE 14 OF THE PUBLIC SAFETY ARTICLE, AND IN AN EFFORT TO CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN THE STATE, DO HEREBY ORDER:

I. Administrative and Implementing Provisions.

- a. The Order of the Governor of the State of Maryland, dated March 12, 2020, entitled “Prohibiting Large Gatherings and Events and Closing Senior Centers,” as amended and restated on March 16, 2020, and further amended and restated on March 19, 2020 by Order Number 20-03-19-01, and further amended and restated on March 23, 2020 by Order Number 20-03-29-01, and further amended and restated on March 30, 2020 by Order Number 20-03-30-01 is further amended and restated in its entirety as set forth herein.
- b. The Secretary of Health is hereby authorized to issue directives under this Order (“Secretary’s Directives”), as the Secretary deems necessary, to monitor, treat, prevent, reduce the spread of, and suppress COVID-19 in relation to any activity permitted under this Order or any business, organization, establishment, or facility that is permitted by this Order to be open to the general public, which directives may include, without limitation, binding requirements and/or non-binding recommendations.
- c. Political subdivisions are not prohibited from opening outdoor public spaces to the general public (such as parks, sports fields and courts, beaches, dog parks, and playgrounds), subject to the following:
 - i. The decision to do so shall be made after consultation with the health officer for the county in which the outdoor public space is located (or, in the case of outdoor public spaces located in Baltimore City, the Commissioner of Health for Baltimore City) (the “Local Health Officer”).
 - ii. The Local Health Officer may issue such directives or orders as may be necessary to monitor, prevent, reduce the spread of, and suppress COVID-19 with respect to the use of the outdoor public space (“Health Officer

Directives”).

- iii. The political subdivision must require persons using the outdoor public space to comply with applicable Secretary’s Directives, applicable Health Officer Directives, and applicable social distancing guidance published by the U.S. Centers for Disease Control and Prevention (“CDC”) and the Maryland Department of Health (“MDH”).

II. Stay-at-Home Order.

- a. All persons living in the State of Maryland are hereby ordered, effective as of 8:00 p.m. on March 30, 2020, to stay in their homes or places of residences (“Homes”) except:
 - i. to conduct or participate in Essential Activities (defined below) or Permitted Outdoor Activities (defined below);
 - ii. staff and owners of businesses and organizations that are not required to close pursuant to paragraph IV or paragraph V below may travel:
 1. between their Homes and those businesses and organizations; and
 2. to and from customers for the purpose of delivering goods or performing services; and
 - iii. staff and owners of Non-Essential Businesses (defined below) may travel:
 1. between their Homes and those Non-Essential Businesses for the purpose of engaging in Minimal Operations; and
 2. to and from customers for the purpose of delivering goods.
- b. As used herein, “Essential Activities” means:
 - i. Obtaining necessary supplies or services for one’s self, family, household members, pets, or livestock, including, without limitation: groceries, supplies for household consumption or use, supplies and equipment needed to work from home, laundry, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence;
 - ii. Engaging in activities essential for the health and safety of one’s self, family, household members, pets, or livestock, including such things as seeking medical or behavior health or emergency services, and obtaining medication or medical supplies;
 - iii. Caring for a family member, friend, pet, or livestock in another household or location, including, without limitation, transporting a family member, friend, pet, or livestock animal for essential health and safety activities,

and to obtain necessary supplies and services;

- iv. Traveling to and from an educational institution for purposes of receiving meals or instructional materials for distance learning;
 - v. Travel required by a law enforcement officer or court order; or
 - vi. Traveling to and from a federal, State, or local government building for a necessary purpose.
- c. As used herein, “Permitted Outdoor Activities” means the following, done in compliance with paragraph III below, applicable Secretary’s Directives, Health Officer Directives, and social distancing guidance published by CDC and MDH:
- i. Outdoor exercise activities, such as walking, hiking, running, biking, or individual and small group sports such as golfing, tennis, and similar activities;
 - ii. Outdoor fitness instruction;
 - iii. Recreational fishing, hunting, shooting, and archery;
 - iv. Recreational boating;
 - v. Horseback riding; and
 - vi. Visiting cemeteries.

III. Gatherings Larger Than 10 Persons Prohibited.

- a. Social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events of more than 10 people (“large gatherings and events”) are hereby prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers.
- b. Planned large gatherings and events must be canceled or postponed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.

IV. Closure of Non-Essential Businesses, Generally.

- a. This Order controls the occupancy and use of all businesses, organizations, establishments, and facilities that are not part of the critical infrastructure sectors identified by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (currently described at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>) (collectively, “Non-Essential Businesses”).

- b. Subject to paragraph IV.c, all Non-Essential Businesses shall remain closed to the general public.
- c. Staff and owners may continue to be on-site at Non-Essential Businesses for only the following purposes (“Minimal Operations”):
 - i. Facilitating remote working (a/k/a/ telework) by other staff;
 - ii. Maintaining essential property;
 - iii. Preventing loss of, or damage to property, including without limitation, preventing spoilage of perishable inventory;
 - iv. Performing essential administrative functions, including without limitation, picking up mail and processing payroll;
 - v. Caring for live animals; and
 - vi. In the case of Non-Essential Businesses that are retail establishments, continuing to sell retail products on a delivery basis.
- d. All businesses, organizations, establishments, and facilities that are required to close pursuant to paragraph V, pursuant to any other Order of the Governor of the State of Maryland or any other Order of a political subdivision, shall be and remain closed in accordance with paragraph V or such other Order, as the case may be.

V. Closure of Certain Specific Businesses, Organizations, and Facilities.

- a. Senior Centers. All senior citizen activities centers (as defined in Section 10-501(i) of the Human Services Article of the Maryland Code) shall remain closed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- b. Restaurants and Bars.
 - i. This Order controls the occupancy and use of restaurants, bars, and other similar establishments that sell food or beverages for consumption on-premises in Maryland (“Restaurants and Bars”). This Order does not apply to food or beverage services in health care facilities, which are expressly excluded from the definition of “Restaurants and Bars.”
 - ii. All Restaurants and Bars shall remain closed to the general public, except that, to the extent permitted by applicable law, and in accordance with any social-distancing recommendations of MDH, food and beverages may be:
 - 1. sold if such food or beverages are promptly taken from the premises, i.e., on a carry-out or drive-through basis; or

2. delivered to customers off the premises.

c. *Fitness Centers.*

- i. This Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Maryland (“Fitness Centers”).
- ii. All Fitness Centers shall remain closed to the general public, except that the portion of any Fitness Center that is licensed or otherwise permitted by applicable law, regulation, or order to provide child care services may remain open to the general public for the purpose of continuing to provide such child care services.

d. *Theaters.*

- i. This Order controls the occupancy and use of theatres in Maryland at which live performances occur or motion pictures are shown (“Theaters”).
- ii. All Theaters shall remain closed to the general public.

e. *Malls.*

- i. This Order controls the occupancy and use of shopping centers in Maryland that have one or more enclosed pedestrian concourses (“Enclosed Malls”).
- ii. The following portions of Enclosed Malls shall remain closed to the general public:
 1. pedestrian concourses and other interior common areas open to the general public, including without limitation, food courts; and
 2. retail establishments only accessible to the general public from enclosed pedestrian concourses or other interior areas.
- iii. This paragraph V.e does not require closure of retail establishments attached to Enclosed Malls that are directly accessible from the outside.
- iv. Notwithstanding paragraph V.e.ii, local governments may approve access by the general public to the following parts of Enclosed Malls:
 1. retail establishments (a) that primarily sell groceries or pharmacy products, or (b) at which licensed professionals provide health care services; and
 2. pedestrian concourses and other interior common areas, but solely to the extent necessary for the general public to access the retail

establishments described in paragraph V.e.iv.1.

f. Other Recreational Establishments.

- i. This Order controls the occupancy and use of the following establishments in Maryland (“Recreational Establishments”):
 1. bingo halls;
 2. bowling alleys;
 3. pool halls;
 4. amusement parks;
 5. roller and ice skating rinks;
 6. miniature golf establishments;
 7. social and fraternal clubs, including without limitation, American Legion posts, VFW posts, and Elks Clubs; and
 8. any other establishment not listed above that is subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code.
- ii. All Recreational Establishments shall remain closed to the general public (including members, in the case of private clubs).
- iii. Effective as of 7:00 a.m. on May 7, 2020, notwithstanding anything to the contrary elsewhere in this Order, the following establishments in Maryland may open to the general public, subject to paragraph III above and all applicable Secretary’s Directives and physical distancing guidance published by CDC and MDH:
 1. golf courses and driving ranges;
 2. outdoor archery and shooting ranges;
 3. marinas and watercraft rental businesses; and
 4. campgrounds.

g. Other Miscellaneous Establishments.

- i. This Order controls the occupancy and use of the following establishments in Maryland:
 1. tattoo parlors;
 2. tanning salons;
 3. barber shops; and
 4. beauty salons and all other establishments that provide esthetic services, provide hair services, or provide nail services (as described in Title 5, Subtitle 2 of the Business Occupations Article of the Maryland Code).
- ii. The establishments listed in paragraph V.g.i above shall remain closed to

the general public.

VI. Specific Exclusions. For avoidance of doubt:

- a. This Order does not require the closure of, or prohibit the movement of any staff or volunteer traveling to, from, or in connection with their duties at any:
 - i. federal, State, or local government unit, building, or facility;
 - ii. newspaper, television, radio, or other media service; or
 - iii. non-profit organization or facility providing essential services to low-income persons, including, without limitation, homeless shelters, food banks, and soup kitchens.
- b. Paragraph II of this Order does not apply to:
 - i. Persons whose homes or residences have become unsafe, such as victims of domestic violence; and
 - ii. Persons who are experiencing homelessness, but governmental and other entities are strongly encouraged to make shelter available for such persons to the maximum extent practicable, in a manner consistent with the social distancing guidelines of the CDC and MDH.

VII. Government Buildings and Facilities with Large Occupancy or Attendance.

- a. State and local government buildings and facilities with an expected occupancy or attendance of more than 10 people shall:
 - i. Promptly and conspicuously post in the building or facility a copy of the MDH recommendations for social distancing; and
 - ii. Provide all occupants and attendees with the capability to wash their hands.
- b. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 10 people.

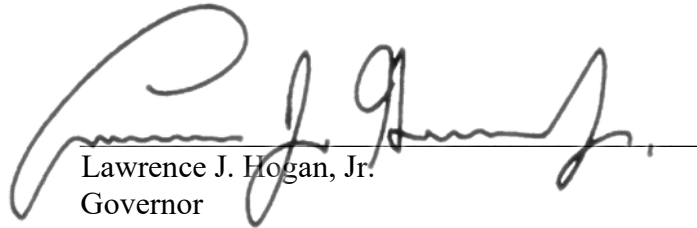
VIII. General Provisions.

- a. Each law enforcement officer of the State or a political subdivision shall execute and enforce this Order.
- b. A person who knowingly and willfully violates this Order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.
- c. This Order remains effective until after termination of the state of emergency and

the proclamation of the catastrophic health emergency has been rescinded, or until rescinded, superseded, amended, or revised by additional orders.

- d. The effect of any statute, rule, or regulation of an agency of the State or a political subdivision inconsistent with this order is hereby suspended to the extent of the inconsistency.
- e. The underlined paragraph headings in this Order are for convenience of reference only and shall not affect the interpretation of this Order.
- f. If any provision of this Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of the Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Order are severable.

ISSUED UNDER MY HAND THIS 6TH DAY OF MAY, 2020, AND
EFFECTIVE IMMEDIATELY.



Lawrence J. Hogan, Jr.
Governor



Angela D. Alsobrooks
County Executive

PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

EXECUTIVE ORDER

No. 8-2020

May 14, 2020

CONTINUED DECLARATION OF A LOCAL STATE OF EMERGENCY FOR PRINCE GEORGE'S COUNTY, MARYLAND

WHEREAS, Section 14-111 of the Public Safety Article of the Annotated Code of Maryland provides for the declaration of a Local State of Emergency; and

WHEREAS, Section 6-134, et seq., of the Prince George's County Code provides for the declaration of a Local State of Emergency; and

WHEREAS, the President of the United States proclaimed that the COVID-19 outbreak in the United States constituted a national emergency beginning March 1, 2020; and

WHEREAS, on March 5, 2020, the Governor of the State of Maryland declared a state of emergency and a catastrophic health emergency for the State of Maryland to control and prevent the spread of COVID-19 and these emergency declarations continue; and

WHEREAS, the World Health Organization, on March 11, 2020, announced that the COVID-19 outbreak can be characterized as a pandemic; and

WHEREAS, Prince George's County, Maryland previously issued the following emergency declarations: Executive Order Number 6-2020 dated March 16, 2020; Executive Order Number 7-2020 dated April 13, 2020; and CR-31-2020 adopted May 11, 2020; and

WHEREAS, Prince George's County, Maryland, with more than 10,400 confirmed positive cases of COVID-19, has the highest number of confirmed cases in the State of Maryland; and,

WHEREAS, Prince George's County, Maryland has more than 1,900 COVID-19 related hospitalizations and more than 350 deaths; and

WHEREAS, Prince George's County, Maryland is still experiencing a surge of County residents becoming ill with the virus and placing stress on the standard method of providing medical care;

WHEREAS, unemployment in Prince George's County, Maryland is currently at approximately fifteen percent and all the jobs created in the County over the last five years have been lost due to economic downturn caused by the current health crisis; and

WHEREAS, Prince George's County, Maryland has been and continues to be severely impacted by the COVID-19 outbreak; and

WHEREAS, the Order of the Governor of the State of Maryland Number 20-05-13-01, issued May 13, 2020, specifically authorized political subdivisions to issue more restrictive orders than issued by the Governor including requiring any businesses, organizations, establishments, or

facilities to close or modify their operations; and/or requiring individuals to remain indoors or to refrain from congregating; and

WHEREAS, the Prince George's County Maryland's available data does not show sufficient downward trend in the number of positive cases, hospitalizations, and deaths, or sufficient increase in necessary testing capacity, to support a re-opening or restart of certain businesses and activities; and

WHEREAS CR-31-2020 authorizes the County Executive to amend the County's emergency declaration; now, therefore

IT IS HEREBY ORDERED, on this 14TH day of May, 2020, that I, Angela D. Alsobrooks, County Executive for Prince George's County, Maryland, hereby proclaim that a Local State of Emergency continues to exist in Prince George's County, Maryland. It is necessary and reasonable to save lives and to protect the public safety and welfare of all Prince Georgians during this pandemic, by controlling and preventing the further spread of COVID- 19, to issue the following orders:

Effective May 15, 2020, beginning 5:00 p.m.:

I. Stay-at-Home Order

A. All persons living in Prince George's County, Maryland are hereby ordered, effective as of 5:00 p.m. on May 15, 2020, to stay in their homes or places of residences ("Homes") except:

1. To conduct or participate in Essential Activities (defined below) or Permitted Outdoor Activities (defined below);
2. Staff and owners of businesses and organizations that are not required to close may travel:
 - a. Between their Homes and those businesses and organizations; and
 - b. To and from customers for the purpose of delivering goods or performing services; and
3. staff and owners of Non-Essential Businesses (defined below) may travel:
 - a. Between their Homes and those Non-Essential Businesses for the purpose of engaging in Minimal Operations; and
 - b. To and from customers for the purpose of delivering goods.

B. As used herein, "Essential Activities" means:

1. Obtaining necessary supplies or services for one's self, family, household members, pets, or livestock, including, without limitation: groceries, supplies for household consumption or use, supplies and equipment needed to work from home, laundry, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence;
2. Engaging in activities essential for the health and safety of one's self, family, household members, pets, or livestock, including such things as seeking medical or behavior health or emergency services, and obtaining medication or medical supplies;
3. Caring for a family member, friend, pet, or livestock in another household or location, including, without limitation, transporting a family member, friend, pet, or livestock animal for essential health and safety activities;
4. Traveling to and from an educational institution for purposes of receiving meals or instructional materials for distance learning;
5. Travel required by a law enforcement officer or court order; or

6. Traveling to and from a Federal, State, or local government building for a necessary purpose.
 - C. As used herein, "Permitted Outdoor Activities" means the following, done in compliance with applicable Maryland State Secretary of Health's Directives, Health Officer Directives, and social distancing guidance published by the Centers for Disease Control and the Maryland Department of Health:
 1. Outdoor exercise activities, such as walking, hiking, running, biking, or individual and small group sports such as golfing, tennis, and similar activities;
 2. Outdoor fitness instruction;
 3. Recreational fishing, hunting, shooting, and archery;
 4. Recreational boating;
 5. Horseback riding; and
 6. Visiting cemeteries
 - D. Except as set forth in Paragraph I.E. of this Order, Non-Essential Businesses (as defined below) shall remain closed to the public.
 - E. Staff and owners may continue to be on-site at Non-Essential Businesses for only the following purposes:
 1. Facilitating remote working (a/k/a/ telework) by other staff;
 2. Maintaining essential property;
 3. Preventing loss of, or damage to property, including without limitation, preventing spoilage of perishable inventory;
 4. Performing essential administrative functions, including without limitation, picking up mail and processing payroll; and
 5. Caring for live animals.
 - F. Non-Essential Businesses are defined as all businesses, organizations, establishments, and facilities that are not part of the critical infrastructure sectors identified by the U.S. Department of Homeland Security, Cybersecurity and Infrastructure Security Agency (currently described at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19> (collectively, "Non-Essential Businesses")
- II. Closure of Certain Specific Businesses, Organizations and Facilities
- A. Senior Centers
 1. All senior citizen activities centers (as defined in Section 10- 501 (i) of the Human Services Article of the Maryland Code) shall remain closed.
 - B. Restaurants and Bars
 1. Restaurants, bars, and other similar establishments that sell food or beverages for consumption on-premises in Prince George's County, Maryland ("Restaurants and Bars") shall remain closed to the general public, except that, in accordance with any social-distancing recommendations of Maryland Department of Health or Prince George's County Health Department, food and beverages may be:
 - a. Sold if such food or beverages are promptly taken from the premises, i.e., on a carry-out or drive-through basis; or
 - b. Delivered to customers off the premises.
 2. This Order does not apply to food or beverage services in health care facilities, which are expressly excluded from the definition of "Restaurants and Bars."

C. Fitness Centers

1. This Executive Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Prince George's County, Maryland ("Fitness Centers").
2. All Fitness Centers shall remain closed to the general public, except that the portion of any Fitness Center that is licensed or otherwise permitted by applicable law, regulation, or order to provide child care services may remain open to the general public for the purpose of continuing to provide such child care services.

D. Theaters

1. Theatres in Prince George's County, Maryland at which live performances occur or motion pictures are shown shall remain closed to the general public.

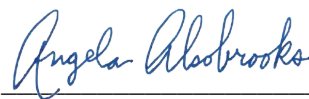
E. Malls

1. This Executive Order controls the occupancy and use of shopping centers in Prince George's County, Maryland that have one or more enclosed pedestrian concourses ("Enclosed Malls").
2. Except as set forth in paragraphs II.E.3 and II.E.4 of this Order, the following portions of Enclosed Malls shall remain closed to the general public:
 - a. Pedestrian concourses and other interior common areas open to the general public, including without limitation, food courts; and
 - b. Retail establishments only accessible to the general public from enclosed pedestrian concourses or other interior areas.
3. Retail establishments attached to Enclosed Malls that are directly accessible from the outside are not required to close.
4. Access to the general public to the following portions of Enclosed Malls is not prohibited:
 - a. That primarily sell groceries or pharmacy products, or
 - b. At which licensed professionals provide health care services; and
 - c. Pedestrian concourses and other interior common areas, but solely to the extent necessary for the general public to access the retail establishments described in this sub-paragraph.

F. Other Recreational Establishments

1. Except for those activities allowed as Permitted Outdoor Activities as defined in paragraph I.C of this Order, "Recreational Establishments" includes:
 - a. Bingo halls;
 - b. Bowling alleys;
 - c. Pool halls;
 - d. Amusement parks;
 - e. Roller- and ice-skating rinks;
 - f. Social and fraternal clubs, including without limitation, American Legion posts, VFW posts, and Elks Clubs;
 - g. Campgrounds; and

- h. Any other establishment not listed above that is subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code.
 - 2. All Recreational Establishments are hereby closed to the general public (including members, in the case of private clubs).
- G. Other Miscellaneous Establishments
 - 1. The following establishments shall remain closed to the general public:
 - a. Tattoo parlors;
 - b. Tanning salons;
 - c. Barbershops; and
 - d. Beauty salons and all other establishments that provide esthetic services, provide hair services, or provide nail services (as described in Title 5 of the Business Occupations Article of the Maryland Code).
- III. Unless specifically allowed pursuant to this Executive Order, social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events ("large gatherings and events") of more than 10 people are hereby prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers. Planned large gatherings and events must be canceled or postponed.
- IV. Grocery stores, pharmacies and large chain retail establishments are required to promote social distancing inside and even outside of these establishments while customers wait to enter the premises.
- V. For avoidance of doubt, this Order does not require the closure of, or prohibit the movement of any staff or volunteer traveling to, from, or in connection with their duties at any:
 - A. Federal, State, or local government unit, building, or facility;
 - B. Newspaper, television, radio, or other media service; or
 - C. Non-profit organization or facility providing essential services to low-income persons, including, without limitation, homeless shelters, food banks, and soup kitchens.
- VI. Unless terminated, extended or amended, Section I of this Executive Order ("Stay at Home"), shall continue through June 1, 2020.
- VII. The remainder of this Executive Order shall remain in effect through June 10, 2020, unless amended or terminated earlier.
- VIII. This Executive Order will be enforced by the Prince George's County Health Department with the assistance of Prince George's County law enforcement as needed.
- IX. If any provision of this Executive Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of the Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are severable.



Angela D. Alsobrooks
County Executive