

CLIENT ALERT

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NEVADA REMAINS OPEN WHILE PAUSING MEASURES TO EXPAND REOPENING: EMERGENCY DIRECTIVE 35 REVIVES SANITIZATION AND SOCIAL DISTANCING REQUIREMENTS

by Gregory R. Gemignani and Caleb Green

Nearly nine months after Governor Sisolak entered the Declaration of State of Emergency due to the COVID-19 pandemic, Nevada, like the rest of the nation, is still grappling with the impact of the coronavirus. After a series of measures that relaxed social distancing requirements in an effort to return the state back to normal operations, Nevada is temporarily increasing safety measures once again. Previously, on September 30, 2020, the Governor issued Nevada Emergency Directive 33 ("Directive 33"), which significantly expanded public gathering limits and permitted large mass gatherings under certain circumstances. However, in response to changes in the number of positive cases throughout the United States, the state of Nevada is reviving certain social distancing requirements.

On November 24, 2020, Nevada Governor Steve Sisolak released Nevada Emergency Directive 035 ("Directive 35"), which expands occupancy limits and existing restrictions to combat the coronavirus's rapid transmission throughout the state. Directive 35, effective as of November 24, 2020, will remain in place for at least three weeks, at which time the Governor stated that he would reevaluate the statewide transmission statistics and decide to extend the Directive or enact more restrictive protocols.

NEVADA EMERGENCY DIRECTIVE 035

In summary, Directive 35 provides the following:

- Expands the existing mask mandate and requires residents and visitors to wear a mask covering at all times when around people not within their immediate household, including private and residential gatherings.
- Food and dining establishments must limit seating to no more than four persons per table.
- Food and dining establishments must require seating via reservations only.
- Limits the following venues and establishments to gatherings no larger than 25% of the fire code occupancy or 50 people, whichever is less:
 - Public Social Gatherings
 - Gaming Establishments
 - Gym, Fitness, Martial Arts, Dance Studios, and similar establishments
 - Arcades, Racetracks, Bowling Alleys, Mini Golf, Amusement & Theme Parks, and similar venues
 - Libraries, museums, art galleries, aquariums, and zoos
- Restricts private residential gatherings to 10 or fewer people from no more than two households.
- This Directive does not change the occupancy limits as set forth in Directive 33 for the following venues and establishments:
 - Offices
 - Indoor Malls
 - Cannabis establishments
 - Hair Salons, Barbershops, Nail salons & Businesses that provide Aesthetic Skin Services
 - Spas, Massage Therapy & Massage Establishments
 - Body Art or Piercing Establishments
 - Community & Recreational Centers, including public pools
- Requires cancellation of all youth and adult sports tournaments previously permitted under Directive 34.

DEFINITION OF GATHERINGS

Consistent with Directive 033, the Directive defines the term "gathering" broadly defining it as "an activity that draws persons to (1) the same space, (2) at the same time, (3) for the same purpose, and (4) for the same duration of time." Such boundaries are characterized by rigid wall structures, separate ownership or property interest, separate ventilation systems, or sufficient distance between adjacent occupied spaces that precludes the intermingling of users in a manner that exceeds the gathering limits as set forth in Directive 35.

Public gathering restrictions apply to, but are not limited to, the following: places of worship, indoor movie theaters, live theater performances, casino showrooms, event venues, trade shows, conferences, conventions, professional seminars, milestone events, weddings, funerals, and similar gathering activities.

ADDITIONAL RESTRICTIONS

Directive 35 also strengthens the existing mask mandate that was introduced through Directive 24. Specifically, Directive 35 requires patrons of food and dining establishments to wear face coverings at all times, except when actively eating. Likewise, gyms, fitness facilities, and related businesses must require all employees, trainers, instructors, and patrons to wear face coverings at all times.

While retail stores and grocery stores will see no change in occupancy limits, the Directive requires that they install "counters" at all public entrances to monitor capacity limits if the establishments contain over 50,000 square feet of publicly accessible retail floor area. Retail establishments are still required to post health screening signage at all public entrances, as provided in Directive 33, and are encouraged to conduct temperature screenings before allowing patrons entry.

In addition, all businesses and gathering venues must post signs at public entrances identifying their COVID-19 capacity limitations imposed by Directives 33 or Directive 35. Lastly, day/night clubs, brothels, and adult establishments must remain closed.

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