

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BILLY GOAT TAVERN 1, INC.,)	
BILLY GOAT MIDWEST, LLC, BILLY)	
GOAT NORTH II, INC., BILLY GOAT)	
VI, INC., BILLY GOAT INN, INC.,)	
BILLY GOAT TAVERN WEST, LLC,)	
all d/b/a BILLY GOAT TAVERN, and all)	No. 20 CV 02068
others similarly situated)	
)	
Plaintiffs,)	
)	
v.)	
)	
SOCIETY INSURANCE)	Honorable Judge Harry D. Leinenweber
)	Magistrate Judge Susan E. Cox
Defendants.)	

**DEFENDANT SOCIETY INSURANCE’S
MOTION FOR SUMMARY JUDGMENT**

NOW COMES, Defendant, SOCIETY INSURANCE (“Society”), by and through its attorneys Thomas B. Underwood, Michael D. Sanders, Michelle A. Miner and Amy E. Frantz of Purcell & Wardrobe, Chtd., and hereby moves for summary judgment on Plaintiffs, BILLY GOAT TAVERN 1, INC., BILLY GOAT MIDWEST, LLC, BILLY GOAT NORTH II, INC., BILLY GOAT VI, INC., BILLY GOAT INN, INC., BILLY GOAT TAVERN WEST, LLC, all d/b/a BILLY GOAT TAVERN’s (collectively Plaintiffs or “Billy Goat”) Complaint pursuant to Federal Rules of Civil Procedure 56(a). In support of said motion, Society states as follows:

1. The threshold issue in this case is a question of law: whether the losses claimed by Plaintiffs fall within the coverage provided by the insurance contract entered into between Plaintiffs and Society. Under Illinois law, which applies to policies issued in Illinois to Illinois businesses, the construction of an insurance policy is a question of law, not fact, and is properly decided by way of summary judgment. *Roman Catholic Diocese of Springfield in Ill. v. Maryland*

Cas. Co., 139 F.3d 561, 565 (7th Cir. 1998); *Commonwealth Edison Co. v. Arch Ins. Co.*, No. 12 C 7698, 2013 WL 3791248, at * 2 (N.D. Ill. July 19, 2013); *Outboard Marine Corp v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 108, 607 N.E.2d 1204 (1992).

2. Plaintiffs’ two count Complaint asserts that as a result of executive orders issued by Illinois Governor J.B. Pritzker related to the COVID-19, six of their eight restaurants have seen a decrease in business.

3. This Court should enter summary judgment in favor of Society and against Plaintiffs. A Covered Cause of Loss under the Society Policy is a “direct physical loss,” and coverage for loss of business income under the Society Policy is limited to that which results from a “direct physical loss of or damage to covered property” at the premises described in the policy. There is no insurance coverage, as a matter of law, under the Society Policy because there has been no “direct physical damage to or loss of covered property” and there has been no Covered Cause of Loss as those terms are defined in the Society Policy and the law.

4. In Illinois, physical loss or damage requires an alteration in the structural integrity or the physical characteristics of the covered property, which has not happened here. *Traveler’s Ins. Co. v. Eljer Mfg., Inc.*, 197 Ill. 2d 278, 301-02, 757 N.E.2d 481 (2001). There are no allegations or evidence that Plaintiffs’ premises have incurred any damage to the structural integrity of their buildings, real estate, or business personal property, or that their property has incurred any physical changes. For example, Plaintiffs do not allege that their covered property has incurred any damage from a fire, tornado, storm damage, or the like.

5. Plaintiffs’ claim of financial loss is, by their own admission, the result of a temporary limitation on their ability to conduct on-site dining at their premises and a decline in revenue. These events do not constitute a physical loss or damage to the property covered under

the policy or a Covered Cause of Loss. Plaintiffs' restaurants have suffered no alteration to their structure, composition, or form. All properties are physically unchanged and undamaged and, in fact, many are being used to prepare and serve food for off-premises enjoyment. As a result, there has been no "Covered Cause of Loss," or "direct physical loss of or damage to covered property at the described premises" as required by the Society Policy, and thus no insurance coverage as a matter of law.

6. Therefore, this Court should enter summary judgment in favor of Society and against Plaintiffs on Count I and Count II of the Plaintiffs' Complaint and should find and declare that there is no insurance coverage for Plaintiffs' claims under the Society Policy.

7. Society adopts and incorporates its Memorandum of Law in support of its motion for summary judgment pursuant to Local Rule 56.1(a)(2) and its Local Rule 56.1(a)(3) statement of material facts, filed contemporaneously herewith.

WHEREFORE, Defendant SOCIETY INSURANCE moves this Court to enter summary judgment in its favor and against Plaintiffs BILLY GOAT TAVERN 1, INC., BILLY GOAT MIDWEST, LLC, BILLY GOAT NORTH II, INC., BILLY GOAT VI, INC., BILLY GOAT INN, INC., BILLY GOAT TAVERN WEST, LLC, all d/b/a BILLY GOAT TAVERN, and to grant Society such other and further relief as this Court deems just.

Date: May 27, 2020

Respectfully submitted,

Society Insurance

By: /s/ Thomas B. Underwood
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Plaintiffs,)	
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v.)	
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SOCIETY INSURANCE)	Honorable Judge Harry D. Leinenweber
)	Magistrate Judge Susan E. Cox
Defendants.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT SOCIETY INSURANCE’S
MOTION FOR SUMMARY JUDGMENT**

There is no insurance coverage under the Society Policy for Plaintiffs’ claims for loss of business income. Plaintiffs allege their businesses have slowed as a result of Illinois Governor J.B. Pritzker’s Executive Orders aimed at curbing the spread of COVID-19. However, those intangible economic claims are not covered as a matter of law under the plain and unambiguous terms of the insurance policy issued by Society.

To obtain “loss of Business Income” coverage under the Society Policy there must be “direct physical loss of or damage to” property at Plaintiffs’ premises that causes a necessary suspension in operations. Plaintiffs did not suspend dine-in operations because of any physical loss of or damage to property at their premises, but because of an external factor: the Executive Orders seeking to limit the spread of COVID-19. Plaintiffs admit that they suspended their operations in compliance with the Governor’s Executive Orders implementing restrictions on the public’s ability to congregate in bars and restaurants. Those orders have nothing to do with

damage or loss to property. The point is to keep people away from one another, not away from damaged property or buildings.

Plaintiffs do not meet the Illinois legal standard for a claim for business income loss based on direct physical loss to covered property. Under Illinois law, a “physical” loss or damage means an alteration to the structure, composition, or form of Plaintiffs’ tangible property. This standard is not met where a business, like Plaintiffs’, suffers only intangible, economic losses. Here, all properties are physically unchanged and undamaged, and, in fact, many are in use, preparing and serving food for off-premises enjoyment. In short, the undisputed facts establish that Plaintiffs’ loss of business income was not caused by a “Covered Cause of Loss,” or “direct physical loss of or damage to covered property at the described premises” as required by the Society Policy.

Therefore, Defendant Society is entitled to summary judgment and a declaration that there is no insurance coverage under the Society Policy for Plaintiffs’ claims

I. SOCIAL DISTANCING EXECUTIVE ORDERS ISSUED BY GOVERNOR PRITZKER.

Illinois Governor J.B. Pritzker, like other governors around the country, entered executive orders that required restaurants to stop providing food and beverages for on-premises consumption in order to enable social distancing and minimize the spread of COVID-19. As a result of Governor Pritzker’s COVID-19 related Executive Orders, Plaintiffs have had to temporarily limit their business to off-premises dining, such as take-out or delivery orders, and have allegedly incurred a loss of income as a result.

Beginning in March, Governor Pritzker, issued several executive orders (collectively, “the Executive Orders”) that are relevant to this litigation. Executive Order 2020-07 was issued on March 16, 2020 (“the March 16 Order”) and states that “COVID-19 is a novel and severe

acute respiratory illness that can spread among people through respiratory transmission.” (Society’s Statement of Material Undisputed Facts (“SOF”) ¶¶ 20-21.) As a result, “social distancing, which consists of maintain [sic] at least a six-foot distance between people, is the paramount strategy for minimizing the spread of COVID-19.” (*Id.* at ¶ 22.) “[T]he number of suspected COVID-19 cases in Illinois is increasing exponentially . . . indicating that drastic social distancing measures are needed.” (*Id.*) Accordingly, it provided:

Section 1. Beginning March 16, 2020 at 9 p.m. through March 30, 2020, all businesses in the State of Illinois that offer food or beverages for on-premise consumption—including restaurants, bars, grocery stores, and food halls—must suspend service for and may not permit on-premises consumption. Such businesses are permitted and encouraged to serve food and beverages so that they may be consumed off-premises, as currently permitted by law, through means such as in-house delivery, third-party delivery, drive-through, and curbside pick-up. In addition, customers may enter the premises to purchase food or beverages for carry out.

(*Id.* at ¶ 23.) The reason for the prohibition of on-premises consumption of food at restaurants, as specified in the March 16 Order, is to reduce the transmission of COVID-19 because public dining “usually involves prolonged close social contact contrary to recommended practice for social distancing.” (*Id.* at ¶ 24.)

Executive Order 2020-10 was issued on March 20, 2020 (“the March 20 Order”). (*Id.* at ¶ 25.) The purpose of the March 20 Order was “for the preservation of public health and safety throughout the entire State of Illinois and to ensure that our healthcare delivery system is capable of serving those who are sick . . . [and] to slow and stop the spread of COVID-19.” (*Id.* at ¶ 27) The March 20 Order required all businesses and operations in the state to cease, with the exception of “Essential Businesses and Operations,” which it “encouraged” to remain open. (*Id.* at ¶¶ 26, 29.) It also prohibited gatherings of more than ten people. (*Id.* at ¶ 26.) “Essential Businesses and Operations” included “[r]estaurants and other facilities that prepare and serve

food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive through, curbside pick-up, and carry-out.” (*Id.* at ¶ 28.) The order further required Illinois residents to “shelter in place” but allowed citizens to leave their homes to perform Essential Activities, including obtaining and delivering food, and to operate Essential Businesses and Operations. (*Id.* at ¶ 31.) Executive Order 2020-18, issued on April 1, 2020 (“April 1 Order”), again recognized that “social distancing, which requires maintaining at least a six-foot distance between people, is a paramount strategy for minimizing the spread of COVID-19 in our communities[,]” and that “drastic social distancing measures are needed[.]” (*Id.* at ¶ 36.)

II. THE SOCIETY POLICY REQUIRES A “DIRECT PHYSICAL LOSS OF OR DAMAGE TO COVERED PROPERTY” FOR THERE TO BE COVERAGE UNDER THE BUSINESS INCOME AND EXTRA EXPENSE ADDITIONAL COVERAGES.

The insurance contract at issue is a Businessowners Policy, with policy number BP17022546-2, between the named Plaintiffs and Society Insurance for the period of August 26, 2019 to August 26, 2020 (“the Society Policy”). The Society Policy is composed of a number of forms; however, the allegations in the Complaint relate to Form TBP2 (05-15), Businessowners Special Property Coverage Form (“the Special Property Coverage Form”).¹ (*Id.* at ¶ 14.)

The Special Property Coverage Form consists of eight parts. Part A. Coverage describes the coverages available under the Special Property Coverage Form and is divided into six numbered sections: 1. Covered Property, 2. Property Not Covered, 3. Covered Causes of Loss, 4. Limitations, 5. Additional Coverages, and 6. Coverage Extensions.

Part A begins:

A. Coverage

¹ All references to the Society Policy should be read as referring to the Businessowners Special Property Coverage Form contained in the Society Policy.

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property includes Buildings as described under Paragraph **a.** below, Business Personal Property as described under Paragraph **b.** below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. . . .

a. Buildings, meaning the buildings and structures at the premises described in the Declarations . . .

b. Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of described premises, including: . . .

(*Id.* at ¶ 15 (emph. added).) The term Covered Cause of Loss is defined in Section 3 of Part A and states:

3. Covered Causes Of Loss

Direct Physical Loss unless the loss is excluded or limited under this coverage form.

(*Id.* at ¶ 16.)

Plaintiffs allege they submitted a claim for Business Income, an Additional Coverage under Section 5, paragraph (g) of Part A. (*Id.* at ¶ 17.) It provides, in pertinent part:

5. Additional Coverages

g. Business Income

(1) Business Income

(a) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your “operations” during the “period of restoration.” The suspension must be caused by a direct physical loss of or damage to covered property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. . . .

(b) We will only pay for loss of Business Income that you sustain during the “period of restoration” and that occurs within 12 consecutive months after the date of direct physical loss or damage.

(*Id.* (emph. added).)

“Period of Restoration” is a defined term under the policy, and refers to the period of time that:

- a. Begins immediately after the time of direct physical loss or damage for Business Income or Extra Expense coverage caused by or resulting from any covered Cause of Loss at the described premises; and
- b. Ends on the earlier of:
 - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

(*Id.* at ¶ 18 (emph. added).)

AS A MATTER OF LAW THERE IS NO COVERAGE UNDER THE SOCIETY POLICY

The only issue in this case is a question of law: whether the losses claimed by Plaintiffs fall within the coverage provided by the Society Policy. The existence of coverage is an essential element of Plaintiffs’ case, and Plaintiffs have the burden of proving their loss falls within the terms of the Society Policy. *Fiorentini v. Paul Revere Life Ins. Co.*, 893 F.3d 476, 480 (7th Cir. 2018) (citing *St. Michael’s Orthodox Catholic Church v. Preferred Risk Mut. Ins. Co.*, 146 Ill. App. 3d 107, 109-110, 496 N.E.2d 1176 (Ill. App. Ct 1986)). The court must construe the policy as a whole “taking into account the type of insurance for which the parties have contracted, the risks undertaken and purchased, the subject matter that is insured and the purposes of the entire contract.” *Westfield Ins. Co. v. Rose Paving Co.*, No. 12 C 40, 2014 WL 866119, at * 2 (N.D. Ill. March 5, 2014) (quoting *Crum & Foster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391, 620 N.E. 2d 1073 (Ill. 1993)). “Insurance policies must be construed and enforced as made by the parties; the courts have no right to make a new contract

for the parties. . . .” *Schewe v. Home Ins. Co.*, 80 Ill. App. 3d 829, 832, 400 N.E. 2d 501 (Ill. App. Ct. 1980). Clear and unambiguous policy terms and provisions must be taken in their plain, ordinary and popular sense. *Medmarc Cas. Ins. Co. v. Avent America, Inc.*, 653 F. Supp. 2d 879, (N.D. Ill. 2009) (citing *Travelers Ins. Co. v. Eljer Mfg., Inc.*, 197 Ill.2d 278, 292-93, 757 N.E.2d 481 (2001)).

I. PLAINTIFFS’ CLAIM WAS NOT THE RESULT OF “PHYSICAL” LOSS OR DAMAGE, NOR WAS IT CAUSED BY A COVERED CAUSE OF LOSS UNDER THE SOCIETY POLICY AS A MATTER OF LAW.

A. A “PHYSICAL” LOSS IS ONE THAT CAUSES A CHANGE IN THE PHYSICAL CHARACTERISTICS OF THE COVERED PROPERTY.

As Plaintiffs admit, the Business Income additional coverage of the Society Policy covers loss of business income sustained due to a suspension of the insured’s operations only if that suspension is caused by a “direct physical loss of or damage to covered property at the described premises.” (Compl. Ex. A at 94, ¶ (g)(1)(a) (emph. added).) Plaintiffs do not have a claim for “direct physical loss of or damage to covered property at the described premises.” Under the plain language of the Society Policy and Illinois law, the term “physical” in the phrases “direct physical loss of or damage to covered property” and “direct physical loss” clearly modifies “loss of or damage to” and “loss.” *Eljer Mfg., Inc.*, 197 Ill. 2d at 301; *see also, Ward Gen’l Ins. Servs., Inc. v. Employer’s Fire Ins. Co.*, 7 Cal. Rptr. 3d 844, 489 (Cal. Ct. App. 2003) (finding that the word “physical” modifies both loss and damage because “[m]ost readers expect the first adjective in a series of nouns or phrases to modify each noun or phrase in the following series unless another adjective appears”).

Under Illinois law, a property sustains a “physical” injury when it “is altered in appearance, shape, color or in other material dimension.” *Eljer Mfg., Inc.*, 197 Ill. 2d at 301. Conversely, intangible damage, such as diminution in value, is not a “physical” injury to

property. *Id.* at 301-02. The same is true in the Seventh Circuit, which requires a change in the physical, as opposed to intangible, characteristics of property to satisfy a “physical” loss requirement. *Windridge of Naperville Condo v. Philadelphia Indem. Ins. Co.*, 932 F.3d 1035, 1040 (7th Cir. 2019) (Illinois law); *see also Advance Cable Co. v. Cincinnati Ins. Co.*, 788 F.3d 743, 747 (7th Cir. 2015) (Wisconsin law). As explained by a leading treatise on insurance law (*Couch on Insurance*): “[t]he requirement that the loss be ‘physical,’ given the ordinary definition of that term, is widely held to exclude losses that are intangible or incorporeal, and, thereby to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.” 10A *Couch On Insurance* § 148.46 (3d Ed. 2019).

The interpretation of “physical” in *Eljer Manufacturing* is also consistent with the decisions of courts across the country that have interpreted the phrase “direct physical loss.” As recently stated by the Southern District of Florida, a “direct physical loss ‘contemplates an actual change in insured property then in a satisfactory state, occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so.’” *Mama Jo’s, Inc. v. Sparta Ins. Co.*, 2018 WL 3412974, at *9 (S.D. Fla. June 11, 2018) (citation omitted). *See also, Ward Gen. Ins. Servs.*, 114 Cal. App. 4th at 556 (“direct physical loss” requires loss of something that “has a material existence, formed out of tangible matter, and is perceptible to the sense of touch”); *Universal Image Prods., Inc. v. Fed. Ins. Co.*, 475 Fed. Appx. 569 (6th Cir. 2012) (requirement of “direct physical loss or damage” not met where presence of bacteria in air conditioning system did not cause tangible damage to insured premises); *Columbiaknit, Inc. v. Affiliated FM Ins. Co.*, No. Civ. 98–434–HU, 1999 WL 619100, at *7 (D.Or. Aug.4, 1999) (exposure of clothing to elevated spore counts was

not “physical loss” in the absence of a “distinct and demonstrable physical change to the garment necessitating some remedial action”); *Mastellone v. Lightning Rod Mut. Ins. Co.*, 175 Ohio App. 3d 23, 884 N.E. 2d 1130, 1144 (Ohio Ct. App. 2008) (holding that mold does not constitute “physical damage” because “[t]he presence of surface mold did not alter or affect the structural integrity of the [property]”).

There has been no alteration in the structure or composition of Plaintiffs’ covered property, and therefore there has been no “direct physical loss of or damage to covered property at the described premises” and no “Covered Cause of Loss” within the meaning of the Society Policy. *Eljer Mfg., Inc.*, 197 Ill. 2d at 301-02. While Plaintiffs allege, in a cursory fashion, that “COVID-19 rendered the covered property at the premises . . . unsafe and inaccessible for dine-in customers” (Compl. ¶ 53), the very Executive Orders relied on by Plaintiffs evidences that it is groups of people, without adequate social distancing, that are unsafe in any location because of COVID-19. (SOF ¶¶ 22, 24, 26, 30.) It is not Plaintiffs’ premises themselves that are unsafe, but the possible threat of transmission among large groups of people within any area. This distinction is demonstrated by the fact that under the March 16 Executive Order, Plaintiffs are allowed, encouraged, and, in fact, are continuing to operate on their premises for the purposes of selling food and beverages for off-premises consumption. (*Id.* at ¶¶ 23, 28) Plaintiffs have presented no evidence or allegations that the structural integrity of any of their restaurants or business personal property have been altered, or their physical characteristics have been changed—the walls remain standing, the roofs have not been torn off, and the property remains untouched by fire or water—and, in fact, the Plaintiffs are still using many of the restaurants for preparing and serving food for takeout and delivery. (*Id.* at ¶ 41.) Consequently, Plaintiffs have not suffered the type of harm covered by the Society Policy, nor have they suffered a harm

resulting from a Covered Cause of Loss. Therefore, there is no coverage under the Society Policy as a matter of law and summary judgment should be granted in Society's favor.

B. THE PARTIAL TEMPORARY LIMITATION OF PLAINTIFFS' OPERATIONS IS NOT A "PHYSICAL" LOSS OR DAMAGE AS A MATTER OF LAW.

Plaintiffs' allegation that Governor Pritzker's Executive Orders have temporarily limited their ability to provide on-site consumption of food and beverages does not, as a matter of law, constitute a "physical" loss or damage. This temporary, partial limitation of business operations is an intangible financial situation, not an alteration in the tangible, physical characteristics of the property. The appearance, shape, structural integrity, nor any other physical characteristic of the property have changed. Rather, Plaintiffs' alleged harm is an intangible change in the available business operations similar to a change in zoning resulting in different hours a business can be open or a temporary suspension of a liquor license.

The only court in Illinois to consider whether a limitation on use constitutes "physical" property damage rejected that proposition. In the context of a third-party liability policy, the court in *Mutlu v. State Farm Fire and Casualty*, denied recovery where the plaintiff sought coverage for the defense and indemnity of a lawsuit that alleged plaintiff deprived other condominium owners in his building of the use of hot water. 337 Ill. App. 3d 420, 423, 785 N.E. 2d 951 (Ill. App. Ct. 2003). The policy at issue insured against liability for property damage, defined as "physical damage to or destruction of tangible property, including loss of use." *Id.* at 426. The court found that under the Illinois Supreme Court's decision in *Eljer Manufacturing*, the loss of use of hot water did not constitute "physical" damage, and held that there was no coverage for loss of use of tangible property unless physical damage or destruction was also shown. *Id.* at 431.

Mutlu is consistent with the opinions of sister courts that have held a mere temporary change or limitation on the use of the insured premises or property, unaccompanied by a physical alteration of the property, does not constitute physical loss or damage under first-party property insurance policies. In *Roundabout Theatre Company v. Continental Casualty*, for example, the Appellate Division of the Supreme Court of New York held there was no “direct physical loss or damage” under an insurance policy where a plaintiff theater company lost all access to its premises due to a municipal order that closed the street the theater was located on. 302 A.D.2d 1 (N.Y. App. Div. 2002). The order was issued as a result of a construction accident on a nearby property, but the premises of the theater did not sustain any physical damage. *Id.* at 3. The street was closed for nearly a month “because of the substantial damage to the area and the danger from the partially collapsed scaffold.” *Id.* As a result, the theater was completely inaccessible to the public and forced to cancel all performances. *Id.* The court rejected the plaintiff’s argument that “loss” should be read as including “loss of use” and held the policy unambiguously required direct physical damage to the theater itself for coverage. *Id.* at 7; *see also, Newman Myers Kreines Gross Harris, P.C. v. Great Northern Ins. Co.*, 17 F. Supp. 3d 323, 331 (S.D.N.Y. 2014) (finding that the words “direct” and “physical” require “actual, demonstrable harm of some form to the premises itself, rather than forced closure of the premises for reasons exogenous to the premises themselves”) (emph. added).

The Eighth Circuit reached the same conclusion in *Pentair v. American Guarantee and Liability Insurance*, holding the mere loss of use and function of a factory was not a direct physical loss, where a factory in Taiwan was shut down due to an earthquake that disabled the electrical substation powering the factory. 400 F.3d 613 (8th Cir. 2005). Although the factory itself did not suffer any physical harm, it was unable to operate without power and the plaintiff

sought to recover losses and extra expenses caused by the shutdown. *Id.* at 614. The insuring agreement provided coverage for “all risk of direct physical loss of or damage to” the property described in the agreement. *Id.* at 614. The court held that even though the factory could not perform its intended function, the mere loss of use or function did not constitute “direct physical loss or damage.” *Id.* at 615.

The Eighth Circuit subsequently held a United States Department of Agriculture embargo on imports of beef from Canada due to mad cow disease was not a direct physical loss. *Source Food Tech. v. U.S. Fid. and Guaranty*, 465 F.3d 834, 835 (8th Cir. 2006). The plaintiff owned a load of beef product that had been manufactured, packaged, and loaded onto a truck by its supplier in Canada. *Id.* Although there was no evidence that the plaintiff’s beef product was contaminated by mad cow disease, the plaintiff contended that the loss of use, function, and access to it constituted a “direct physical loss” under the terms of its policy. *Id.* at 835-36. The court held that because the property, namely the beef product, was not physically damaged or contaminated, the plaintiff had failed to establish a direct physical loss. *Id.* at 837-38.

Courts have also found that reduced consumer demand resulting from a limitation on an insured’s business operations at the insured premises due to a governmental order is not a “direct loss.” *Brothers Inc. v. Liberty Mut. Fire Ins. Co.*, 268 A.2d 611 (D.C. 1970). In *Brothers*, the local government imposed a 5:30 p.m. curfew and prohibited the sale of alcoholic beverages in response to riots following the assassination of Martin Luther King, Jr. *Id.* at 611-12. The insured’s policy covered “direct” losses to covered property from riot and civil commotion; however, the Court held that the policy did not provide coverage for the plaintiff’s claims because the “business ‘falloff’” resulting from the inability to conduct business on its premises

after 5:30 p.m. was not a “direct” loss by a riot. *Id.* at 613. Rather, the court found that “[a]t the most, the loss incurred here was an indirect, if not remote loss resulting from riots.” *Id.*

The phrase “direct physical loss” requires more than what Plaintiffs have alleged here: a temporary and partial limitation of operations at its premises. Such a claim is insufficient to bring it within the express terms of the insurance contract between the parties. “Direct physical loss” requires damage to the structural integrity of Plaintiffs’ restaurants. Such is not the case here where Plaintiffs’ restaurants have sustained no tangible change in their physical structure or composition. Plaintiffs continue to operate their businesses as intended, as a restaurant, with their operations temporarily limited to take-out and delivery. Therefore, as a matter of law there is no coverage under the Society Policy.

C. THE PERIOD OF RESTORATION CLAUSE IS FURTHER EVIDENCE THAT “PHYSICAL” LOSS OR DAMAGE REQUIRES A TANGIBLE CHANGE IN THE PHYSICAL CHARACTERISTICS OF PROPERTY.

The fact that the Business Income Additional Coverage of the Society Policy “will only pay for loss of Business Income that [the policyholders] sustain[s] during the ‘period of restoration’” further demonstrates the meaning of the requirement of “physical” loss or damage. Under the policy definition, the “period of restoration” begins with the “direct physical loss or damage,” and ends on the earlier of “the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality” or “when business is resumed at a new permanent location.” (SOF at ¶ 18.)

This Court is to construe the policy as a whole and give meaning to each provision. *Eljer Mfg., Inc.*, 197 Ill. 2d at 292. The definition of “period of restoration” provides additional context to the intended meaning of “physical loss or damage” as used in the Society Policy. Read together, it is clear the phrase “physical loss of or damage to” does not encompass a

temporary limitation on use, without more. Rather, it refers to a loss or damage that requires the repair, rebuilding, or replacement of the property. *See, e.g., Newman Myers*, 17 F. Supp. 3d at 332 (explaining that use of “repair” and “replace” in period of restoration clause “contemplates physical damage to the insured premises as opposed to loss of use of it”); *Roundabout Theatre*, 302 A.D.2d at 8 (same). Providing coverage for a period of restoration where there is no need for restoration because the property has not been physically altered would lead to an absurd result and must not be adopted. *U.S. Fire Ins. Co. v. Hartford Ins. Co.*, 726 N.E.2d 126, 128 (Ill. Ct. App. 2000) (“A strained, forced, unnatural or unreasonable construction [of an insurance policy], or one which would lead to an absurd result, must not be adopted.”).

Here, there is no “period of restoration” because there is nothing on the Plaintiffs’ premises that needs to be repaired, rebuilt, or replaced and no reason for Plaintiffs to move their businesses to a new location. The facts establish the very opposite of this requirement – that Plaintiffs continue to use their restaurants to prepare and serve take-out and delivery. (SOF ¶ 41.) To allow for losses that do not require repair, rebuilding, or replacement would impermissibly render the period of restoration provision meaningless. As further demonstrated by these additional requirements for the coverage Plaintiffs seek, there is no genuine issue of material fact regarding the cause of Plaintiffs’ reduction in business, and the cause of Plaintiffs’ reduction in business does not constitute “physical loss or damage” to the described premises or a Covered Cause of Loss as defined in the Society Policy. As a result, summary judgment should be entered in Society’s favor on both counts of the Complaint.

CONCLUSION

WHEREFORE, the Defendant, Society Insurance, respectfully requests that this Honorable Court enter an order granting summary judgment in its favor and against Plaintiffs as to the Plaintiffs’ Complaint in its entirety; declaring there is no coverage for Plaintiffs’ claims

under the Society Policy; and granting Society such other and further relief as this Court deems just.

Date: May 27, 2020

Respectfully submitted,

Society Insurance

By: /s/ Thomas B. Underwood

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BILLY GOAT TAVERN 1, INC.,)	
BILLY GOAT MIDWEST, LLC, BILLY)	
GOAT NORTH II, INC., BILLY GOAT)	
VI, INC., BILLY GOAT INN, INC.,)	
BILLY GOAT TAVERN WEST, LLC,)	
all d/b/a BILLY GOAT TAVERN, and all)	No. 20 CV 02068
others similarly situated)	
)	
Plaintiffs,)	
)	
v.)	
)	
SOCIETY INSURANCE)	Honorable Judge Harry D. Leinenweber
)	Magistrate Judge Susan E. Cox
Defendants.)	

**DEFENDANT SOCIETY INSURANCE’S LOCAL RULE 56.1 STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Defendant Society Insurance, by and through its attorneys Thomas B. Underwood, Michael D. Sanders, Michelle A. Miner and Amy E. Frantz of Purcell & Wardrope, Chtd., submits this statement of undisputed material facts.

Description Of The Parties

1. Plaintiff, Billy Goat Tavern I, Inc., is an Illinois corporation with its principal place of business at 430 North Michigan Avenue, Chicago, Illinois 60611. (Compl. ¶ 3.)

2. Plaintiff, Billy Goat Midwest, LLC, is an Illinois limited liability company with its principal place of business at 60 East Lake Street, Chicago, Illinois 60601. Billy Goat Midwest, LLC’s members are Basilios Sianis, Athanasios Sianis, Apostolos Sianis, Theofanis Sianis and Eygenia Constantinou—all of whom are Illinois citizens. (*Id.* at ¶ 4.)

3. Plaintiff, Billy Goat North II, Inc., is an Illinois corporation with its principal place of business at Navy Pier, 700 East Grand Avenue, Chicago, Illinois 60601. (*Id.* at ¶ 5.)

4. Plaintiff, Billy Goat North VI, Inc., is an Illinois corporation with its principal place of business at the Merchandise Mart, 222 Merchandise Mart, Number Fc-2, Chicago Illinois, 60654. (*Id.* at ¶ 6.)

5. Plaintiff, Billy Goat Inn, Inc., is an Illinois corporation with its principal place of business at 1535 West Madison Street, Chicago, Illinois 60607. (*Id.* at ¶ 7.)

6. Plaintiff, Billy Goat Tavern West, LLC, is an Illinois limited liability company with its principal place of business at 203 Yorktown Center, Lombard, Illinois 60148. Billy Goat Tavern West, LLC’s members are Basilios Sianis, Athanasios Sianis, Apostolos Sianis, Theofanis Sianis and Eygenia Constantinou—all of whom are Illinois citizens. (*Id.* at. ¶ 8.)

7. At all times mentioned herein, Plaintiffs, collectively doing business as “Billy Goat Tavern,” operated eight restaurants within the State of Illinois, including but not limited to:

Billy Goat Tavern Michigan Ave.
430 N. Michigan Ave.
Chicago, IL 60611

Billy Goat Tavern Lake Street
60 E. Lake St.
Chicago, IL 60601

Billy Goat Tavern Navy Pier
700 E. Grand Ave.
Chicago, IL 60611

Billy Goat Inn
1535 W. Madison St.
Chicago, IL 60607

Billy Goat Tavern Merchandise Mart
222 Merchandise Mart, # Fc-2
Chicago, IL 60654

Billy Goat Tavern Yorktown

Yorktown Center Food Court
203 Yorktown Center
Lombard, IL 60148

(*Id.* at ¶ 9.)

8. Defendant, Society Insurance, is a mutual insurance company organized under the laws of the State of Wisconsin, with its principal place of business in Fond du Lac, Wisconsin. (*Id.* at ¶ 10.)

9. At all times mentioned herein, Defendant, Society Insurance, was licensed to do business in the State of Illinois, selling property and casualty insurance policies to bars, restaurants, caterers, banquet halls, and other hospitality businesses. (*Id.* at ¶ 11.)

Jurisdiction and Venue

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(1) because there is complete diversity among the parties, and the alleged amount in controversy exceeds \$75,000.00 exclusive of interest and costs. (*Id.* at ¶ 13.)

11. This Court has personal jurisdiction over Society Insurance pursuant to Illinois' long-arm statute, 735 ILCS 5/2-209, because this complaint concerns: (1) one or more contracts Society made to insure property and/or risk in Illinois, (2) business that Society transacted within Illinois, and (3) one or more contracts and/or promises Society made that are substantially connected with Illinois. 735 ILCS 5/2-209(a)(1), (4), (7). (*Id.* at ¶ 14.)

12. Venue is appropriate because “a substantial part of the events or omissions giving rise to the claim[s] occurred” in the Northern District of Illinois and Society “resides” in the Northern District of Illinois. 28 U.S.C. § 1391. (*Id.* at ¶ 16.)

Undisputed Material Facts

13. The Billy Goat Plaintiffs and Society Insurance entered into a Businessowners Policy insurance contract with policy number BP17022546-2 for the period of August 26, 2019 to August 26, 2020 (“the Society Policy”). A copy of the Society Policy is attached as Exhibit A to Plaintiffs’ Complaint. (Doc. 1-1.)

14. The Society Policy contains Form TBP2 (05-15), Businessowners Special Property Coverage Form. (*Id.* at ¶¶ 31-36, Ex. A).

15. Part A of the Special Property Coverage Form is the section that provides and defines the coverage available.

Part A begins:

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property includes Buildings as described under Paragraph **a.** below, Business Personal Property as described under Paragraph **b.** below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. . . .

a. Buildings, meaning the buildings and structures at the premises described in the Declarations . . .

b. Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of described premises, including: . . .

(Compl., Ex. A at 90, ¶ A (1).)

16. The term Covered Cause of Loss is defined in Section 3 of Part A and states:

3. Covered Causes Of Loss

Direct Physical Loss unless the loss is excluded or limited under this coverage form.

(*Id.* at 91.)

17. Plaintiffs' Complaint alleges they submitted a claim for Business Income, an Additional Coverage, which is contained in Section 5, paragraph (g) of Part A. It provides, in pertinent part:

5. Additional Coverages

g. Business Income

(1) Business Income

- (a) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration." The suspension must be caused by a direct physical loss of or damage to covered property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. . . .
- (b) We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months after the date of direct physical loss or damage.

(*Id.* at 94.)

18. "Period of Restoration" refers to the period of time that:

- a. Begins immediately after the time of direct physical loss or damage for Business Income or Extra Expense coverage caused by or resulting from any covered Cause of Loss at the described premises; and
- b. Ends on the earlier of:
 - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

(*Id.* at 120, ¶ 12.)

19. The novel coronavirus, COVID-19, is a virus that has spread across the United States. (Compl. ¶ 18.)

20. On March 16, 2020, Illinois Governor issued Executive Order 2020-07 (“the March 16 Order.”) A copy the March 16 Executive Order is attached as Exhibit 1.

21. The March 16 Order states that “COVID-19 is a novel and severe acute respiratory illness that can spread among people through respiratory transmission.” (Ex. 1 at 1.)

22. The March 16 Order further states that “social distancing, which consists of maintain [sic] at least a six-foot distance between people, is the paramount strategy for minimizing the spread of COVID-19.” It goes on to say, “[T]he number of suspected COVID-19 cases in Illinois is increasing exponentially . . . indicating that drastic social distancing measures are needed.” (*Id.* at 1-2.)

23. The March 16 Order provides that, beginning March 16, 2020 at 9 p.m., restaurant and bars “must suspend service for and may not permit on-premises consumption. Such businesses are permitted and encouraged to serve food and beverages so that they may be consumed off-premises, as currently permitted by law, through means such as in-house delivery, third-party delivery, drive-through, and curbside pick-up. In addition, customers may enter the premises to purchase food or beverages for carry out.” (*Id.*)

24. The reason for the prohibition of on-premises consumption of food at restaurants, as set forth in the March 16 Order, is because such public dining “usually involves prolonged close social contact contrary to recommended practice for social distancing.” (*Id.* at 1.)

25. On March 20, 2020 Governor Pritzker issued an executive order (“March 20 Order”). A copy of the March 20 Order is attached as Exhibit 2.

26. The March 20 Order required all businesses and operations in the state to cease, with the exception of “Essential Businesses,” and prohibited gatherings of more than ten people. (Ex. 2, at 2, ¶¶ 2-3.)

27. The March 20 Order states that it was entered into “for the preservation of public health and safety throughout the entire State of Illinois and to ensure that our healthcare delivery system is capable of serving those who are sick . . . [and] to slow and stop the spread of COVID-19.” (Ex. 2 at 1.)

28. Essential Businesses under the March 20 Order include “[r]estaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive through, curbside pick-up, and carry-out.” (*Id.* at 6-7, ¶12(1).)

29. Essential Businesses were encouraged to remain open. (*Id.* at 2, ¶ 2.)

30. The March 20 Order requires Essential Businesses, to the greatest extent feasible, to “comply with Social Distancing Requirements as defined in this Executive Order, including by maintaining six-foot social distancing for both employees and members of the public at all times.” (*Id.* at p. 2, ¶ 2.)

31. Individuals were allowed to leave their homes for “Essential Activities” and obtaining and delivering food are “Essential Activities” under the March 20 Order. (*Id.* at p. 2, ¶ 5(b).)

32. Attached as Exhibit 4 is a copy of a document entitled Illinois Liquor Control Commission March 31 COVID-19: Compliance Directive.

33. The Illinois Liquor Control Commission interpreted Governor Pritzker’s orders as allowing bars and taverns to receive the delivery of beer, wine, and liquor from wholesalers, and, if allowed by local ordinance, to sell and deliver alcohol for off-premises consumption as long as they follow the appropriate social-distancing guidelines. (*Id.*)

34. Attached as Exhibit 5 is a document issued by the Chicago Department of Business Affairs and Consumer Protection (“BACP”).

35. The BACP guidance provided that holders of a license for consumption on premises-incidental activity as well as holders of a tavern liquor license can sell and deliver incidental packaged goods liquor. (*Id.*)

36. On April 1, Governor Pritzker executed Executive Order 2020-18 (“April 1 Order”), a copy of which is attached as Exhibit 3.

37. Plaintiffs claim to have suspended all dine-in operations at six of their eight restaurants beginning on March 16 as a result of the Executive Orders. (Compl. ¶ 38.)

38. Plaintiffs are not making a claim regarding their Midway or O’Hare restaurants. (*Id.* at ¶ 9.)

39. Plaintiffs’ restaurants at Midway and O’Hare continue to serve food and beverages.

40. Attached as Exhibit 6 is an image captured from www.billygoattavern.com on April 24, 2020.

41. Three of Plaintiffs’ locations—Michigan Avenue, Madison Street, and Lake Street—are currently operating for pickup and delivery. (Ex. 6.)

42. Plaintiffs made a claim for loss of business income under the Society Policy on March 16, 2020, which was denied by Society on March 20, 2020. (Compl. at ¶¶ 55-56.)

Date: May 27, 2020

Respectfully submitted,

Society Insurance

By: /s/ Thomas B. Underwood
Counsel for Defendant

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FILED
INDEX DEPARTMENT
MAR 16 2020
IN THE OFFICE OF
SECRETARY OF STATE

March 16, 2020

Executive Order 2020 – 07

EXECUTIVE ORDER IN RESPONSE TO COVID-19
(COVID-19 EXECUTIVE ORDER NO. 5)

WHEREAS, in late 2019, a new and significant outbreak of Coronavirus Disease 2019 (COVID-19) emerged; and,

WHEREAS, COVID-19 is a novel severe acute respiratory illness that can spread among people through respiratory transmissions and present with symptoms similar to those of influenza; and,

WHEREAS, certain populations are at higher risk of experiencing more severe illness as a result of COVID-19, including older adults and people who have serious chronic medical conditions such as heart disease, diabetes, or lung disease; and,

WHEREAS, despite efforts to contain COVID-19, the World Health Organization and the Centers for Disease Control (CDC) indicate that it is expected to spread; and,

WHEREAS, in communities with confirmed COVID-19 cases, the CDC currently recommends mitigation measures, including practicing social distancing, staying at home when sick, staying home when a household member is sick with respiratory disease symptoms or when instructed to do so by public health officials or a health care provider, and keeping away from others who are sick; and,

WHEREAS, the CDC currently recommends the cancellation or postponement of in-person events that consist of 50 people or more; and,

WHEREAS, social distancing, which consists of maintain at least a six-foot distance between people, is the paramount strategy for minimizing the spread of COVID-19 in our communities; and,

WHEREAS, the Illinois Department of Public Health recommends Illinois residents avoid group dining in public settings, such as in bars and restaurants, which usually involves prolonged close social contact contrary to recommended practice for social distancing; and,

WHEREAS, frequently used surfaces in public settings, including bars and restaurants, if not cleaned and disinfected frequently and properly, also pose a risk of exposure; and,

WHEREAS, current testing availability has identified further spread of confirmed cases throughout the State of Illinois, and it is expected that increased testing capacity would demonstrate that COVID-19 is circulating in communities across Illinois that currently have not identified a confirmed case; and,

WHEREAS, the number of suspected COVID-19 cases in Illinois is increasing exponentially and across more locations in Illinois, indicating that drastic social distancing measures are needed, even in communities where confirmed cases have not yet been identified, to reduce the number of people who become sick at any given time and the possibility of exhausting our health care resources; and,

WHEREAS, the ongoing spread of COVID-19 and the danger the virus poses to the public's health and wellness require the reduction of on-premises consumption of food and beverages; and

WHEREAS, State agencies have been directed to temporarily reduce activities and workforce to core mission functions and essential operations, encouraging working remotely where possible; and,

WHEREAS, the Liquor Control Act of 1934, 235 ILCS 5, "shall be liberally construed, to the end that the health, safety, and welfare of the People of the State of Illinois shall be protected"; and,

WHEREAS, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area on March 9, 2020 ("Gubernatorial Disaster Proclamation"); and,

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

WHEREAS, it is necessary and appropriate for the State of Illinois to immediately take measures to protect the public's health in response to this COVID-19 outbreak;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, and pursuant to Sections 7(1), 7(2), 7(3), and 7(8) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, I hereby order the following:

Section 1. Beginning March 16, 2020 at 9 p.m. through March 30, 2020, all businesses in the State of Illinois that offer food or beverages for on-premises consumption—including restaurants, bars, grocery stores, and food halls—must suspend service for and may not permit on-premises consumption. Such businesses are permitted and encouraged to serve food and beverages so that they may be consumed off-premises, as currently permitted by law, through means such as in-house delivery, third-party delivery, drive-through, and curbside pick-up. In addition, customers may enter the premises to purchase food or beverages for carry-out. However, establishments offering food or beverages for carry-out, including food trucks, must ensure that they have an environment where patrons maintain adequate social distancing. Businesses located in airports, hospitals, and dining halls in colleges and universities are exempt from the requirements of this Executive Order. Hotel restaurants may continue to provide room service and carry-out. Catering services may continue.

Section 2. Beginning March 18, 2020, all public and private gatherings in the State of Illinois of 50 people or more are prohibited for the duration of the Gubernatorial Disaster Proclamation. A public or private gathering includes community, civic, public leisure, faith-based events, sporting events with spectators, concerts, conventions, and any similar event or activity that brings together 50 or more people in a single room or a single space at the same time. This includes venues such as fitness centers/health clubs, bowling alleys, private clubs, and theatres. This does not include venues that provide essential goods or services such as grocery stores, hospitals, pharmacies, gas stations, banks/credit unions, and shelters. This order amends Section 1 of EO 2020-04, which prohibited gatherings of 1,000 people or more.

FILED
INDEX DEPARTMENT
MAR 16 2020
IN THE OFFICE OF
SECRETARY OF STATE

Section 3. Pursuant to Sections 7(2) and 7(3) of the Illinois Emergency Management Act, the Illinois State Police, the Illinois Department of Public Health, the State Fire Marshal, and the Illinois Liquor Control Commission are directed to cooperate with one another and to use available resources to enforce the provisions of this Executive Order with respect to entities under their jurisdiction under Illinois law.

Section 4. Nothing in this Executive Order shall amend or supersede the authority of the Illinois Department of Public Health pursuant to Section 2310-15 of the Department of Public Health Powers and Duties Law, 20 ILCS 2310/2310-15.

Section 5. During the duration of the Gubernatorial Disaster Proclamation, the provision of the Unemployment Insurance Act, 820 ILCS 405/500(D), requiring a one-week waiting period for unemployment insurance claims is suspended for claimants who are unemployed and who are otherwise eligible for unemployment insurance benefits.

Section 6. During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended. Public bodies are encouraged to postpone consideration of public business where possible. When a meeting is necessary, public bodies are encouraged to provide video, audio, and/or telephonic access to meetings to ensure members of the public may monitor the meeting, and to update their websites and social media feeds to keep the public fully apprised of any modifications to their meeting schedules or the format of their meetings due to COVID-19, as well their activities relating to COVID-19.



JB Pritzker, Governor

Issued by the Governor March 16, 2020
Filed by the Secretary of State March 16, 2020

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MAR 16 2020
IN THE OFFICE OF
SECRETARY OF STATE



March 20, 2020

Executive Order 2020-10

EXECUTIVE ORDER IN RESPONSE TO COVID-19
(COVID-19 EXECUTIVE ORDER NO. 8)

WHEREAS, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area on March 9, 2020 (Gubernatorial Disaster Proclamation) in response to the outbreak of Coronavirus Disease 2019 (COVID-19); and,

WHEREAS, in a short period of time, COVID-19 has rapidly spread throughout Illinois, necessitating updated and more stringent guidance from federal, state, and local public health officials; and,

WHEREAS, for the preservation of public health and safety throughout the entire State of Illinois, and to ensure that our healthcare delivery system is capable of serving those who are sick, I find it necessary to take additional measures consistent with public health guidance to slow and stop the spread of COVID-19;

WHEREAS, COVID-19 has resulted in significant economic impact, including loss of income and wages, that threaten to undermine housing security and stability;

WHEREAS, the enforcement of eviction orders for residential premises is contrary to the interest of preserving public health and ensuring that individuals remain in their homes during this public health emergency;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, and pursuant to Sections 7(1), 7(2), 7(8), 7(10), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, and consistent with the powers in public health laws, I hereby order the following, effective March 21, 2020 at 5:00 pm and for the remainder of the duration of the Gubernatorial Disaster Proclamation, which currently extends through April 7, 2020:

Section 1. Stay at Home; Social Distancing Requirements; and Essential Businesses and Operations

1. **Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Illinois are ordered to stay at home or at their place of residence except as allowed in this Executive Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible maintain social distancing of at least six feet from any other person, consistent with the Social Distancing Requirements set forth in this Executive Order. All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations, all as defined below.

Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make

such shelter available as soon as possible and to the maximum extent practicable (and to use in their operation COVID-19 risk mitigation practices recommended by the U.S. Centers for Disease Control and Prevention (CDC) and the Illinois Department of Public Health (IDPH)). Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

2. **Non-essential business and operations must cease.** All businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).

All Essential Businesses and Operations are encouraged to remain open. To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in this Executive Order, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line.

3. **Prohibited activities.** All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes permitted by this Executive Order. Pursuant to current guidance from the CDC, any gathering of more than ten people is prohibited unless exempted by this Executive Order. Nothing in this Executive Order prohibits the gathering of members of a household or residence.

All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, museums, arcades, fairs, children's play centers, playgrounds, funplexes, theme parks, bowling alleys, movie and other theaters, concert and music halls, and country clubs or social clubs shall be closed to the public.

This Executive Order supersedes Section 2 of Executive Order 2020-07 (COVID-19 Executive Order No. 5), which prohibited gatherings of 50 people or more.

4. **Prohibited and permitted travel.** All travel, including, but not limited to, travel by automobile, motorcycle, scooter, bicycle, train, plane, or public transit, except Essential Travel and Essential Activities as defined herein, is prohibited. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into or out of the State to maintain Essential Businesses and Operations and Minimum Basic Operations.
5. **Leaving the home for essential activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities:
 - a. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.
 - b. **For necessary supplies and services.** To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need

to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.

- c. **For outdoor activity.** To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined below, such as, by way of example and without limitation, walking, hiking, running, or biking. Individuals may go to public parks and open outdoor recreation areas. However, playgrounds may increase spread of COVID-19, and therefore shall be closed.
 - d. **For certain types of work.** To perform work providing essential products and services at Essential Businesses or Operations (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.
 - e. **To take care of others.** To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order.
6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. Nothing in this Executive Order prevents the Illinois Department of Public Health or local public health departments from issuing and enforcing isolation and quarantine orders pursuant to the Department of Public Health Act, 20 ILCS 2305.
7. **Healthcare and Public Health Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services through Healthcare and Public Health Operations.

Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; licensed medical cannabis dispensaries and licensed cannabis cultivation centers; reproductive health care providers; eye care centers, including those that sell glasses and contact lenses; home healthcare services providers; mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

Healthcare and Public Health Operations also includes veterinary care and all healthcare services provided to animals.

Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. Healthcare and Public Health Operations does not include fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities.

8. **Human Services Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services at any Human Services Operations, including any provider funded by the Illinois Department of Human Services, Illinois Department of Children and Family Services, or Medicaid that is providing services to the public and including state-operated, institutional, or community-based settings providing human services to the public.

Human Services Operations includes, but is not limited to: long-term care facilities; all entities licensed pursuant to the Child Care Act, 225 ILCS 10, except for day care centers, day care homes, group day care homes, and day care centers licensed as specified in Section 12(s) of this Executive Order; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

9. **Essential Infrastructure.** For purposes of this Executive Order, individuals may leave their residence to provide any services or perform any work necessary to offer, provision, operate, maintain and repair Essential Infrastructure.

Essential Infrastructure includes, but is not limited to: food production, distribution, and sale; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, and housing construction); building management and maintenance; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

10. **Essential Governmental Functions.** For purposes of this Executive Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support Essential Businesses and Operations are categorically exempt from this Executive Order.

Essential Government Functions means all services provided by the State or any municipal, township, county, subdivision or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Government Functions. Each government body shall determine its Essential Governmental Functions and identify employees and/or contractors necessary to the performance of those functions.

This Executive Order does not apply to the United States government. Nothing in this Executive Order shall prohibit any individual from performing or accessing Essential Governmental Functions.

11. **Businesses covered by this Executive Order.** For the purposes of this Executive Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.
12. **Essential Businesses and Operations.** For the purposes of this Executive Order, Essential Businesses and Operations means Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:¹
 - a. **Stores that sell groceries and medicine.** Grocery stores, pharmacies, certified farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, alcoholic and non-alcoholic beverages, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations;
 - b. **Food, beverage, and cannabis production and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; licensed medical and adult use cannabis dispensaries and licensed cannabis cultivation centers; and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities;
 - c. **Organizations that provide charitable and social services.** Businesses and religious and secular nonprofit organizations, including food banks, when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities;
 - d. **Media.** Newspapers, television, radio, and other media services;
 - e. **Gas stations and businesses needed for transportation.** Gas stations and auto-supply, auto-repair, and related facilities and bicycle shops and related facilities;
 - f. **Financial institutions.** Banks, currency exchanges, consumer lenders, including but not limited, to payday lenders, pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products;
 - g. **Hardware and supply stores.** Hardware stores and businesses that sell electrical, plumbing, and heating material;

¹ On March 19, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, issued a *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*. The definition of Essential Businesses and Operations in this Order is meant to encompass the workers identified in that Memorandum.

- h. **Critical trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;
- i. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods or services to end users or through commercial channels;
- j. **Educational institutions.** Educational institutions—including public and private pre-K-12 schools, colleges, and universities—for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible. This Executive Order is consistent with and does not amend or supersede Executive Order 2020-05 (COVID-19 Executive Order No. 3) or Executive Order 2020-06 (COVID-19 Executive Order No. 4) except that affected schools are ordered closed through April 7, 2020;
- k. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers;
- l. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Executive Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property. This Executive Order is consistent with and does not amend or supersede Section 1 of Executive Order 2020-07 (COVID-19 Executive Order No. 5) except that Section 1 is ordered to be extended through April 7, 2020;
- m. **Supplies to work from home.** Businesses that sell, manufacture, or supply products needed for people to work from home;
- n. **Supplies for Essential Businesses and Operations.** Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;
- o. **Transportation.** Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Executive Order;

- p. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery;
 - q. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;
 - r. **Professional services.** Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services);
 - s. **Day care centers for employees exempted by this Executive Order.** Day care centers granted an emergency license pursuant to Title 89, Section 407.400 of the Illinois Administrative Code, governing Emergency Day Care Programs for children of employees exempted by this Executive Order to work as permitted. The licensing requirements for day care homes pursuant to Section 4 of the Child Care Act, 225 ILCS 10/4, are hereby suspended for family homes that receive up to 6 children for the duration of the Gubernatorial Disaster Proclamation.
 - t. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations.
 - u. **Critical labor union functions.** Labor Union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations – provided that these checks should be done by telephone or remotely where possible.
 - v. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services.
 - w. **Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services.
13. **Minimum Basic Operations.** For the purposes of this Executive Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:
- a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
 - b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
14. **Essential Travel.** For the purposes of this Executive Order, Essential Travel includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.

- a. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.
- b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
- c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
- d. Travel to return to a place of residence from outside the jurisdiction.
- e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement.
- f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

15. **Social Distancing Requirements.** For purposes of this Executive Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

- a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:
 - i. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
 - ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;
 - iii. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and
 - iv. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

16. **Intent of this Executive Order.** The intent of this Executive Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Executive Order should be interpreted to effectuate this intent.

17. **Enforcement.** This Executive Order may be enforced by State and local law enforcement pursuant to, *inter alia*, Section 7, Section 18, and Section 19 of the Illinois Emergency Management Agency Act, 20 ILCS 3305.

18. **No limitation on authority.** Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing the State or any county, or local government

body from ordering (1) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency, or (2) any closer of a specific location for a limited period of time, including the duration of this public health emergency. Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing a county or local government body to enact provisions that are stricter than those in this Executive Order.

Section 2. Order ceasing evictions.

Pursuant to the Illinois Emergency Management Agency Act, 20 ILCS 3305/7(2), (8), and (10), all state, county, and local law enforcement officers in the State of Illinois are instructed to cease enforcement of orders of eviction for residential premises for the duration of the Gubernatorial Disaster Proclamation. No provision contained in this Executive Order shall be construed as relieving any individual of the obligation to pay rent, to make mortgage payments, or to comply with any other obligation that an individual may have under tenancy or mortgage.

Section 3. Savings clause.

If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.


JB Pritzker, Governor

Issued by the Governor March 20, 2020

Filed by the Secretary of State March 20, 2020

FILED
INDEX DEPARTMENT
MAR. 20 2020
IN THE OFFICE OF
SECRETARY OF STATE



April 1, 2020

Executive Order 2020-18

EXECUTIVE ORDER IN RESPONSE TO COVID-19
(COVID-19 EXECUTIVE ORDER NO. 16)

WHEREAS, Coronavirus 2019 (COVID-19) is a novel severe acute respiratory illness that can spread among people through respiratory transmissions and present with symptoms similar to those of influenza; and,

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

WHEREAS, despite efforts to contain COVID-19, the World Health Organization (WHO) and the federal Centers for Disease Control and Prevention (CDC) have declared that it is expected to spread; and,

WHEREAS, certain populations are at higher risk of experiencing more severe illness as a result of COVID-19, including older adults and people who have serious chronic medical conditions such as heart disease, diabetes, or lung disease; and,

WHEREAS, in a short period of time, COVID-19 has rapidly spread throughout Illinois, necessitating updated and more stringent guidance from federal, state, and local public health officials; and,

WHEREAS, social distancing, which requires maintaining at least a six-foot distance between people, is a paramount strategy for minimizing the spread of COVID-19 in our communities; and,

WHEREAS, current testing availability has identified further spread of confirmed cases throughout the State of Illinois, and it is expected that increased testing capacity would demonstrate that COVID-19 is circulating in communities across Illinois that currently have not identified a confirmed case; and,

WHEREAS, the number of suspected COVID-19 cases in Illinois is increasing exponentially and across more locations in Illinois, indicating that drastic social distancing measures are needed, even in communities where confirmed cases have not yet been identified, to reduce the number of people who become sick at any given time and the possibility of exhausting our health care resources; and,

WHEREAS, I, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area on March 9, 2020 (the First Gubernatorial Disaster Proclamation) in response to the outbreak of COVID-19; and,

WHEREAS, I again declared all counties in the State of Illinois as a disaster area on April 1, 2020 (the Second Gubernatorial Disaster Proclamation, and, together with the First Gubernatorial Disaster Proclamation, the Gubernatorial Disaster Proclamations) in response to the exponential spread of COVID-19; and,

WHEREAS, for the preservation of public health and safety throughout the entire State of Illinois, and to ensure that our healthcare delivery system is capable of serving those who are sick, I find it necessary to take additional measures consistent with public health guidance to slow and stop the spread of COVID-19; and,

WHEREAS, I find it necessary to continue and extend the Executive Orders issued to date in response to the outbreak of COVID-19, Executive Orders 2020-03, 2020-04, 2020-05, 2020-06, 2020-07, 2020-08, 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, 2020-14, 2020-15, 2020-16, and 2020-17, and hereby incorporate the WHEREAS clauses of those Executive Orders;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, pursuant to Sections 7(1), 7(2), 7(3), 7(8), 7(9), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, and consistent with the powers in public health laws, I hereby order the following:

Part 1: Continuing and Extending Prior Executive Orders.

Executive Orders 2020-03, 2020-04, 2020-05, 2020-06, 2020-07, 2020-08, 2020-09, 2020-10, 2020-11, 2020-12, 2020-13, 2020-14, 2020-15, 2020-16, and 2020-17 hereby are continued and extended by this Executive Order 2020-18 as follows:

Executive Order 2020-04 (Closure of James R. Thompson Center; Waiver of Sick Leave Requirement for State Employees):

Section 1. Beginning March 16, 2020, the James R. Thompson Center located at 100 W. Randolph Street, Chicago, Illinois, is closed for the duration of the Gubernatorial Disaster Proclamations to members of the public, except as necessary for the conduct of state business, to obtain services from a state agency or constitutional office, or to operate a business located in the James R. Thompson Center. This closure does not affect public access to businesses located on the ground floor in the James R. Thompson Center through exterior entrances, except as otherwise specified in this Order.

Section 2. Beginning March 13, 2020, the two-year continuous service requirement for state employees to receive advancement of sick leave pursuant to Title 80, Section 303.110 of the Illinois Administrative Code Personnel Rules, is suspended during the duration of the Gubernatorial Disaster Proclamations.

Executive Orders 2020-05 and 2020-06 (School Closures):

Executive Orders 2020-05 and 2020-06 are continued and extended in their entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-07 (Suspension of on-premises consumption at restaurants and bars; Unemployment insurance; Open Meetings Act):

Section 1. Beginning March 16, 2020 at 9 p.m. through April 30, 2020, all businesses in the State of Illinois that offer food or beverages for on-premises consumption—including restaurants, bars, grocery stores, and food halls—must suspend service for and may not permit on-premises consumption. Such businesses are permitted and encouraged to serve food and beverages so that they may be consumed off-premises, as currently permitted by law, through means such as in-house delivery, third-party delivery, drive-through, and curbside pick-up. In addition, customers may enter the premises to purchase food or beverages for carry-out. However, establishments offering food or beverages for carry-out, including food trucks, must ensure that they have an environment where patrons maintain adequate social distancing. Businesses located in airports, hospitals, and dining halls in colleges and universities are exempt from the requirements of this Executive Order. Hotel restaurants may continue to provide room service and carry-out. Catering services may continue.

Section 2. Pursuant to Sections 7(2) and 7(3) of the Illinois Emergency Management Act, the Illinois State Police, the Illinois Department of Public Health, the State Fire

Marshal, and the Illinois Liquor Control Commission are directed to cooperate with one another and to use available resources to enforce the provisions of this Executive Order with respect to entities under their jurisdiction under Illinois law.

Section 3. Nothing in this Executive Order shall amend or supersede the authority of the Illinois Department of Public Health pursuant to Section 2310-15 of the Department of Public Health Powers and Duties Law, 20 ILCS 2310/2310-15.

Section 4. During the duration of the Gubernatorial Disaster Proclamations, the provision of the Unemployment Insurance Act, 820 ILCS 405/500(D), requiring a one-week waiting period for unemployment insurance claims is suspended for claimants who are unemployed and who are otherwise eligible for unemployment insurance benefits.

Section 5. During the duration of the Gubernatorial Disaster Proclamations, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that “members of a public body must be physically present” is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended. Public bodies are encouraged to postpone consideration of public business where possible. When a meeting is necessary, public bodies are encouraged to provide video, audio, and/or telephonic access to meetings to ensure members of the public may monitor the meeting, and to update their websites and social media feeds to keep the public fully apprised of any modifications to their meeting schedules or the format of their meetings due to COVID-19, as well their activities relating to COVID-19.

Executive Order 2020-08 (Secretary of State Operations):

Executive Order 2020-08 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-09 (Telehealth):

Executive Order 2020-09 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-10 (Stay at Home; Social distancing; Evictions ceased):

Executive Order 2020-10 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-11 (Revisions to Executive Orders 2020-05 and 2020-10; Department of Corrections notification period):

Executive Order 2020-11 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-12 (Health care worker background checks; Department of Juvenile Justice notification period; Coal Mining Act):

Executive Order 2020-12 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-13 (Suspending Department of Corrections admissions from county jails):

Executive Order 2020-13 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-14 (Notary and witness guidelines):

Executive Order 2020-14 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-14, Section 2, Paragraphs (h) and (i) hereby are amended and revised as follows:

- h. The signatory must transmit by overnight mail, fax, or electronic means a legible copy of the entire signed document directly to the witness no later than the day after the document is signed;
- i. The witness must sign the transmitted copy of the document as a witness and transmit the signed copy of the document back via overnight mail, fax, or electronic means to the signatory within 24 hours of receipt; and

Executive Order 2020-15 (Suspending provisions of the Illinois School Code):

Executive Order 2020-15 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Order 2020-16 (Repossession of vehicles; suspension of classroom training requirement for security services):

Executive Order 2020-16 is continued and extended in its entirety for the duration of the Gubernatorial Disaster Proclamations, which currently extends through April 30, 2020.

Executive Orders 2020-03 and 2020-17 (Cannabis deadlines and applications):

Section 1. The application submission deadlines in the Cannabis Regulation and Tax Act and implementing regulations for submitting applications by March 16, 2020, which previously were suspended pursuant to Executive Order 2020-03 and extended through March 30, 2020, and extended through Executive Order 2020-17 to April 7, 2020, hereby are suspended as follows:

- a. The March 16, 2020, deadline for submission of craft grower license applications pursuant to Title 8, Section 1300.300(b) of the Illinois Administrative Code, which was extended through Executive Order 2020-03 to March 30, 2020, and extended through Executive Order 2020-17 to April 7, 2020, is extended to **April 30, 2020**; and
- b. The March 16, 2020, deadline for submission of infuser license applications pursuant to Section 35-5(b) of the Cannabis Regulation and Tax Act, 410 ILCS 705/35-5(b) and Title 8, Section 1300.400(b) of the Illinois Administrative Code, which was extended through Executive Order 2020-03 to March 30, 2020, and extended through Executive Order 2020-17 to April 7, 2020, is extended to **April 30, 2020**; and
- c. The March 16, 2020, deadline for submission of transporter license applications pursuant to Section 40-5(b) of the cannabis Regulation and Tax Act, 40 ILCS 705/40-5(b) and Title 8, Section 1300.510(b)(1)(A) of the Illinois Administrative Code, which was extended through Executive Order 2020-03 to March 30, 2020, and extended through Executive Order 2020-17 to April 7, 2020, is extended to **April 30, 2020**.

Section 2. Any statutory or regulatory requirement to accept such applications in-person is suspended and the Department of Agriculture is directed to cease accepting in-person applications beginning 5 p.m. Central Time March 12, 2020.

Section 3. The Illinois Department of Agriculture is further directed to accept all craft grower, infuser, and transporter license applications post-marked on or before April 30, 2020, via certified US Mail at:

Illinois Department of Agriculture
c/o Bureau of Medicinal Plants
P.O. Box 19281
Springfield, IL 62794-9281 USA

Part 2: Savings Clause. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.


JB Pritzker, Governor

Issued by the Governor April 1, 2020
Filed by the Secretary of State April 1, 2020

FILED
INDEX DEPARTMENT

APR 01 2020

IN THE OFFICE OF
SECRETARY OF STATE



J.B. Pritzker, Governor
Cynthia Berg, Chair
Chimaobi Enyia, Executive Director

100 West Randolph Street, Suite 7-801, Chicago, IL 60601
300 West Jefferson, Suite 300, Springfield, IL 62702

Illinois Liquor Control Commission

COVID-19 Related Action

March 16, 2020

Updated: March 31, 2020

COMPLIANCE DIRECTIVE

Due to the outbreak of COVID-19 and the declaration of a national public emergency, federal, state and local public officials have been required to take extraordinary measures to protect the health, safety and welfare of its citizens.

Pursuant in the authority vested in the Governor of the State of Illinois and pursuant to Sections 7(1), 7(2), 7(3) and 7(8) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, Illinois Governor JB Pritzker has issued Executive Order 2020-07 mandating that “all businesses in the State of Illinois that offer food or beverages for on-premises consumption—including restaurants, bars, grocery stores, and food halls—must suspend service for and may not permit on-premises consumption.” ***Executive Order 2020-07, March 16, 2020.***

In consideration of the Governor’s Executive Order, the Illinois Liquor Control Commission (“State Commission”) has the responsibility and authority to take necessary actions to protect the “health, safety, and welfare of the People of the State of Illinois.” 235 ILCS 5-1-2; 235 ILCS 5/3-12(a)(2); 235 ILCS 5/3-4. Furthermore, the State Commission has the responsibility and authority to ensure that its license holders abide by all State and Federal laws. 11 Ill. Admin. Code 100.30.

Under such responsibility and authority, the State Commission hereby issues the following Compliance Directive:

1. All alcoholic liquor license holders shall cease the sale and service of all beverages and food for the consumption on the licensed premises effective 9:00 pm on March 16, 2020 and for the duration of the Gubernatorial Disaster Proclamation. Such license holders include: On-premises and combined retailers, brew pubs, distilling pubs, wine-maker premises, all manufacturer class licenses with on-premises retailing privileges, special events retailers, special-use permit holders, and craft distilling tasting permit holders.
2. All license holders authorized by the State Commission and local liquor control commissions to sell alcoholic liquor, non-alcoholic liquor and food at retail for consumption off the licensed premises ***may conduct “in-person” sales on a “to-go” basis only but not for the consumption on the licensed premises.*** License holders that normally have this privilege include: Combined (on/off consumption) retailers, off-premises only retailers, brew pubs, distilling pubs, brewers, class 1 brewers, class 2 brewers, class 1 craft distillers, and class 2 craft distillers.

3. Subject to local ordinance, license holders with the authority to sell alcoholic liquor for off-premise consumption may conduct in-house delivery, third-party delivery, drive-through service, curbside pick-up and home delivery.
4. Licensees may permit patrons to enter licensed establishments to conduct sales for off-premises consumption if the licensees maintain a suitable environment where patrons can maintain adequate social distancing.
5. On-premises liquor license holders for hotels may continue to sell food and beverages via room service, mini-bar, and carry out.
6. On-premises license holders located at airports, hospitals and dining halls in colleges and universities are exempt from the Executive Order.
7. On-premises license holders may continue to sell growlers and crows for off-premises consumption under the conditions set forth for such sales in 235 ILCS 5/6-6.5 and the Executive Order.
8. Beginning March 18, 2020, caterer retailers shall not sell or serve alcoholic liquor or food at private events of fifty (50) or more guests. The return of salable beer from a caterer retailer to a distributor as a result of the policy stated herein is considered an Act of God which authorizes the return of beer under 235 ILCS 5/5-1(o).

Please refer to the State Commission Q/A Guidance for other specific questions related the Governor's Executive Order.

All agencies with law enforcement authority, including, but not limited to, Illinois Liquor Control Commission, Illinois State Police, Illinois Department of Public Health, and Local Law Enforcement will issue cease and desist notices to any business violating the terms of the Governor's Executive Order. License holders found to be in violation of the Executive Order will be required to cease actions which violate the order and will be subjected to further penalties against their liquor license.

Chima Enyia

Chimaobi Enyia
Executive Director
Illinois Liquor Control Commission



BACP

NOTICE: STATEWIDE CLOSURE OF RESTAURANTS AND BARS

All bars and restaurants in the state of Illinois will be closed to the public, beginning at the close of business Monday, March 16th through Monday, March 30th following Governor JB Pritzker's latest action to minimize the spread of COVID-19 in our communities. The Department of Business Affairs and Consumer Protection (BACP) is working in close partnership with Chicago's restaurant owners and entrepreneurs on how they can continue to serve our residents during this difficult time, including ensuring kitchens can safely remain open by implementing food delivery, drive-thru and carry out at local establishments.

This is a rapidly evolving situation and this document will be updated regularly with new guidance and answers to frequently asked questions regarding the Coronavirus Disease 2019 (COVID-19) impacts on the food industry. For up-to-date health guidance, please visit www.chicago.gov/coronavirus.

★ WHAT TIME IS END-OF-BUSINESS ON MONDAY FOR BARS AND RESTAURANTS?

- The mandated closure goes into effect at 9:00pm on Monday, March 16, 2020.

★ ARE PATRONS ALLOWED TO ENTER THE RESTAURANT TO PICK-UP FOOD AND/OR ORDER AND THEN LEAVE?

- Residents will be permitted to enter a restaurant to order food and then immediately leave upon receiving the food. Restaurant and bar owners are responsible to ensure social distancing policies are in place and that people do not congregate inside or outside. Sidewalk cafes must be closed.

★ WHAT TYPES OF ESTABLISHMENTS ARE INCLUDED IN THE MANDATED BAR AND RESTAURANT CLOSURE?

- Are movie theaters, bowling alleys and other entertainment venues covered by the closure?
 - The statewide closure applies to all restaurants or services that provide on-site consumption of food or beverages, including concession stands.
- Can food trucks still operate?
 - Yes, the statewide closure does not apply to City-licensed food trucks or mobile food vehicles. However, the Chicago Department of Public Health guidance on social distancing should be maintained and lines should not be permitted.
- Can residents still go to coffee shops or cafes?
 - Coffee shops and cafes are considered restaurants. There should be no onsite consumption of food or beverages at coffee shops or cafes. Delivery, drive-thru or carry-out will be permitted.
- Can residents still go to grocery stores or bakeries?
 - Bakeries and grocery stores can allow customers to enter and buy food to go. No onsite consumption of food or beverage is permitted.
- How about cafes, coffee bars, ice cream counters and other establishments that are operating within grocery stores?
 - These locations are considered restaurants as they serve on-site consumption of food or beverages. Food can only be sold to-go and for carry-out at these locations.
- Are businesses located in airports, hospitals and dining halls in colleges covered by the closure of restaurants and bars?
 - No. Businesses located in airports, hospitals and dining halls in colleges/universities are exempt from the closure of restaurants and bars. However, these establishments are encouraged to maintain an environment with adequate social distancing.

[Continued on second page](#)



City of Chicago
Department of Business Affairs and Consumer Protection

EXHIBIT 5

City Hall, 121 N. LaSalle, Room 805, Chicago, IL 60602



BACP

NOTICE: STATEWIDE CLOSURE OF RESTAURANTS AND BARS

All bars and restaurants in the state of Illinois will be closed to the public, beginning at the close of business Monday, March 16th through Monday, March 30th following Governor JB Pritzker's latest action to minimize the spread of COVID-19 in our communities. The Department of Business Affairs and Consumer Protection (BACP) is working in close partnership with Chicago's restaurant owners and entrepreneurs on how they can continue to serve our residents during this difficult time, including ensuring kitchens can safely remain open by implementing food delivery, drive-thru and carry out at local establishments.

This is a rapidly evolving situation and this document will be updated regularly with new guidance and answers to frequently asked questions regarding the Coronavirus Disease 2019 (COVID-19) impacts on the food industry. For up-to-date health guidance, please visit www.chicago.gov/coronavirus.

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★ CAN RESTAURANTS AND BARS SELL AND DELIVER ALCOHOL IN CHICAGO?

- Consumption on premises-incidental activity and tavern liquor licensees in the City of Chicago can sell and deliver incidental packaged goods liquor. By definition they have local approval.
 - Liquor sales and delivery must occur during liquor sale hours as defined in the Municipal Code 4-60-130
 - Licensees must verify proof of age
 - No cash on delivery; the transaction must take place at the retail licensee
 - Only sealed packaged goods in their original container (no to-go cups) can be sold or delivered
- Additional restrictions on delivery may apply to those who are licensed by the State as brew pubs, distilling pubs and manufacturers. These businesses should contact the State Liquor Commission or visit their website for additional information. <https://www2.illinois.gov/ilcc/Pages/Home.aspx>

★ CAN BARS AND RESTAURANTS CONTINUE WITH PRIVATE EVENTS?

- All private events taking place at bars or restaurants are required to be postponed or cancelled as a result of the statewide mandate.

★ WILL CATERING STILL BE PERMITTED?

- Licensees with valid catering licenses can provide food for delivery or customer pick up.

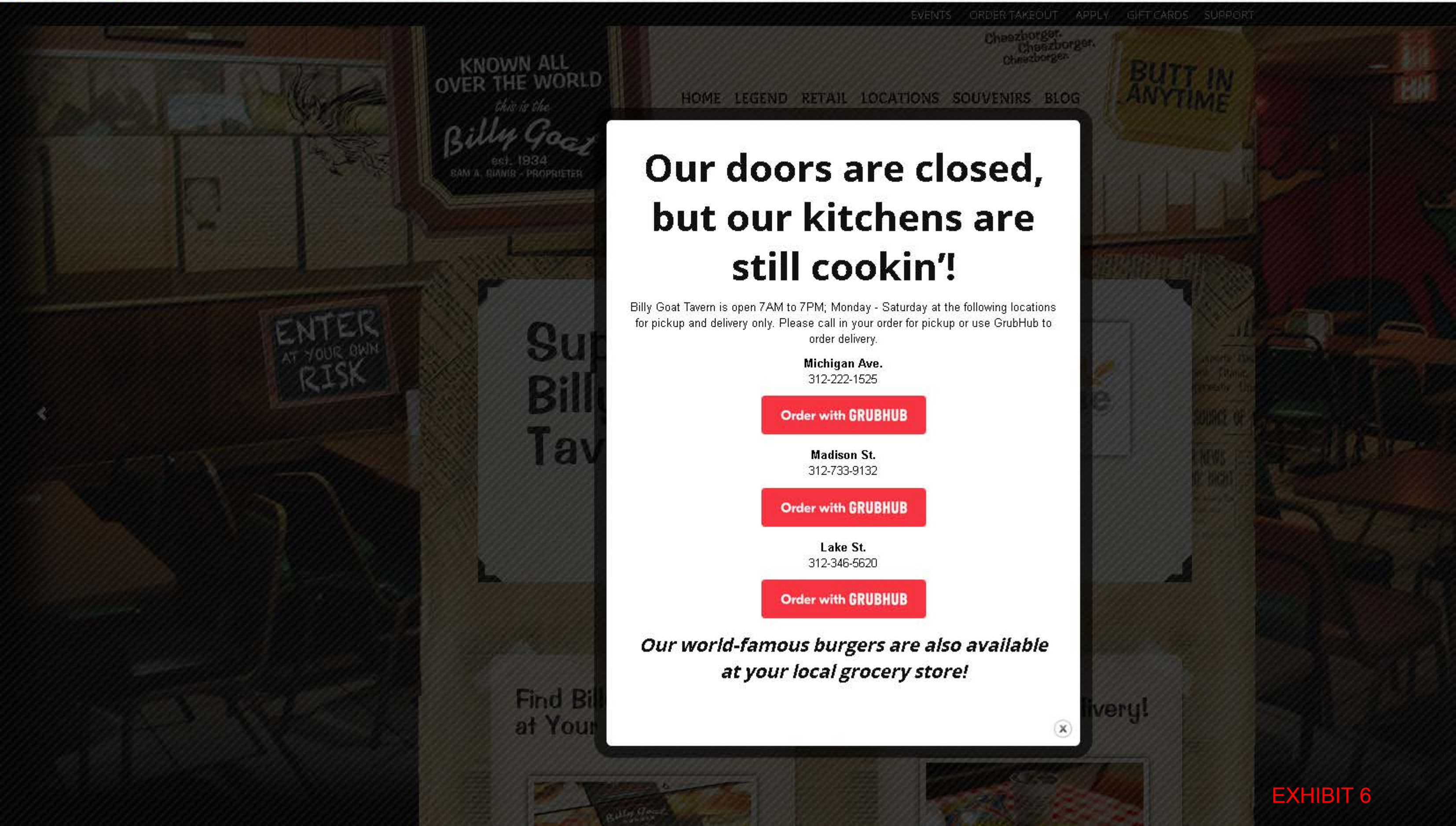
★ ARE AIRPORT CONCESSIONS INCLUDED IN THE BAN?

- In order to ensure the availability of food for travelers, food concessions at O'Hare and Midway Airport are exempt from the ban. However, the Chicago Department of Aviation is taking steps to ensure social distancing policies are in place at our airports to protect the health and safety of Chicago residents and visitors.



City of Chicago
Department of Business Affairs and Consumer Protection

City Hall, 121 N. LaSalle, Room 805, Chicago, IL 60602



Our doors are closed, but our kitchens are still cookin'!

Billy Goat Tavern is open 7AM to 7PM; Monday - Saturday at the following locations for pickup and delivery only. Please call in your order for pickup or use GrubHub to order delivery.

Michigan Ave.
312-222-1525

Order with **GRUBHUB**

Madison St.
312-733-9132

Order with **GRUBHUB**

Lake St.
312-346-5620

Order with **GRUBHUB**

*Our world-famous burgers are also available
at your local grocery store!*

