

LOURDES A. LEON GUERRERO
GOVERNOR



JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Via Hand Delivery
and E-mail: speaker@guamlegislature.org

March 29, 2022

HONORABLE THERESE M. TERLAJE

Speaker

I Mina'trentai Sais Na Liheslaturan Guåhan

36th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

RE: EXECUTIVE ORDER NO. 2022-09

Hafa Adai Madame Speaker:

Pursuant to Public Law 34-16, transmitted herewith is the following Executive Order:

EXECUTIVE ORDER NO. 2022-09: RELATIVE TO EXTENDING THE PUBLIC HEALTH EMERGENCY, ESTABLISHING METRICS FOR RESCISSION OF SOCIAL GATHERING RESTRICTIONS AND SOCIAL DISTANCING REQUIREMENTS, AND THE GRADUAL RESCISSION OF THE MASK MANDATE

Thank you.

Senseremente,

LESLIE A. TRAVIS

Legal Counsel

Enclosure: Executive Order No. 2022-09

cc via email: *Maga'hågan Guåhan*
Sigundo Maga'låhen Guåhan
Hon. F. Philip Carbullido, Chief Justice of Guam
Compiler of Law
Central Files
Cabinet Members



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EXECUTIVE ORDER NO. 2022-09

**RELATIVE TO EXTENDING THE PUBLIC HEALTH EMERGENCY,
ESTABLISHING METRICS FOR RESCISSION OF SOCIAL GATHERING
RESTRICTIONS AND SOCIAL DISTANCING REQUIREMENTS, AND
THE GRADUAL RESCISSION OF THE MASK MANDATE**

WHEREAS, on March 14, 2020, I, Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, Governor of Guam, acting pursuant to the Organic Act of Guam and the laws of Guam, declared a public health emergency in Guam due to dangers posed by the 2019 novel coronavirus ("COVID-19"); and

WHEREAS, mindful of our limited healthcare resources in Guam, as well as the comorbidities prevalent in our community, I implemented a policy by which community-level restrictions were set and adjusted in response to measurable COVID-19 metrics, including daily new cases, test positivity rate, retransmission rate, and ultimately including our vaccination rate; and

WHEREAS, on February 25, 2022, the U.S. Centers for Disease Control and Prevention ("CDC") announced new metrics that monitor the transmission of COVID-19, using community-level indicators that focus on reducing medically significant illness and minimizing strain on the healthcare system; and

WHEREAS, the CDC Community Level metrics are intended to inform community actions and local decisions, including implementation and easing of restrictions, individual preventive behaviors, testing strategies, and vaccine outreach; and

WHEREAS, the CDC Community Level metrics track the following items: the cumulative 7-day new COVID-19 cases per 100,000, which is presently 203.5 in Guam; the 7-day new hospital admissions per 100,000, which is currently recorded at 11; and the percent of staffed inpatient beds occupied by COVID-19 patients, which presently stands at 5% locally; and

WHEREAS, though Guam recently moved into the moderate category of risk based on CDC Community Level metrics, Guam has returned to the high-risk level as of this writing; and

WHEREAS, our island's response to the spread of COVID-19 is fortified by our robust vaccination rate. Over 135,000 Guam residents are fully vaccinated. This means that approximately 95% of our (5+) eligible population and 88% of our entire population is fully vaccinated; and

WHEREAS, over 50% of our fully vaccinated population has also received their booster shots – a rate that is among the highest in the country; and

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WHEREAS, as part of our phased-in approach to adjusting restrictions based on local factors, at this time, it is appropriate to consider the final remaining category of community restrictions: the mask mandate; and

WHEREAS, mandating the use of masks in public spaces has aided in community COVID-19 responses worldwide. The use of masks is a cornerstone piece in an individual's layered prevention strategy. The science supporting the use of masks is as universal as it is incontrovertible; COVID-19 is primarily transmitted via respiratory particles, and reducing the spread of COVID-19 is accomplished by limiting one's contact with infected individuals, through measures such as physical distancing, and reducing the probability of transmission in the event contact occurs, such as through public mask-wearing; and

WHEREAS, our community has embraced the use of masks. We wear them even when it is inconvenient or uncomfortable. We have accepted masks as a small price to pay to protect our health and the health of our community; and

WHEREAS, we have weathered every COVID-19 surge through our vigilant observance of the three W's: wearing your mask, watching your distance, and washing your hands. This common-sense approach to our own health has contributed to our island's overall well-being, and has enabled us to keep our numbers down, keep our hospitalizations manageable, and keep our businesses and schools open; and

WHEREAS, the announcement of the CDC Community Level metrics, and corresponding guidance for implementation and easing of restrictions, provide us with an objective lens through which we can consider our local factors, and fashion a reasonable framework for our continued response to the COVID-19 pandemic; and

WHEREAS, with the concurrence of the Guam Department of Public Health and Social Services ("DPHSS"), and the advice of the Guam National Guard Surgeon Cell and Physicians Advisory Group, we have gradually lifted community level restrictions in recent months, following the decline of the Omicron surge, including vaccination requirements, social gathering restrictions, and the truancy suspension for schools; and

WHEREAS, as we look ahead to moving into a low category of risk under the CDC Community Level metrics, barring an unanticipated downturn in the metrics informing our level of risk, I am prepared to announce the gradual rescinding of our mask mandate; and

WHEREAS, lifting restrictions, including the mask mandate, does not mean the public health emergency is over; and

WHEREAS, I am aware of recent efforts in the Legislature to pass a resolution to end the public health emergency pursuant to the Emergency Health Powers Act; and

WHEREAS, the legislative resolution is short-sighted and demonstrates a lack of understanding of, and appreciation for, the monumental multi-agency effort involved in activating, coordinating, and operationalizing a dynamic pandemic response; and



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WHEREAS, the Emergency Health Powers Act (“EHPA”), codified at 10 GCA Chapter 19, substantially mirrors the Model State Emergency Health Powers Act (“Model Act”), which was drafted by the CDC and revised in 2001 by the Center for Law and the Public Health at the Georgetown University Law Center and Johns Hopkins University. The Model Act has been passed in thirty-three (33) states in various forms; and

WHEREAS, under the EHPA, the Governor’s declaration of an emergency activates a comprehensive government response for the prevention, detection, management, and containment of public health threats in ensuring an effective and timely response to a public health emergency; and

WHEREAS, the drafters of the legislative resolution have not considered the broader implications associated with ending the public health emergency; and

WHEREAS, the EHPA, like the Model Act before it, is designed to facilitate a rapid and flexible response in light of the community’s needs during a public health emergency. The EHPA has enabled us to coordinate critical services during this emergency, including mass testing clinics, mass vaccination clinics, and ultimately treatment clinics. It has empowered us to identify issues affecting more vulnerable populations within our community and direct resources to address them. It has enabled us to fill shortfalls in personnel by pooling health care providers from other agencies to assist in our response efforts; and

WHEREAS, under the EHPA, I have issued numerous executive orders to address diverse issues relating to the pandemic that fell outside the scope of direct medical response, including the prohibition on price gouging, the authorization for overtime to our overextended government frontliners, and the waiver of licensing and permitting requirements for additional health care personnel assisting in the performance of vaccinations, treatment, examination, or testing. I have ordered that government agencies, including the Legislature, may hold public meetings via teleconferencing. I established and ultimately suspended a moratorium on foreclosures and evictions, implemented differential pay processes for essential employees in close proximity to infected populations, enabled DPHSS to establish temporary guidance allowing for importation and distribution of COVID-19 commodities, and temporarily suspended examination requirements for our teachers; and

WHEREAS, 10 GCA § 63500 states in relevant part that, as Commander-in-Chief of the Guam National Guard, I may order the Guam National Guard into active military service during a state emergency. In the absence of a state emergency, my ability to activate the Guam National Guard is constrained to affairs of the state, state ceremonies, or other territorial activities or duties. The Guam National Guard, which I activated pursuant to the EHPA, has proven to be an incredible resource during the pandemic, helping further focus our efforts efficiently and quickly, organizing and executing critical missions to ensure the success of our pandemic response. They are funded federally until July 2022, but are not otherwise activated for state duty outside of the public health emergency that the sponsors of the legislative resolution seek to end. The majority of our guardsmen serve other duties when not on active guard duty, and mobilizing and demobilizing these forces requires time that we simply do not have during a pandemic. The legislative resolution does not



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adequately account for the impact that deactivating and reactivating would have on the lives of our guardsmen; and

WHEREAS, most of the measures identified above could have been implemented by legislation but were not. While it is true that, unlike the Executive branch, the Legislature does not have the operational capacity to effectuate a rapid response to emergency needs as they develop, the Legislature is empowered to pass bills to perfect the transition of these measures to a non-emergency state; and

WHEREAS, while other U.S. jurisdictions have ended their COVID-19 public health emergencies, their legislatures—recognizing that such an action carries consequences for the numerous initiatives and programs established from the declaration of an emergency—passed prior legislation to ensure the continuity of such services and programs, or implemented sunset provisions to allow the agencies responsible for implementing response measures with an opportunity to transition their initiatives to regular operations; and

WHEREAS, the sponsors of this legislative resolution have failed to transition emergency measures to permanent agency operations; and

WHEREAS, to be clear, ending the public health emergency would also not give the Legislature power over grant monies received pursuant to the American Rescue Plan Act (“ARPA”). However, the Executive branch’s use of these funds is still subject to Federal oversight; and

WHEREAS, federal rules limit the use of ARPA funds to categories of spending that specifically address the COVID-19 pandemic, such as replacing lost public sector revenue, responding to the negative economic impacts of the pandemic by supporting individuals and households, businesses, and industries, and providing premium pay for essential workers; and

WHEREAS, it is for this reason that I have, time and again, rejected language in proposed legislation that purports to direct the spending of ARPA funds, especially for items that, on their face, are not related to the public health emergency. It is for this reason that I have declined to implement broader categories of direct aid that cannot be legitimately traced to individuals and households that were presumed to be negatively impacted by the pandemic; and

WHEREAS, ending the public health emergency would have a significant impact on another type of federal aid our island currently receives – Supplemental Nutrition Assistance Program (“SNAP”) supplemental emergency allotments; and

WHEREAS, in March 2020, Congress passed the Families First Coronavirus Response Act (“FFCRA”), allowing the U.S. Department of Agriculture to issue emergency allotments to SNAP recipients during the COVID-19 pandemic; and

WHEREAS, the FFCRA provides that such aid is available based on a public health emergency declaration by the Secretary of Health and Human Services under Section 319



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of the Public Health Service Act related to an outbreak of COVID-19 and, critically, “the issuance of an emergency or disaster declaration by a State based on an outbreak of COVID-19;” and

WHEREAS, Guam is approved to receive on average \$2.3M in monthly emergency allotments under SNAP, which affects over 15,000 households in Guam. It is true that states such as Florida, Idaho, Arkansas and Montana have stopped issuing these emergency allotments, but it cannot be overstated how critical these funds are to our indigent population. This aid is important to recipient families, and it is important to me. If the sponsors of this resolution intend to proceed without resolving the SNAP emergency allotments, they should be held to account for their decision to cut off this aid to thousands of our most vulnerable families during a global pandemic; and

WHEREAS, the legislative resolution alleges that the emergency declaration provides the Governor “unprecedented authority over government procurement,” and indeed, one of the sponsors of this resolution has publicly denounced the availability of emergency procurements during the public health emergency. However, emergency procurements are, in fact, a creature of Guam Procurement Law, and are available in the absence of a public health emergency declaration, upon a certificate of emergency by the head of a purchasing agency and a determination of need describing a condition that poses an imminent threat to public health or the environment, which could not have been foreseen, and which could not be addressed by other procurement methods. This method of procurement is not contingent upon a declaration of emergency by the Governor, and has been utilized countless times by numerous agencies for decades, as the need arises; and

WHEREAS, in addition to the COVID-19 national emergency, public health emergencies continue in twenty (20) states as of March 2022; and

WHEREAS, Guam does not have the healthcare resources of states like California or Texas, a fact which, along with the prevalence of several comorbidities on our island, further justifies our deliberate and gradual lifting of restrictions, and a measured transition to steady-state operations; and

WHEREAS, the EHPA requires that the Legislature state “the conditions that make possible the termination of the declaration [of a public health emergency][.]” In the legislative resolution, the drafters have indicated that such conditions include “the many measures established nationally to prevent the spread of the COVID-19 virus[.]” COVID-19 community restrictions “established nationally” were extremely limited during the pandemic, and included requirements such as mandatory vaccinations for our health workers, mandatory testing in order to board international flights, and an attempt at workplace vaccinations. I am pleased that the drafters of the legislative resolution appear to support these measures implemented by President Biden. However, the internal measures implemented on the island during the pandemic, except for the quarantine policy that I executed pursuant to my Organic Act of Guam authority, were implemented by coordinated executive orders and DPHSS guidance memoranda issued pursuant to the EHPA. While the legislative resolution appears to characterize these measures as “draconian,” it also acknowledges that these measures that our Administration established



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to prevent the spread of COVID-19 have led to our island's success in weathering this pandemic, and ultimately made it possible for us to consider transitioning out of our emergency state in the foreseeable future; and

WHEREAS, as noted, our island presently remains at a high level of risk according to CDC Community Level metrics, which objectively justifies the continued declaration of a public health emergency while slowly easing restrictions. As we continue to move toward, or even when we achieve, a low level of risk, it is critical that we continue to ease out of emergency measures to ensure continuity of the operations and services our community relies upon; and

WHEREAS, as we ease these restrictions, I urge businesses and individuals alike to study their practices, and implement proven mitigation strategies to reduce the risk of infection to their customers and employees, their families and our community; and

WHEREAS, it continues to be critical to the health of our community that individuals, who are medically able to do so, get vaccinated and boosted immediately; and

WHEREAS, as our island continues to be engaged in emergency response, it is important that we utilize our best available tools against COVID-19, including vaccines, therapeutics, testing, and, as always, the practice of strict personal mitigation measures.

NOW THEREFORE, I, LOURDES A. LEON GUERRERO, *I Maga'hågan Guåhan*, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam as amended, do hereby order:

1. **EXTENSION OF THE PUBLIC HEALTH EMERGENCY.** The public health emergency first declared in Executive Order No. 2020-03 and extended in Executive Order Nos. 2020-09, 2020-11, 2020-16, 2020-22, 2020-24, 2020-29, 2020-35, 2020-38, 2020-41, 2020-46, 2021-03, 2021-05, 2021-07, 2021-09, 2021-12, 2021-15, 2021-16, 2021-20, 2021-24, 2021-27, 2021-30, 2021-32, 2022-02 and 2022-04 shall be extended for an additional thirty (30) day period, effective April 3, 2022. The public health emergency is now scheduled to expire on May 3, 2022.
2. **GRADUAL LIFTING OF REMAINING RESTRICTIONS.** Upon achieving a Low Level of Risk pursuant to the CDC Community Levels metrics, as certified by the Director of DPHSS and accepted by the Governor, restrictions are lifted as follows:
 - a. Effective fourteen (14) days after certification is accepted by the Governor:
 1. The mask mandate first imposed in Section 2(b) of Executive Order No. 2020-44 and most recently continued in Section 3 of Executive Order No. 2022-08, shall be **amended**. Individuals over the age of two (2) shall not be required to wear masks in outdoor settings, but shall continue to wear masks in indoor public settings;



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2. Numerical restrictions on social gatherings first imposed in Section 3 of Executive Order No. 2020-04, and most recently amended in Section 2 of Executive Order No. 2022-08, shall be **rescinded**. Individuals shall be permitted to congregate indoors and outdoors without numerical restriction; and
3. Social distancing requirements first imposed in Section 5 of Executive Order No. 2020-04 and most recently amended in Section 1(b) of Executive Order No. 2021-01, shall be **rescinded**. Individuals shall not be required to social distance, whether in indoor or outdoor settings.

This section is subject to DPHSS guidance, which shall specifically address related restrictions on facilities and activities including schools, sports, and graduations.

- b. Effective fourteen (14) days after the implementation date of Section 2(a) above:
 1. The mask mandate first imposed in Section 2(b) of Executive Order No. 2020-44 and most recently continued in Section 3 of Executive Order No. 2022-08, shall be **rescinded**. Individuals shall no longer be required to wear masks in public.

This section is subject to DPHSS guidance, which shall specifically address related restrictions on facilities and activities including schools, sports, and graduations. This section is further subject to change in the event of an unanticipated deviation from the anticipated continued reduction in local metrics informing CDC Community Level calculations.

- c. Businesses may impose stricter restrictions, including requirements for mask-wearing and social distancing, subject to local and federal laws.

Notwithstanding the gradual lifting of restrictions, including mandated mitigation measures such as mask-wearing and social distancing, individuals are encouraged to practice such measures based on their personal level of risk. If you are immunocompromised or at high risk for severe illness, you should talk to your healthcare provider about additional precautions, such as wearing masks indoors in public settings. Individuals who are not vaccinated or boosted are at an increased risk of infection, hospitalization, and death as a result of COVID-19. Such individuals are encouraged to get vaccinated immediately before engaging in activities in congregate settings where mask use is compromised.

3. **LIFTING RESTRICTIONS ON ENTRY INTO GUAM.** Effective immediately, restrictions on incoming travelers first imposed in Section 6 of Executive Order No. 2020-04, and most recently amended in Section 3 of Executive Order No. 2021-29, are hereby **rescinded**. Individuals arriving in Guam on domestic or international flights are no longer subject to quarantine. Individuals traveling from a foreign



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country must still comply with federal requirements to board a flight into the United States, including Guam.

4. **SEVERABILITY.** If any provision of this Executive Order or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Order that can be given effect without the invalid provision or application, and to this end, the provisions of this order are severable.
5. **PRIOR ORDERS REMAIN IN EFFECT.** All prior Executive Orders remain in full force and in effect, except to the extent they conflict with this Executive Order.

SIGNED AND PROMULGATED at Hagåtña, Guam, this 29th day of March, 2022.

A handwritten signature in black ink that reads "Lourdes A. Leon Guerrero".

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

Attested by:

A handwritten signature in blue ink that reads "Therese M. Terlaje".

THERESE M. TERLAJE
Åkto Sigundo Maga'hågan Guåhan
Lt. Governor of Guam

