

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**BLU NIGHTCLUB;** )  
**DARREN GREIVING,** )  
 )  
**and** )  
 )  
**CLUB INDIGO OLD TOWN LLC** )  
**dba INDUSTRY OLD TOWN;** )  
**BRADLEY J. STEVEN,** )  
 )  
**and** )  
 )  
**VORSHAY'S COCKTAIL** )  
**LOUNGE; STEVEN PETERS** )  
 )  
**and** )  
 )  
**THE COWBOY INN;** )  
**JEANNIE AHRENS,** )  
 )  
**and** )  
 )  
**PARTY EXPRESS, LLC;** )  
**DALLAS BROZ,** )  
 )  
**and** )  
 )  
**WICHITA'S BALLROOM** )  
**CHAOMIN HSU,** )  
 )  
**and** )  
 )  
**AUGUSTINO BREWING CO.;** )  
**AUGUSTINE IACOPELLI** )  
 )  
**and** )  
 )  
**THE STOP;** )  
**ALAN BRINKMAN,** )  
 )  
**and** )  
 )

<b>THE RUSTY NAIL;</b>	)	
<b>KRISTI IVY,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>A &amp; J'S MUSIC ROOM BAR &amp;</b>	)	
<b>GRILL; ART AGNER,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>REVOLUTION LOUNGE;</b>	)	
<b>KYLE OKUMURA,</b>	)	
	)	
<b>PLAINTIFFS,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No: 20-cv-1340</b>
	)	
<b>GAROLD MINNS in his official</b>	)	
<b>capacity as the Sedgwick County</b>	)	
<b>Local Health Officer,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>JOHN DOE 1-20; and</b>	)	
<b>DOE ENTITIES 1-20.</b>	)	
	)	
<b>DEFENDANTS.</b>	)	

**VERIFIED AMENDED COMPLAINT**  
**FOR DECLARATORY AND INJUNCTIVE RELIEF**

**PRELIMINARY STATEMENT**

This is an amended complaint filed pursuant to Fed. R. Civ. P. 15(a)(1)(A). The original complaint filed in this matter sought injunctive and declaratory relief from Dr. Minns' Emergency Public Health Order issued on November 24, 2020, and Sedgwick County Commission Resolution 154-2020, and City Council Resolution 20-369, which imposed criminal sanctions upon the violation of Dr. Minns' Order.

The original complaint was filed in the District Court of Sedgwick County, Kansas. The Defendants filed a notice of removal on December 3, 2020, to this Court.

The amended complaint seeks declaratory and injunctive relief from the 11 p.m. curfew for bars, nightclubs, and other businesses imposed by the Emergency Order issued by the Defendant, :Garold Minns, M.D. on December 8, 2020, and to take effect on December 10, 2020. (Exhibit 1 hereinafter “the December 8 Order”). The December 8 Order amends and replaces the emergency order which was issued on November 24, 2020, which became effective on November 27, 2020, and which has been replaced by the December 8 Order.

Dr. Minns did not have statutory authority to issue the curfew restrictions in the December 8 Order. By doing so, he has acted *ultra vires*. But even if he did have authority to issue curfew restrictions, the December 8 Order is in violation of the First and Fourteenth Amendments to the United States Constitution, Sections 1 and 18 of the Kansas Bill of Rights, and the state separation of powers and non-delegation doctrines.

The Plaintiffs seek to have the curfew provision of the December 8 Order declared null and void, and in violation of the United States and Kansas Constitutions, and requests this Court to issue an immediate injunction enjoining the enforcement of the curfew restriction within Sedgwick County, and within the corporate limits of the City of Wichita.

#### **PARTIES**

1. Plaintiff Blu Nightclub is located at 8715 W. Maple St., Wichita, KS 67209.
2. Plaintiff Darren Greiving is a resident of the City of Wichita, Sedgwick County, Kansas. He is owner and operator of Blu Nightclub. Mr. Greiving files this suit in his capacity as the owner of Blu Nightclub, and in his individual capacity.

3. Plaintiff Club Indigo Old Town LLC dba Industry Old Town is located at 126 N. Mosley St., Wichita, KS 67202.
4. Plaintiff Bradley J. Steven is a resident of the City of Wichita, and the owner and manager of Club Indigo Old Town LLC dba Industry Old Town. Mr. Steven files this suit in his capacity as the owner of Blu Nightclub, and in his individual capacity.
5. Plaintiff Vorshay's Cocktail Lounge is located at 417 E. Douglas, Wichita, KS 67202.
6. Plaintiff Steven Peters is a resident of the City of Wichita, Sedgwick County, Kansas, and is the owner of Vorshay's Cocktail Lounge. Mr. Peters files this suit in his capacity as the owner of Vorshay's Cocktail Lounge, and in his individual capacity.
7. Plaintiff The Cowboy Inn is located at 642 N. St. Paul, Wichita, Kansas.
8. Plaintiff Jeannie Ahrens is a resident of the City of Wichita, Sedgwick County, Kansas, and is the owner of The Cowboy Inn. Ms. Ahrens files this suit in her capacity as the owner of The Cowboy Inn, and in her individual capacity.
9. Plaintiff Party Express, LLC is located at 13728 W. Kellogg Drive, Wichita, KS.
10. Plaintiff Dallas Broz is a resident of the City of Wichita, Sedgwick County, Kansas, and is the owner of Party Express, LLC. Mr. Broz files this suit in his capacity as the owner of Party Express Bus, and in his individual capacity.
11. Plaintiff Wichita's Ballroom is located at 4600 W. Kellogg Drive, Wichita, KS.
12. Plaintiff Chaomin Hsu is a resident of the City of Wichita, Sedgwick County, Kansas, and is the owner of Wichita's Ballroom. Mr. Hsu files this suit in his capacity as the owner of Wichita's Ballroom, and in his individual capacity.



13. Plaintiff Augustino Brewing Company is located at 756 N. Tyler Road, Sedgwick County, Kansas..
14. Plaintiff Augustin Joseph Iacopelli is a resident of the City of Wichita, Sedgwick County, Kansas, and is the owner of Augustino Brewing Company. Mr. Iacopelli files this suit in his capacity as the owner of Augustino Brewing Company, and in his individual capacity.
15. Plaintiff The Stop is located at 1450 S. Washington, Wichita, Kansas.
16. Plaintiff Alan Brinkman is a resident of the City of Wichita, Sedgwick County, Kansas, and is the owner of The Stop. Mr. Brinkman files this suit in his capacity as the owner of The Stop, and in his individual capacity.
17. Plaintiff The Rusty Nail is located at 1155 S. Washington, Wichita, Kansas.
18. Plaintiff Kristi Ivy is a resident of the City of Wichita, Sedgwick County, Kansas, and is the owner of The Rusty Nail. Ms. Ivy files this suit in her capacity as the owner of The Rusty Nail, and in her individual capacity.
19. Plaintiff A & J's Music Room Bar and Grill is located at 1602 S. Meridian Avenue, Wichita, KS.
20. Plaintiff Art Agner is a residence of the City of Wichita, Sedgwick County, Kansas, and the owner and manager of A & J's Music Room Bar and Grill. Mr. Agner files this suit in his capacity as the owner of A & J's Music Room Bar and Grill, and in his individual capacity.
21. Plaintiff Revolution Lounge is located at 233 N. Mosley St., Wichita, Kansas.

22. Plaintiff Kyle Okumura is a resident of the City of Wichita, Sedgwick County, Kansas, and the owner and manager of Revolution Lounge. Mr. Okumura files this suit as the owner and manager of Revolution Lounge, and in his individual capacity.
23. Plaintiff Nick Sutter is a resident of the City of Wichita, Sedgwick County, Kansas. He brings this suit in his individual capacity.
24. Plaintiff Josiah McCoy is a resident of Sedgwick County, Kansas. He brings this suit in his individual capacity.
25. Defendant Garold Minns is the current Sedgwick County Local Health Officer. Dr. Minns issued an Emergency Order dated December 8, 2020, purportedly under the authority of K.S.A. 65-119, K.S.A. 65-202, and “other applicable laws or regulations.” (The December 8 Order, pg. 1). The order also purports to be a “public health directive” pursuant to Section 9 of the 2020 Special Session House Bill No. 2016. (The December 8 Order, pg. 10).
26. Defendant Minns was acting under color of state law which caused the deprivation of Plaintiffs’ rights protected by the United States and Kansas Constitutions. Defendant Minns is sued in his official capacity for non-monetary prospective relief.
27. Plaintiffs reserve the right to amend the complaint to assert claims against Doe persons and entities. Plaintiffs anticipate conducting discovery in this matter which could reveal a basis for adding additional defendants based on their activities in connection with the issues in this case.
28. The Attorney General will be served with a copy of the proceedings pursuant to KSA 75-764.

## **JURISDICTION AND VENUE**

29. Plaintiffs seek to vindicate their rights under the Fourteenth Amendment to the United States Constitution, pursuant to 42 U.S.C. § 1983, the Declaratory Judgment Act, 28 U.S.C. § 2201-2202, Sections 1 and 18 of the Kansas Bill of Rights, and under 42 U.S.C. § 1988 an award of attorney's fees.
30. Plaintiffs seek temporary and/or preliminary and permanent injunctive relief, and a declaratory judgment, all arising from the curfew restrictions in the December 8 Order and/or the enabling statutes.
31. This Court has jurisdiction under 28 U.S.C. § 1331, 1343, 1367, and 42 U.S.C. § 1983.
32. Venue is proper because the acts occurred in Sedgwick County, Kansas.

## **STATEMENT OF FACTS**

### **A. THE BUSINESS CURFEW.**

33. The December 8 Order requires "all bars, night clubs, other businesses licensed to sell alcohol for on-premises consumption," abide by a curfew from 11 p.m until 5 a.m. (Section IV(4)). These businesses may remain open between 11 PM and 5 AM for curbside drive through, and delivery services, but not carry out.
34. The Plaintiffs have been and continue to be injured by the bar curfew. Among other things, the Plaintiffs must cease commercial activity at 11:00 p.m. This bar curfew contravenes state law in many ways, but as an example, the Plaintiffs would not otherwise be prohibited from serving alcoholic beverages from 6:00 a.m. to 2:00 a.m.,

(See KSA § 41-2614). There is no constitutionally sufficient rationale for imposing the bar curfew.

35. There is no statistical correlation between the spread of COVID-19 and bars being open until 2 a.m. For instance, the 11 AM curfew was in effect up through the Emergency Order issued by the Defendant on September 17, 2020. Beginning on that date, the bar curfew was 12 A.M. The curfew was then extended to 1 A.M. by the Defendant's Emergency Order issued on October 16, 2020. The 1 A.M. curfew remained in effect through the Defendant's Emergency Order dated November 10, 2020. At that date, the curfew was taken back to 11 P.M. and remains that way through the December 8 Order.
36. On September 9, 2020, the KDHE reported 1 active cluster from a "bar or restaurant," although the particular bar or restaurant was not identified. At that time the threshold for a cluster was set at 5 or more people. On November 19, 2020, the KDHE reported one active cluster arising from Buffalo Wild Wings in Salina, Kansas. At that date, the threshold for a cluster was set at 3 or more people.
37. Thus, during the approximate two months when the 1 A.M. curfew was in place in Wichita, there was a single active cluster arising from a "bar or restaurant" in the entire State of Kansas. Within 9 days of the 11 P.M. curfew again being put in place by the Defendant, there was still only 1 active case arising from a bar/restaurant located in Salina. Perhaps more significantly, upon information and belief, there were no active COVID clusters arising from any Wichita bar, and certainly not the bars owned by the Plaintiffs while the 1 A.M. curfew was in place or thereafter. There is

simply no rational connection between the spread of COVID-19 and the curfew imposed by the December 8 Order.

38. Further, according to the KDHE website, there have been a total of 20 clusters of COVID-19 cases across the entire state, from the beginning of the pandemic, that can be connected with bars or restaurants. This has resulted in 304 cases, 4 hospitalizations, and 0 deaths.

<https://www.coronavirus.kdheks.gov/160/COVID-19-in-Kansas> (last accessed 11/25/20).

39. As of December 10, 2020, KDHE reports only 3 active clusters in the State of Kansas arising from a “bar or restaurant.” *Id.* Again, upon information and belief, none of these active clusters have arisen from any Wichita bar, and certainly not the bars owned and operated by the Plaintiffs. In fact, there were less COVID clusters in the State of Kansas when the Wichita bar curfew was at 1 A.M. than there are currently under the 11 P.M. curfew. Simply stated, there is no reasonable or rational connection between the 11 P.M. curfew imposed by the Defendant’s Order and the spread of COVID-19.

40. If the goal of the December 8 Order is to slow the spread of COVID-19, then there is no rational or reasonable basis for the 11 p.m. curfew.

41. The bar curfew has caused significant economic injury to the Plaintiffs and will continue to cause significant economic injury. For instance, Plaintiff Steven Peters states that sales at his establishment, Vorshay’s Cocktail Lounge, are down approximately 92%. (Attached Affidavit of Steven Peters, ¶ 5). Plaintiff Hsu has lost



80% of his income from Wichita's Ballroom due to the series of Dr. Minns' Order, including the order which took effect on December 10. (Affidavit of Chasmin Hsu, ¶ 5). Plaintiff Brinkman's revenue has decreased by 70%. (Affidavit of Alan Brinkman, ¶ 5). Plaintiff Dallas Broz, owner of Party Express, LLC, avers that his establishment has been "harmed substantially due to the shutdown orders all while having no cases of COVID or evidence/data to support the closures." (Affidavit of Dallas Broz, ¶ 5). Plaintiff Kristi Ivy avers that her establishment, The Rusty Nail, has experienced a loss of over \$23,000, since the November 13, 2020, Emergency Order of Dr. Minns. (Affidavit of Krisi Ivy). Plaintiff Bradley Steven, owner of Club Indigo Old Town LLC dba Industry Old Town, avers that "sales are at an all time low." (Affidavit of Bradley Steven, ¶ 5). Plaintiff Jeannie Ahrens, owner of The Cowboy Inn, states the curfew and other restrictions have caused "unbelievable financial burden." (Affidavit of Jeannie Ahrens, ¶ 5). Plaintiff Augustine Iacopelli, owner of Augustino Brewing Company, states that his business has dropped by 15%. (Affidavit of Augustine Iacopelli, ¶5). The significant economic hardship caused by the December 8 Order has made complete closure of several of the Plaintiffs' bars/restaurants a likely reality. (Affidavit of Darren Greiving, ¶ 5).

42. The same day the December 8 Order is enjoined and/or declared unconstitutional, the Plaintiffs will either fully open for business (while continuing to implement COVID-19 mitigation procedures and protocols outlined in their affidavits), or immediately request a hearing before the appropriate tribunal. See Affidavits of Plaintiff Bar Owners filed with this Court.



43. The December 8 Order is an ongoing violation of federal law.
44. But for the series of Health Orders from November 13 through the December 8 Order, the Plaintiffs would not have suffered the extent of these harms or injuries in the past, and would not suffer the extent of these harms or injuries in the future.
45. Because the December 8 Order does not contain a pre- or post-deprivation process, the Plaintiffs have no other option than to file this lawsuit.
46. The Plaintiffs have been and continue to be injured by the December 8 Order because, among other things, they do not have any opportunity other than this suit to challenge the December 8 Order.
47. The Plaintiffs have been and continue to be injured by the December 8 Order's enabling statutes. The enabling statutes have caused significant economic injury to the Plaintiffs and will continue to cause significant economic injury.
48. But for the December 8 Order's enabling statutes, the Plaintiffs would not have suffered the extent of these harms or injuries in the past, and would not suffer the extent of these harms or injuries in the future.
49. The Plaintiffs have been and continue to be injured by the December 8 Order's enabling statutes because, among other things, they are unconstitutionally vague, and they do not provide for an opportunity to challenge the December 8 Order.
50. The December 8 Order's enabling statutes are an ongoing violation of federal law and an ongoing violation of the Kansas Constitution.

51. But for the December 8 Order's enabling statutes and threatened enforcement, the Plaintiffs would not have suffered the extent of these harms or injuries in the past, and would not suffer the extent of these harms or injuries in the future.

### **DECLARATORY AND INJUNCTIVE RELIEF**

52. Plaintiffs reallege and incorporate by reference all previous paragraphs.

53. An actual controversy has arisen and now exists between Plaintiffs and the Defendant concerning Plaintiffs' rights under the United States and Kansas Constitutions. A judicial declaration is necessary and appropriate at this time.

54. Plaintiffs desire a judicial determination of their rights against the Defendant as it pertains to the curfew restrictions in the December 8 Order, and the enabling statutes for said order.

55. It is appropriate and proper that a declaratory judgment be issued, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring unconstitutional all relevant portions of the December 8 Order, and the enabling statutes at issue in this case.

56. Pursuant to U.S.C. § 2201, 2202, and Fed. R. Civ. P. 65 it is appropriate that this Court issue a temporary injunction, and/or preliminary and permanent injunction prohibiting enforcement of the December 8 Order, and/or the enabling statutes.

### **CONSTITUTIONAL VIOLATIONS**

**Claim One: The business curfew provision of the December 8 Order violates procedural due process under the Fourteenth Amendment to the United States Constitution (42 U.S.C. § 1983).**

57. Plaintiffs reallege and incorporate by reference all previous paragraphs.

58. Procedural due process ensures the government will not deprive a party of life, liberty, or property, without engaging in fair procedures to reach such a decision.
59. Procedural due process requires that an individual be given the opportunity to be heard in a meaningful time and a meaningful manner.
60. In this context, a health order impacting a business operation and/or earning a living, coupled with interests in a license(s), and/or a corporation or limited liability company are or should be, enough to trigger procedural due process guarantees.
61. The December 8 Order does not provide a pre- or postdeprivation hearing process of any kind. The lack of a pre- and post-deprivation hearing violates procedural due process.
62. There is no hearing process contained within the Order, but if there were such a process, the Defendant has the burden of establishing that Plaintiffs must remain subjected to the The December 8 Order. Speiser v. Randall, 357 U.S. 513 (1958), Nelson v. Colorado, 137 S. Ct. 1249 (2017).
63. The curfew restrictions of the December 8 Order constitutes a “deprivation” in the constitutional sense.
64. On its face and as applied, the December 8 Order violates the Fourteenth Amendment to the United States Constitution because it does not provide a pre- or post-deprivation hearing process, and if there were a hearing process, the burden must be on the Defendant.
65. As a direct and proximate result of the Defendant’s violation of procedural due process of law under the Fourteenth Amendment, as set forth in this Amended Complaint,

Plaintiffs have and continue to suffer irreparable harm, including direct economic harm, and the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief.

**Claim Two: The business curfew provision of the December 8 Order violates substantive due process under the Fourteenth Amendments to the United States Constitution (42 U.S.C. § 1983).**

66. Plaintiffs reallege and incorporate by reference all previous paragraphs.
67. The Fourteenth Amendment “includes a substantive component that bars arbitrary, wrongful, government action regardless of the fairness of the procedures used to implement them.” County of Butler v. Thomas W. Wolf, 2:20-CV-00677, (ECF. Doc. 79), 2020 WL 5510690, at \*25 (E.D. Penn., Sep. 14, 2020).
68. Substantive due process protects against certain exercises of governmental power.
69. In this context, Plaintiffs have or should have the requisite liberty or property interest to trigger substantive due process guarantees.
70. The December 8 Order violates substantive due process for all of the following reasons, when considered individually or collectively:
  - a. Defendant Minns acted *ultra vires* by creating and promulgating a bar curfew regime;
  - b. The December 8 Order does not set forth any process or means to challenge the Order;
  - c. The December 8 Order is arbitrary, capricious, irrational, and abusive toward bars in general and Plaintiffs in particular because there is no discernable justification, or such justification is too attenuated, that bars are unique vectors for the

spread of COVID-19, in general, or as applied to Plaintiffs; because there is no discernable justification, or such justification is too attenuated, that drinking alcohol in a bar after 11 p.m. increases the spread of COVID-19;

d. Upon information and belief, Sedgwick County's criminal enforcement of the December 8 order is arbitrary and discriminatory in that it is specifically directed only against businesses who violate the Order (even though the Order's mandates purportedly apply equally to businesses and individuals), and has created an online portal where individuals can report businesses who allegedly violate the December 8 Order. <https://www.sedgwickcounty.org/covid-19/violations/> and <https://www.sedgwickcounty.org/communications/news-releases/covid-19-public-safety-enforcement-in-place/>. One of the "concerns" that can be reported for enforcement purposes is "business operating outside of approved hours." This is directed at enforcing the curfew restrictions of the December 8 Order, which singles out businesses, like the Plaintiffs, for arbitrary and discriminatory criminal enforcement of the December 8 Order. Grayned v. City of Rockford, 408 U.S. 104, 108–09, 92 S. Ct. 2294, 2299, 33 L. Ed. 2d 222 (1972) ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.")

71. On its face and as applied, the December 8 Order violates the Fourteenth Amendment to the United States Constitution.



72. As a direct and proximate result of the Defendant's violation of substantive due process of law under the Fourteenth Amendment, as set forth in this Amended Complaint, Plaintiffs have and continue to suffer irreparable harm, including direct economic loss, and the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief.

**Claim Three: The enabling statutes violate the right to due process under the Fourteenth Amendments to the United States Constitution (42 U.S.C. § 1983). (Void for Vagueness)**

73. Plaintiffs reallege and incorporate by reference all previous paragraphs.

74. An enactment is void for vagueness if it **“is so standardless that it authorizes or encourages seriously discriminatory enforcement.”** F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012); *see also* Welch v. United States, 136 S. Ct. 1257 (2016).

75. The health statutes at issue do not define or otherwise establish sufficient standards necessary to prohibit or discourage seriously discriminatory enforcement. Instead, the statutes authorize a local health officer to “prohibit public gatherings” and to the extent relied upon, take “all known measures.” The lack of standards has caused seriously discriminatory enforcement in this case, i.e.: the creation of the bar curfew.

76. As a direct and proximate result of the enabling statutes, as set forth in this Amended Complaint, the Plaintiffs have and continue to suffer irreparable harm, including the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief.



**Claim Four: The enabling statutes violate the Unlawful Delegation and Separation of Powers Doctrine Under the Kansas Constitution and/or the Defendant has Exceeded His Authority.**

77. Plaintiffs reallege and incorporate by reference all previous paragraphs.
78. The non-delegation doctrine prohibits the delegation of governmental power to unelected and politically unaccountable bodies. Schneider v. Kansas Sec. Comm'r, 54 Kan. App. 2d 122, 146 (2017). The non-delegation doctrine “flows from the separation of powers principles embodied in Art. 2, § 1 of the Kansas Constitution, which provides that the legislative power of this state shall be vested in a house of representatives and senate.” *Id.*
79. “Article 2 of the Kansas Constitution gives the legislature the **exclusive** power to pass, amend, and repeal statutes.” State ex rel. Morrison v. Sebelius, 285 Kan. 875, 898 (2008) (emphasis added). *See also* State ex rel. Stephan v. Finney, 251 Kan. 559 (1992).
80. Only the legislature can legislate. State ex rel. Tomasic v. Unified Gov't of Wyandotte Cty./Kansas City, Kan., 264 Kan. 293, 303 (1998) (“If the constitution does not authorize a delegation of such legislative power, then the delegation is improper as a violation of the separation of powers doctrine and art. 2, § 1, which vests legislative power with the legislature only.”).
81. “If the legislature has included specific standards in a delegation, then it has already enacted the law and it is simply delegating the administrative power to administer the law, based on the standards included in the delegation. On the other hand, if the legislature has not included specific standards within a delegation, then the legislature

has delegated the legislative power to make the law. Such delegation is improper without constitutional authorization.” State ex rel. Tomasic v. Unified Gov't of Wyandotte Cty./Kansas City, Kan., 264 Kan. 293, 303–04 (1998).

82. If and to the extent the December 8 Order constitutes legislative action, this standardless delegation by the enabling statutes constitutes an unconstitutional delegation of power.
83. As a consequence of the enabling statutes, Defendant Minns has, among other things, and for all intents and purposes, created his own regulatory regime that departs from state law, and is now criminally enforceable pursuant to Resolutions 154-200 and 20-369.
84. Either the authority constitutes an unlawful delegation of power, or the Defendant has exceeded his authority.
85. Either way, as a direct and proximate result of the Defendant’s actions, as set forth in this Complaint, the Plaintiffs have and continue to suffer irreparable harm, entitling them to declaratory and injunctive relief.

**Claim Five: The bar curfew of the December 8 Order violates procedural due process under Section 18 of the Kansas Bill of Rights.**

86. Plaintiffs reallege and incorporate by reference all previous paragraphs.
87. Kan. Const. Bill of Rts. § 18 states as follows: “All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.”
88. “Constitutionally protected procedural due process requires that a person be afforded a right to be heard in a meaningful way before being deprived of life, liberty, or

property.” Johnson v. Kansas Dep't of Revenue, 58 Kan. App. 2d 431, 472 P.3d 92, 103 (2020).

89. In this context, a health order impacting a business operation and/or earning a living, coupled with an interest in a license(s), and/or a corporation or limited liability company are or should be, enough to trigger procedural due process guarantees. Johnson v. Kansas Dep't of Revenue, 58 Kan. App. 2d 431, 472 P.3d 92, 103 (2020)(“Suspension of issued licenses ... involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.”); State ex rel. Stephan v. Smith, 242 Kan. 336, 370, 747 P.2d 816, 841 (1987)(“One who practices his profession has a property interest in that pursuit which may not be taken from him or her at the whim of the government without due process.”); Kansas E. Conference of United Methodist Church, Inc. v. Bethany Med. Ctr., Inc., 266 Kan. 366, 379, 969 P.2d 859, 868 (1998)(holding the Kansas Corporation Code, in allowing corporate officers to control the operations of the corporation and giving them freedom to alienate its property upon dissolution, created a “definite property interest” protected by the due process); Chubb v. Sullivan, 50 Kan. App. 2d 419, 438–39, 330 P.3d 423, 436 (2014) (holding a property right is defined as ‘[t]he right to possess, use, and enjoy a determinate thing; ... the right of ownership,’ and a ‘property right must have some ascertainable monetary value.’”); K.S.A. 17-76,111 (“A limited liability company interest is personal property.”)

90. The December 8 Order does not provide a pre- or postdeprivation hearing process of any kind. The lack of a pre- and post-deprivation hearing violates Section 18 for which there should be a remedy by due course of law..
91. There is no hearing process contained within the Order, but if there were such a process, the Defendant has the burden of establishing that Plaintiffs must remain subjected to the the December 8 Order.
92. The curfew restrictions of the December 8 Order constitutes an “injury” to property under Section 18 of the Kansas Bill of Rights.
93. On its face and as applied, the December 8 Order violates Section 18 because it does not provide a remedy for injury to the Plaintiffs’ property, i.e. it does not provide a pre- or post-deprivation hearing process.
94. As a direct and proximate result of the Defendant’s violation of procedural due process of law under Section 18, as set forth in this Amended Complaint, Plaintiffs have and continue to suffer irreparable harm, including direct economic harm, and the loss of their fundamental constitutional rights, entitling them to declaratory and injunctive relief.

**Claim Six: The bar curfew of the December 8 Order violates Section 1 of the Kansas Bill of Rights.**

95. Plaintiffs reallege and incorporate by reference all previous paragraphs.
96. Kan. Const. Bill of Rts. § 1 states as follows: “All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.”
97. Firmly embedded within Section 1 of the Kansas Bill of Rights, and judicially enforceable in Kansas courts, is the fundamental right to follow any lawful vocation.



Coffeyville Vitrified Brick & Tile Co. v. Perry, 69 Kan. 297, 76 P. 848, 848–49 (1904)

([T]he Legislature has no power to impair or limit the reasonable and lawful exercise of a right, guaranteed by [Section 1 of] the Constitution, under the guise of a police regulation . . . The right to follow any lawful vocation, and to make contracts, is as completely within the protection of [Section 1 of] the Constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will . . . Every citizen is protected in his right to work where and for whom he will.”)

98. The strict scrutiny standard is employed once an infringement of Section 1 has been proven, regardless of degree of the infringement. Hodes & Nauser, MDs, P.A. v. Schmidt, 309 Kan. 610, 669, 440 P.3d 461, 496 (2019).
99. By reason of the aforementioned acts, the Defendant has infringed and deprived the Plaintiffs of their right to life, liberty, and the pursuit of happiness in violation of Section 1 of the Kansas Constitution.
100. As a direct and proximate result of the Defendant’s violation of Section 1 of the Kansas Bill of Rights, Plaintiffs have suffered irreparable harm, including the loss of their fundamental constitutional right to follow their lawful vocation, and the threat of criminal prosecution for the exercise of said rights, entitling them to declaratory and injunctive relief.

## REQUEST FOR RELIEF

Plaintiffs respectfully request the Court to grant the following relief:

101. Declaratory judgment that the curfew mandate of the December 8 Order violates the Fourteenth Amendment to the United States Constitution, on its face and as applied to the Plaintiffs; and the enabling statutes violate the Fourteenth Amendment to the United States Constitution, and violate the unlawful delegation and separation of powers doctrines under the Kansas Constitution, on their face and as applied to Plaintiffs; and/or the Defendant acted ultra vires, and/or in the alternative, to the extent the December 8 Order relies upon KSA § 65-202 (“all known measures” provision), the Order is unenforceable; and, the curfew mandate of the December 8 Order violates Sections 1 and 18 of the Kansas Bill of Rights on its face and as applied.
102. For entry of a temporary restraining order, and/or preliminary and/or permanent prospective injunctive relief, enjoining the Defendant, Defendant’s officers, agents, employees, attorneys, servants, assigns, and all those in active concert or participation who receive, through personal service or otherwise, actual notice of this Court’s order, from enforcing or directing the enforcement of the curfew mandate in the December 8 Order, either because the curfew mandate of the Order violates the Fourteenth Amendments to the United States Constitution, or violates Sections 1 and 18 of the Kansas Bill of Rights, or because the enabling statutes violate the Fourteenth Amendment to the United States Constitution or because the enabling statutes violate the Kansas Constitution, or because the Order is ultra vires, thus allowing Plaintiff and others similarly situated, to be free from the bar curfew of the December 8 Order.



103. Reasonable costs and attorney's fees under 42 U.S.C. § 1988 and other applicable law;  
and
104. Such other legal or equitable relief as this Court deems appropriate and just.

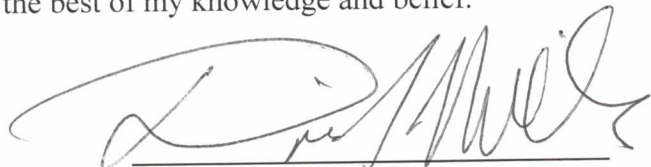
**Jury Demand**

105. Plaintiffs request a jury trial on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

VERIFICATION

STATE OF KANSAS        )  
  )  
COUNTY OF SEDGWICK )

David L. Miller, being of lawful age and duly sworn upon oath, declares that he has read the foregoing petition, he is familiar with the contents contained herein, and that all statements are true and accurate to the best of my knowledge and belief.



David L. Miller #26928  
The Law Office of David L. Miller  
7200 W. 13<sup>th</sup> St. N., Suite 212  
Wichita, Kansas 67212  
(316) 201-6414  
DavidLMillerLaw@gmail.com  
Attorney for Plaintiffs

Subscribed and sworn to before me this 11<sup>th</sup> day of December, 2020.

  
Notary Public

My Commission Expires:

8-24-24



**CERTIFICATE OF SERVICE**

I certify that on December 11, 2020, I filed the above and foregoing Amended Complaint using the Court's electronic filing system and sent a copy via U. S. mail and electronic mail to the following:

Gaye B. Tibbets  
Jon E. Newman  
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and

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/s/ David L. Miller  
David L. Miller



*Sedgwick County...  
working for you*

**EMERGENCY PUBLIC HEALTH ORDER OF THE  
SEDGWICK COUNTY LOCAL HEALTH OFFICER  
AMENDING AND REPLACING THE EMERGENCY  
PUBLIC HEALTH ORDER ISSUED ON NOVEMBER 24, 2020**

December 8, 2020

*Applicable within the entirety of Sedgwick County, Kansas*

This Emergency Public Health Order is effective the 10<sup>th</sup> day of December, 2020, at 12:01 A.M. to slow the spread of COVID-19 in Sedgwick County, Kansas pursuant to the authority provided in K.S.A. 65-119, K.S.A. 65-202, and other applicable laws or regulations.

WHEREAS, the Local Health Officer is authorized and required, pursuant to K.S.A. 65-119 and K.S.A. 65-202, to immediately exercise and maintain a supervision over known or suspected cases of any infectious or contagious disease during its continuance, and to issue orders seeing that all such cases are properly handled; and

WHEREAS, the Local Health Officer is appointed by Sedgwick County pursuant to K.S.A. 65-201 and is authorized, pursuant to K.S.A. 65-119(a), to prohibit public gatherings when necessary for the control of any and all infectious or contagious diseases, and to use all known measures to prevent the spread of any infectious, contagious, or communicable disease pursuant to K.S.A. 65-202; and

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 14,900,000 cases of the illness and more than 284,000 deaths as a result of the illness across the United States; and

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020; and

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020 and remains in effect at this time; and

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 5121-5207 (the "Stafford Act")); and

*Exhibit 1*



WHEREAS, as of this date, in Kansas there have been 174,025 reported positive cases of COVID-19 spread among all 105 counties, including 1,856 deaths; and

WHEREAS, on March 16, 2020, the Chairman of the Board of County Commissioners of Sedgwick County issued a state of local disaster emergency declaration, which remains in place at the time of this Order; and

WHEREAS, COVID-19 is a respiratory disease that spreads easily from person to person and may result in serious illness or death; and

WHEREAS, COVID-19 has resulted in 25,969 reported positive cases of COVID-19 in Sedgwick County and the deaths of 172 Sedgwick County residents; and

WHEREAS, the spread of COVID-19 endangers the health, safety, and welfare of persons and property within Sedgwick County, Kansas; and

WHEREAS, to reduce the spread of COVID-19, measures that are recommended and considered effective by the Centers for Disease Control and Prevention (“CDC”) include, among other measures, avoiding close contact with other people and covering one’s mouth and nose with mask or other face covering when in public settings; and

WHEREAS, the increased spread of COVID-19 also presents a serious threat to the continued effective operation of the local economy within Sedgwick County; and

WHEREAS, wearing a mask in public is one of the easiest and most effective ways to protect oneself and others, help keep our businesses open and our economy running, and keep children in school; and

WHEREAS, large public gatherings lead to heightened risks of large-scale COVID-19 person-to-person transmission; and

WHEREAS, the intent of this Order is not to deprive any person or entity of any rights protected by the United States Constitution, the Kansas Constitution, or any other law, but merely to set forth restrictions which would best protect Sedgwick County residents against the community spread of COVID-19; and

WHEREAS, with regard to matters of public health, the Supreme Court of the United States has venerable precedent from 1905 which indicates that, “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members...” (*Jacobson v. Massachusetts*, 197 U.S. 11); and

WHEREAS, in 1957, the Supreme Court of Kansas has stated that, “[a]mong all the objects sought to be secured by government, none is more important than the preservation of the public health; and, an imperative obligation rests upon the state through its proper instrumentalities or agencies to take all necessary steps to accomplish this objective. Statutes enacted for this purpose should be liberally construed and the most extensive

power may be conferred on administrative boards, either state or local, to carry out such purpose.” (*State ex rel. Anderson v. Fadely*, 180 Kan. 652, internal citations omitted); and

WHEREAS, in-person dining in restaurants and in-person activities within bars, night clubs, and other businesses licensed to sell alcohol for on-premises consumption present heightened risks of person-to-person spread of COVID-19 because the nature eating food and drinking beverages in such businesses generally involves customers being in close proximity with other customers for extended periods of time while not wearing masks or other face coverings; and

WHEREAS, within Sedgwick County, both the number of positive cases and the percentage of individuals tested with positive COVID-19 test results (the 14-day rolling average is 19.5%, as of December 8, 2020) have increased significantly in the past weeks; and

WHEREAS, the intensive care units at the largest hospitals within Sedgwick County are at or very near full capacity, and leadership within such hospitals have voiced concerns about their capacity to serve the community’s general medical needs while being overwhelmed due to the large influx of COVID-19 hospitalizations; and

WHEREAS, in a report dated November 15, 2020, the White House Coronavirus Task Force identified Kansas as being in the “red zone” and recommended that Kansas take stronger actions to control the spread of COVID-19 due to the state’s high rate of COVID-19 cases per 100,000 residents (9<sup>th</sup> highest among states) and the state’s high test positive rate (5<sup>th</sup> highest among states); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the County’s responsibility to provide for and ensure the health, safety, security, and welfare of the people of Sedgwick County, requiring that masks or other face coverings be worn in public, limiting the size of public gatherings, requiring social distancing, and placing certain other restrictions on activities are all measures that can be taken to slow and reduce the spread of COVID-19.

NOW, THEREFORE, BE IT ORDERED by the Sedgwick County Local Health Officer, pursuant to the above authorities that:

**Section I. Definitions**

As used within this Order, the following terms shall have the following meanings:

1. “Bona fide public protest activities” means any in-person public protest activity that occurs outdoors on public property and does not extend to any other activity outside the scope of such in-person public protest.
2. “Business or organization”, whether the terms are used together or individually, within this Order means any person, firm, formal business type, or other entity,



who solely or jointly and severally along with others, shall be in charge, care, and/or control of the business activity, structure, or premises. As stated within this definition, “any person” includes any owner, manager, employee, or agent of the business or organization.

3. “Mask or other face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or secured to the head by other means or devices or simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a mask or other face covering should have two or more layers. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from the household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels. The definition of “mask or other face covering” includes a face shield. The definition of “mask or other face covering” does not include a covering that is equipped with a one-way valve or vent through which air can be exhaled.
4. “Mass gatherings” mean gatherings of individuals within specific enclosed, confined, or designated public spaces, whether indoors or outdoors. Within this definition, distinct buildings, distinct rooms, or outdoor spaces (as opposed a building’s indoor space) shall be considered as distinct spaces. Due to the transitory nature of consumer activity within retail stores, retail stores shall not be considered as mass gatherings. Mass gatherings also do not include restaurants, bars, night clubs, other businesses licensed to sell alcohol for on-premises consumption, fitness centers, and health clubs. Mass gatherings do not include normal operations in spaces where individuals may be in transit or coming and going from one location or another (e.g., walking down the street). Mass gatherings do not include youth organized sports. Outdoor and indoor entertainment venues with plans that have been approved by the Local Health Officer pursuant to Section IV.7. of this Order shall not be considered as mass gatherings.
5. “Physical barrier” means a partition (e.g., Plexiglas) or a wall that is impervious to air circulation that separates individuals from one another.
6. “Public property” means any property owned by a governmental entity or property that is dedicated to public use.
7. “Public space” means any indoor or outdoor space or area that is open to the public; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors.
8. “Retail store” means a business or organization that sells finished goods to consumers and includes grocery stores, drug stores, department stores, convenience stores, and other similar stores. The term “retail store” does not include limited time sales events, trade shows, and similar events and

occurrences, which would instead be analyzed pursuant to this Order's provisions regarding mass gatherings.

9. "Social distancing" means the physical separation of at least 6 feet between one individual and another individual.

## **Section II. Wearing of Masks or Other Face Coverings.**

1. **Individuals.** Any person within Sedgwick County shall cover their mouth and nose with a mask or other face covering when they are in the following situations:
  - a. Present within any indoor public space;
  - b. While outdoors and in line waiting to enter an indoor public space;
  - c. While outdoors and unable to maintain social distancing at all times, except for infrequent or incidental moments of closer proximity; and
  - d. While riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle.
  
2. **Businesses and Organizations.** All businesses and organizations in Sedgwick County must both: (1) make reasonable efforts to inform members of the public as to applicable mask or other face covering requirements, and (2) require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering when:
  - a. Employees are working in any space visited by customers or members of the public, regardless of whether anyone from the public is present at the time;
  - b. Employees who are working in any space where food is prepared or packaged for sale or distribution to others;
  - c. Customers, members, visitors, or members of the public are in a facility managed by the business or organization; or
  - d. Employees are in any room or enclosed area where other people (except individuals who reside together) are present and unable to maintain a 6-foot distance except for infrequent or incidental moments of closer proximity.

"Reasonable efforts to inform members of the public", as described within Section II.2.(1) may include, but are not limited to, an individual or combined use of signs, greeters, intercoms, and directly addressing unmasked employees or customers.

An exemption to the requirement to wear a mask or other face covering must be expressed to businesses and organizations by employees, customers, members, visitors, and members of the public as an affirmative exception to the requirement. The mere existence of possible exemptions to the requirement to wear a mask or other face covering in no way releases a business or organization from its duty to ensure individuals are complying with the aforementioned requirement to wear a mask or other face covering.



3. Exemptions. The following individuals are exempt from wearing masks or other face coverings in situations described in Sections II.1 and II.2.:
- a. Persons age five years or under and, at the discretion of the school, children in kindergarten classes (children age two years and under in particular should not wear a face covering because of the risk of suffocation);
  - b. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering—this includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
  - c. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;
  - d. Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines;
  - e. Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
  - f. Persons actively engaged in eating food or drinking a beverage;
  - g. Athletes who are engaged in an organized sports activity that allows athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity (note: this exemption shall not apply while an athlete is on the bench or sidelines and is not participating), and individuals who are actively participating in strenuous exercise that allows such individuals to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity (note: this exemption does not apply while an individual is not actively participating in the strenuous exercise);
  - h. Persons who are engaged in an activity that a professional association, regulatory entity, medical association, or other public health-oriented entity recognized by the Local Health Officer has determined cannot be safely conducted while wearing a mask or other face covering;
  - i. Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary;
  - j. Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law;
  - k. Persons who have one or more physical barriers between them and any other persons;
  - l. Voters at election polling places; and
  - m. Individuals who are actively speaking to an audience of other individuals at a religious institution, wedding, funeral, an open meeting of a political or taxing subdivision, or as a member of a political or taxing subdivision during an open meeting, provided that such individual speaking has at

least 6 feet of social distancing from other individuals or is separated from other individuals by a physical barrier. These individuals are still encouraged to wear a mask or other face covering.

### **Section III. Social Distancing and Mass Gatherings Provisions.**

1. Individuals within a public space shall maintain 6 feet of social distancing from other individuals, unless such individuals reside together or an exception stated within Section III.3. or Section III.5. applies.
2. Within a public space where a business or organization operates, such business or organization shall ensure that 6 feet of social distancing is maintained between individuals and groups of individuals, unless such individuals reside together or an exception stated within Section III.3. or Section III.5. applies.
3. Exceptions to the 6 feet of social distancing requirements stated within Sections III.1. and III.2. shall include:
  - a. Businesses and organizations that provide services that intrinsically require staff from the business or organization to be within less than 6 feet from the customer, such as dentists, hair salons, barber shops, nail salons, chiropractors, massage services, tattoo parlors, medical services providers, and similar services.
  - b. Businesses where tasks completed by employees require such employees to work within 6 feet of one another.
  - c. Persons who have one or more physical barrier between them and any other persons.
4. Mass gatherings, as defined within Section I. of this Order, shall be limited to 25 total individuals and shall also be subject to the requirements within Sections III.1. and III.2. requiring social distancing. Any business or organization hosting or organizing a mass gathering shall be responsible for ensuring individuals' compliance with the mass gathering and 6 feet of social distancing requirements stated within this Order.
  - a. While retail stores do not fit within the definition of "mass gatherings", retail stores shall be limited to 50 percent of the capacity permitted under the applicable fire code. Within retail stores, social distancing requirements stated within Sections III.1. and III.2. shall continue to apply.
  - b. While restaurants, bars, night clubs, and other businesses licensed for the on-premises consumption of alcohol do not fit within the definition of "mass gatherings", all of the aforementioned business types shall limit the number of patrons to 100 or 50 percent of the capacity permitted under the applicable fire code, whichever is less. To the extent that a restaurant, bar,



night club, or other business licensed for the on-premises consumption of alcohol may have separate dining rooms or outdoor dining areas, the aforementioned limitations on the maximum number of patrons shall apply to each specific room or outdoor dining area. Employees for these businesses and organizations shall not be included in any capacity calculation. While seated at a restaurant, bar, night club, or other business licensed to sell alcohol for on-premises consumption, individuals at the same table may be located within 6 feet of one another. However, there shall not be more than 8 individuals at any one table. Also, all tables and individuals located at a table shall be located at least 6 feet from any other tables and individuals seated at such tables. For purposes of this Section III.4.b., "table" means table, booth, or other distinct seating or dining area for a group of individuals.

- c. While fitness centers and health clubs do not fit within the definition of "mass gatherings", such businesses and organizations shall limit capacity to 100 individuals or 50 percent of the capacity permitted under the applicable fire code, whichever is less. To the extent the fitness center or health club has separate rooms or outdoor workout areas, the aforementioned limitations on the maximum number of individuals shall apply to each specific room or outdoor workout area. Within fitness centers and health clubs, social distancing requirements stated within Sections III.1. and III.2. shall continue to apply.
- d. All youth organized sports tournaments, games, practices, and related events shall limit attendance and activities in the following manner ("youth organized sports" shall not apply to any collegiate sporting events and sporting events governed by the Kansas State High School Activities Association and/or school boards):
  - (1) For indoor single-court or single-playing area rooms and outdoor facilities (regardless of the number of courts or playing areas), there shall be a maximum of 2 attendees per participant. After the participants' game has concluded, both the participants and the accompanying attendees shall leave the area where the game has occurred.
  - (2) For indoor multi-court or multi-playing area rooms, there shall be a maximum of 1 attendee per participant and the facility hosting any youth organized sports shall limit utilization to one-half or less of the courts or playing areas such that, where feasible, every other court or playing area is utilized. After the participants' game has concluded, both the participants and the accompanying attendees shall leave the area where the game has occurred.



- (3) The youth organized sports provisions shall apply regardless of the type of facility where such activities occur.
  - e. All of the businesses and organizations identified within Section III.4.a. through d. shall undertake reasonable efforts to ensure that their facilities remain in compliance with the applicable percent of fire code capacity limitations established within this Order and any other limitations contained within Section III.4.a. through d.
5. The following are exempt from Sections III.1., III.2., and III.4., and are instead encouraged to maintain social distancing as much as is feasible and to maintain 6 feet of social distancing between individuals who do not reside together, when feasible:
- a. Religious facilities;
  - b. Wedding and funeral ceremonies (this exemption would not apply to a reception or gathering outside of the wedding or funeral ceremony, unless another exemption would apply);
  - c. Election polling places;
  - d. Licensed childcare facilities;
  - e. Pre-K through 12<sup>th</sup> grade schools and activities within the purview of the school's governing body and/or the Kansas State High School Activities Association;
  - f. Court facilities;
  - g. Airports, bus stations, and other public transportation activities;
  - h. Military and national guard activities;
  - i. Law enforcement, jail, or correctional facilities;
  - j. Any facility being used as part of a government or community response to a natural disaster;
  - k. Food pantries and shelter facilities;
  - l. Detoxification centers;
  - m. Hospitals and other medical facilities;
  - n. Long-term care and assisted living facilities;
  - o. Government service centers;
  - p. Manufacturing, processing, distribution, and production facilities;
  - q. Utility facilities; and
  - r. Bona fide public protest activities, as defined in Section I of this Order.

**Section IV. Provisions Specific to Certain Activities.** Notwithstanding any provision in Sections I, II, III, or IV to the contrary, the following requirements apply to these specific activities:

- 1. Nail salons, barber shops, hair salons, tattoo parlors, dentists and other personal services businesses where 6 feet of social distancing is not feasible must only serve customers for pre-scheduled appointments or online check-in.

2. Fitness centers and health clubs must frequently clean common touchpoints, which include but are not limited to benches, seating, and lockers.
3. Fairs, festivals, carnivals, parades, trade shows, exhibitions, and other similar events shall not occur.
4. All bars, night clubs, and other businesses licensed to sell alcohol for on-premises consumption must abide by a curfew and close any in-person dining and drinking areas so that they are vacated by 11:00 P.M., and remain closed until at least 5:00 A.M. or such later time that they may subsequently reopen pursuant to state or local law. However, such businesses may remain open between 11:00 P.M. and 5:00 A.M. for curbside, drive through, and delivery services (but not carry-out), pursuant to any limits established by state or local laws.
5. All restaurants must abide by a curfew to close such in-person dining areas by 11:00 P.M., and have such in-person dining areas remain closed until at least 5:00 A.M. However, such businesses may remain open between 11:00 P.M. and 5:00 A.M. for curbside, drive through, and delivery services (but not carry-out).
6. If a business or organization has multiple distinct components that fit within different portions of this Order, each distinct component shall be required to fit the requirements of this Order that apply most specifically to such component of the business or organization.
7. Outdoor and indoor entertainment venues with capacities in excess of 2,000 people may not host events in excess of this Order's mass gatherings provisions unless the Local Health Officer has approved a written plan from the venue subsequent to the issuance of this Order. Any such written plan shall be submitted with sufficient advance notice to afford the Local Health Officer a meaningful opportunity to review such plan.

**Section V. Lawful Order.** This Order is a lawfully issued order pursuant to K.S.A. 65-202 and K.S.A. 65-119(a), and is also a "public health directive" as identified within Section 9 of 2020 Special Session House Bill No. 2016. Individuals and organizations within Sedgwick County are required to comply with this Order. Failure to comply with this Order is a violation of Board of County Commissioners of Sedgwick County Resolution No. 154-2020 and can result in a fine of up to \$500.00.

**Section VI. Possible Review, Amendment, or Revocation.** Pursuant to Sections 37 and 38 of 2020 Special Session House Bill No. 2016, which amended K.S.A. 65-201 and 65-202, the Board of County Commissioners may review, amend, or revoke this Order.

**Section VII. Severability.** If any portion of this Order is found or determined to be invalid, such finding or determination shall only affect the portion of the Order that is at issue and shall not affect the validity of the remainder of the Order.

**Section VIII. Effect on Prior Order.** This Order amends and replaces the Emergency Public Health Order issued on November 24, 2020.

**Section IX. Effective Date; Conclusion.** This Order is effective at 12:01 A.M. on the 10<sup>th</sup> day of December, 2020, and shall remain in effect through 11:59 P.M. on the 9<sup>th</sup> day of January, 2021, unless it is amended, revoked, or replaced.

IT IS SO ORDERED this 8<sup>th</sup> day of December, 2020.

*Garold Minns M.D.*

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Garold Minns  
Sedgwick County Local Health Officer, M.D.