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DECLARATION OF ONGOING PUBLIC HEALTH EMERGENCY AND STATE OF EMERGENCY

- WHEREAS, the world is facing an ongoing COVID-19 pandemic that has resulted in the deaths of over 788,000 Americans; and
- WHEREAS, the COVID-19 pandemic is a global disaster that poses an imminent threat to the entirety of the Territory of American Samoa; and
- WHEREAS, the transmission of the disease occurs through respiratory droplets, which necessitates preventative measures such as mask use, social distancing, quarantine, and travel restrictions; and
- WHEREAS, public employees routinely interact with the public and other employees; and
- WHEREAS, the Government of American Samoa desires to protect the health of its employees and the public; and
- WHEREAS, the Food and Drug Administration (“FDA”) has given approval to the Pfizer-BioNTech COVID-19 vaccine, and granted Emergency Use Authorization for COVID-19 vaccines made by Moderna and Johnson & Johnson, and that all three vaccines meet its relevant standards for safety and effectiveness; and
- WHEREAS, the Centers for Disease Control stated that vaccination remains the best way to protect people and reduce the spread of the virus and prevent new variants from emerging; and
- WHEREAS, the lack of sufficient work force in critical areas including our supply chain and medicine is a clear and present danger to the safety of the Territory and its ability to protect its population from the effects of COVID-19; and
- WHEREAS, the President of the United States issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak; and
- WHEREAS, the President of the United States has approved a Major Disaster Declaration for American Samoa; and

WHEREAS, the protective measures taken by the American Samoa Government thus far have prevented the spread of COVID-19 to the Territory, however, the imminent threat remains;

NOW THEREFORE, I, LEMANU P. S. MAUGA, Governor of American Samoa, declare an ongoing public health emergency under A.S.C.A. § 13.0301 *et seq.* and a state of emergency under A.S.C.A. § 26.0101 *et seq.* for COVID-19. The Emergency Operations Center shall continue to be activated to coordinate response efforts.

Pursuant to A.S.C.A. § 13.0307 and § 26.0105, I further declare that:

American Samoa's response will be guided by a color-coded system to meet the changing threat level. The following provides a guideline for escalating measures according to shifting situations. These restrictions will be implemented to the fullest extent possible, but also may be subject to alteration as more information becomes available or a COVID-19 case is confirmed. **Code BLUE** is currently in effect.

1. **Code Blue:** Restrictions are designed to prevent the spread of COVID-19 to American Samoa. When the Governor declares that the Territory is in Code Blue, the following restrictions will be in force.
 - (A) Vaccination is a very effective method of protecting the people of American Samoa. Everyone is encouraged to vaccinate as soon as they are eligible.
 - (i) Full course of vaccination against COVID-19 is mandatory for all Executive Branch employees of the American Samoa Government, including but not limited to, career service employees, political appointees, and contract employees. Semi-autonomous authorities and entities which have their own personnel hiring, compensation, leave, disciplinary and termination rules and policies will adopt their own rules for their employees' COVID-19 vaccine requirements.
 - (I) Employees must provide the Director of Human Resources with evidence of having completed the full course of vaccination against COVID-19 that is approved by the FDA or the World Health Organization by January 14, 2022. Departments and agencies may collect proof of vaccination from their employees on behalf of the Director of Human Resources.
 - (II) Employees whose full course of vaccination requires two doses are reminded that the recommended interval between the first dose and second dose is 21 days for the Pfizer vaccine and 28 days for the Moderna vaccine. Thus, an employee would need to receive the first Pfizer dose by December 24, 2021 or the first Moderna dose by December 17, 2021 in order to meet the January 14, 2022 deadline.

- (III) Evidence of full course of vaccination must be documented in the form of a copy of the record of immunization from a health care provider or pharmacy, a copy of the COVID-19 Vaccination Record Card, a copy of medical records documenting the vaccination, a copy of immunization records from a public health or state/territory immunization information system, or a copy of any other official documentation containing the type of vaccine administered, date(s) of administration, and the name of the health care professional(s) or clinic site(s) administering the vaccine(s). Employees may be required to certify under penalty of perjury that the documentation they are submitting is true and correct.
- (IV) Employees who fail to provide evidence of vaccination as required by Subparagraph (I) or do not have an approved accommodation under Subparagraph (VII), will not be permitted to work in any position inside a government-owned or leased building, or a government-owned or leased vehicle, or any worksite or location where they will be in the presence of other ASG employees or members of the public in the course of their employment.
- (V) Any employee who does not comply with Subparagraph (I) shall be placed on leave by employee's department or agency and the Director of Human Resources until the employee provides proof of vaccination as required by Subparagraph (I), the employee has an approved accommodation under Subparagraph (VII), or the ongoing public health emergency and state of emergency is over. Pursuant to A.S.A.C. §§ 4.0802(e) and 4.1005(a)(2), employees may use their accumulated annual or sick leave while they are on leave. Otherwise, the leave shall be without pay.
- (VI) Nothing in this Declaration prohibits the termination of an employee for violation of standards established administratively which govern employee conduct and deportment pursuant to A.S.C.A. § 7.0801 or abandonment of position pursuant to A.S.C.A. § 7.0804.
- (VII) Exceptions to the vaccination requirement of this Declaration of Ongoing Public Health Emergency and State of Emergency will only be permitted as required by law. A reasonable accommodation may be provided to employees who communicate in writing to the Department of Human Resources that they are not vaccinated against COVID-19 because of a disability pursuant to the Americans with Disabilities Act (42 U.S.C. § 1201 *et seq*) or a valid medical reason or because of a sincerely held religious belief, practice, or observance. Requests for exemptions and accommodation must promptly be directed to the Director of Human Resources. Determining whether an exception is legally required will include consideration of relevant factors, including the basis for

the request; the nature of the employee's job responsibilities; and the reasonably foreseeable effects and any burden on government operations; and the protection of other employees and the public from COVID-19.

- (VIII) The Department of Human Resources shall notify ASG department and agency directors of any employees who have failed to provide proof of a full course of vaccination without having applied for and been granted an exemption or accommodation.
 - (IX) No employee hired after November 1, 2021 shall begin work until they demonstrate that they can comply with Subparagraph (I) or they are granted an exception and accommodation pursuant to Subparagraph (VII).
 - (ii) Full vaccination¹ is required prior to entering American Samoa for any person who is 16 years old or older unless the person is not medically qualified.
- (B) All entry permits will continue to be suspended until further notice with the exception of Guest Worker Permits issued for employment at a cannery or call center pursuant to A.S.C.A. § 41.0901 *et seq.* and any entry permits authorized by the Governor's Authorized Representative ("GAR").
- (C) Any person entering the Territory,
- (i) Must register with TALOFAPASS (<https://talofapass.as.gov/>) the online travel program approved by the COVID-19 Task Force, the Department of Health, and the Department of Legal Affairs. If the person is coming from a place with community spread of COVID-19, that registration must take place 21 days prior to entering the Territory,
 - (ii) Must show proof of negative test or tests prior to arrival as required by the Department of Health, and
 - (iii) Must submit to a quarantine upon arrival if required by the Department of Health.
 - (iv) Any person who makes false statements or provides fraudulent documents to TALOFAPASS will be subject to criminal prosecution and civil liability.
 - (v) The GAR may make exceptions and authorize the entry of persons into the Territory without using the online travel program. Any person entering under an exception by the GAR must comply with the safety requirements

¹ For the purposes of this declaration, "full vaccination" means that the person has received the full course of vaccination and 14 or more days elapsed after the final administration of the vaccine.

mandated by the GAR. Any inquiries can be made at covidtravel@go.as.gov.

- (D) Regularly scheduled passenger flights to and from American Samoa are suspended. The GAR may authorize limited scheduled flights or authorize flights based on the needs of the Territory. Passengers of any permitted flight must comply with the entry requirements listed above and any additional requirements contained in the GAR's written authorization.
- (E) All air crew must contact the Department of Health at least 96 hours prior to travel and provide documents required by the Director of Health. They must also submit proof of a negative COVID-19 test at least 72 hours prior to arrival, evidence of having recovered from COVID-19 in the last 6 months, or proof of complete vaccination at least 14 days prior to arrival. Agents for cargo flights are responsible for providing that proof to the Department of Health.
- (F) Air crew will not be permitted to exit their aircraft without the prior written approval of the Governor or the Lieutenant Governor unless it is necessary to comply with safety requirements or regulations.
 - (i) Anyone permitted to stay overnight will be subject to quarantine.
 - (ii) The Director of Health may establish policies or promulgate rules to govern personal protective equipment and procedures for airport operations including but not limited to, loading and unloading people, luggage, and cargo onto or off of aircraft.
- (G) Shipping agents for vessels, including but not limited to fishing and cargo vessels, entering American Samoa must provide the Department of Health documentation required by International Health Regulations and must provide the Department of Health proof of a negative COVID-19 test, evidence of having recovered from COVID-19 in the last 6 months, or proof of complete vaccination at least 14 days prior to arrival for each person on the vessel at least 72 hours prior to arrival.
 - (i) No person will be allowed to disembark from any vessel unless they are residents of American Samoa without prior written approval of the Governor or Lieutenant Governor. Residents will need to comply with the requirements of Paragraph 1(C).
 - (ii) The Director of Health may establish policies or promulgate rules to govern the health precautions for the entry of vessels into the ports of American Samoa pursuant to his authority in Title 20, Chapter 13 of the American Samoa Code Annotated.
- (H) Nothing in this order affects the authority of village councils to enact regulations imposing curfews or restricting public gatherings pursuant to A.S.C.A. § 5.0305.

2. **Code Yellow:** In the event a person tests positive for COVID-19 in the Territory and there is a heightened threat of community spread of COVID-19, the Governor may declare that Code Yellow restrictions listed below will be in force:
 - (A) All persons, businesses, organizations, or agencies are required to mandate mask use inside of any building that is open to the public. All persons must wear a mask that covers their mouth and nose in the following circumstances:
 - (i) In or at a location where mask use is required by the person or agency who controls that location;
 - (ii) At a public gathering or inside a building that is open to the public;
 - (iii) Every person who occupies a bus, taxi, or other vehicle engaged in commercial transportation must wear a mask;
 - (iv) Subparagraphs (i) - (iii) do not apply to:
 - (a) children under 2 years of age;
 - (b) a person who cannot wear a mask or cannot safely wear a mask, because of a disability as defined by the Americans with Disabilities Act (42 U.S.C. 1201 *et seq.*);
 - (c) a person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or regulations; and
 - (d) a person who is the sole occupant of a vehicle or office.
 - (B) Families are encouraged to self-quarantine and designate one family member to go to the store.
 - (C) All employers, public and private, will reduce their staffing at places of employment to the extent possible. Remote work is encouraged.
 - (D) All businesses will only be allowed to operate from 5 am to 6 pm.
 - (E) All restaurants will be allowed to provide take-out only. Dine-in service is prohibited.
 - (F) Unnecessary travel to affected areas will be limited.
 - (G) The Code Blue provisions in Paragraphs (B) through (G), relating to entry and exit from the Territory, remain in effect.
 - (H) The Hope House, LBJ TMC, and the Tafuna Correctional Facility will be closed for visitation.
 - (I) A Territorial Curfew of 9 pm will be imposed. Public gatherings of more than ten people are prohibited. All public gatherings from 9 pm and 5 am are prohibited.

- (J) Additional requirements and restrictions will be issued as necessary for the protection of public health.
3. **Code Red:** In the event of community spread of COVID-19 locally, the Governor may declare that Code Red is in effect.
- (A) The Code Yellow restrictions remain in effect except as modified below:
 - (B) All businesses will only be allowed to operate from 5 am to 4 pm.
 - (C) All employers, public and private, will designate essential employees who directly perform or support essential services such as those related to public safety; health; utilities; food production, distribution, and sales; sanitation and laundry; port operations; and similarly, essential services. Only those employees who are absolutely essential should work at places of employment.
 - (D) All ASG operations will be suspended except for first responders and essential employees.
 - (E) All air and sea travel will be suspended.
 - (F) Ports of entry will be closed except for military and approved air or sea cargo vessels.
 - (G) All public gatherings will be prohibited.
 - (H) Additional requirements and restrictions will be issued as necessary for the protection of public health.
4. General Provisions:
- (A) A.S.C.A. § 13.0215(d)(3) regarding quarantine and isolation is suspended in part.
 - (i) The Director of Health is authorized to quarantine a person for up to fifteen days without notice if that person was or may have been exposed to COVID-19. Quarantine for more than fifteen days must be authorized by the High Court of American Samoa.
 - (ii) The Director of Health is authorized to isolate a person for up to fifteen days without notice if that person is infected or reasonably believed to be infected with COVID-19. Isolation for more than fifteen days must be authorized by the High Court of American Samoa.
 - (B) Unauthorized entry into quarantine or isolation sites is prohibited. Any person entering a quarantine or isolation site without permission from the Department of Health may be quarantined pursuant to A.S.C.A. § 13.0215(c).
 - (C) Any person who violates the requirements of this declaration or violates a quarantine or isolation order issued by the Director of Health or his designee may be charged with a violation of A.S.C.A. §§ 13.0323 or 46.4703.

- (D) Price gouging is prohibited. This declaration established a “State of Emergency” as the term is used in Title 27, Chapter 9 of the American Samoa Code Annotated. All violations of this provision will be prosecuted vigorously to the full extent of the law. The Attorney General is authorized to request justification from any business deemed to have substantially increased its prices during this Health Emergency period.
- (E) Requests for transporting human remains to or from American Samoa must be submitted to the Lieutenant Governor and the Department of Health. The request will be reviewed by the Department of Health prior to final approval or disapproval by the Lieutenant Governor.
- (F) The requirements of A.S.C.A. §§ 41.0208(a) and 41.0501 are waived to the extent that people entering American Samoa may be transported from port facilities at Fagatogo or the Pago Pago International Airport to a designated alternate location before they will be required to prove that they are not subject to exclusion. Alternate locations will be designated by the Lieutenant Governor. For purposes of A.S.C.A. §§ 41.0208(a) and 41.0501, the alternate location will be considered a Port of Entry. Additionally, the alternate location shall be considered a secure area for the purposes of A.S.C.A. § 27.1003.
- (G) Departments, Agencies, and Offices of the American Samoa Government may promulgate emergency rules in accordance with established law and the Administrative Procedures Act. Emergency rules will be submitted to the Governor prior to promulgation.
- (H) Aliens who are present in American Samoa who do not have legal status and are considered “overstayers” may apply at the Immigration Office for a P5 immigration status under the 2021 Amnesty Program.
 - (i) In order to be approved, the alien must demonstrate to the Immigration Board that the alien
 - (a) has a valid passport;
 - (b) has completed the full course of vaccination against COVID-19;
 - (c) has a valid offer of employment conditioned on Immigration Board approval and a qualified immigration sponsor;
 - (d) has local hospital and court clearances and paid the required fees and bond; and
 - (e) is not excludable per A.S.C.A. § 41.0615, provided that an alien who has stayed beyond the time allowed in their entry permit or granted by the Board shall not be denied solely on the basis of being an overstayer.

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- (ii) In accordance with A.S.C.A. 26.0105(g)(1), the numerical limitations of A.S.C.A. § 41.0301 are suspended.
- (iii) In accordance with A.S.C.A. 26.0105(g)(1), A.S.C.A. § 41.0410(b) and A.S.A.C. § 41.1005(b) are suspended to the extent that aliens may seek employment in order to comply with the provisions of this paragraph.
- (iv) This amnesty has been available since November 12, 2021. The program will conclude on January 13, 2022. Applications submitted prior to or on January 13, 2022 shall continue to be processed and decided by the Immigration Board.

The Governor's Office may be contacted at covidtravel@go.as.gov or 633-4116.

The Department of Health may be contacted at dohcovid19clearance@doh.as or 684-633-5871/5872.

This declaration will be effective December 9, 2021 and supersedes the Declaration dated November 10, 2021. It will be in effect for thirty (30) days and will expire on January 8, 2022. Exclusive authority for rendering all final decisions pertaining to the implementation of all prescribed dictates of this Emergency Declaration is vested in the Governor and Lieutenant Governor of the Territory of American Samoa.

Dated: December 9, 2021



LEMANU P. S. MAUGA
GOVERNOR