



May 12, 2020

Read new requirements under Governor Ralph Northam's Executive Order 61 and corresponding Guidelines for All Business Sectors, as the Commonwealth experiences loosened restrictions on businesses and individuals as early as Friday (May 15). At the end of this update, see the latest on how Northern Virginia localities — hit hard by the coronavirus — will experience loosened restrictions more slowly than others.

Governor Northam issues Executive Order 61, releases guidelines for Phase I of reopening.

Over the weekend, Governor Ralph Northam issued [Executive Order 61](#), which revises the public health guidance in Executive Orders 53 and 55. Coinciding with the Order are newly released [Guidelines for All Business Sectors](#), which stipulate restrictions and best practices for businesses in Phase I of the Commonwealth's reopening plan: "[Forward Virginia](#)."

Executive Order 61 will be effective Friday (May 15) through Wednesday, June 10, 2020 unless amended or rescinded by further executive action. In the meantime, **carefully review the following information — it could be the difference between your store's continued operations and forced closure.**

Non-Essential Brick and Mortar Retail (Sales and Finance Departments)

- Like Executive Order 53, Executive Order 61 treats sales and finance departments as non-essential brick and mortar retail operations.
- Sales and finance departments must comply with the mandatory provisions for brick and mortar retail stipulated in the [Guidelines for All Business Sectors](#). Failure to comply requires closure.
 - That means continued physical distancing, enhanced cleaning and disinfection, and enhanced workplace safety plus a posting of CDC materials as stipulated in [the Guidelines](#).
 - It also means **nine (9) additional, mandatory requirements**¹ for Virginia's franchised auto dealerships. Stores must:
 - **(1)** Post signage at the entrance that states that no one with a fever or symptoms of COVID-19, or known exposure to a COVID-19 case in the prior 14 days, is permitted in the establishment.
 - (Note: See [this example](#).)
 - **(2)** Post signage to provide public health reminders regarding physical distancing, gatherings, options for [high risk individuals](#), and staying home if sick (samples included at the bottom of [the Guidelines](#) and [here](#), [here](#), [here](#), [here](#), and [here](#)).
 - **(3)** Limit occupancy to 50% of the lowest occupancy load on the certificate of occupancy.
 - **(Note: This new requirement replaces the 10-patron/customer limit under Executive Order 53 and applies to both customers and dealership personnel. If you do not know your store's lowest occupancy load, your locality's building inspector office may have the answer. If your lowest occupancy load is 100, you are permitted 50 employees and customers or less physically present at any one**

¹ There is a tenth requirement for non-essential brick and mortar retail; it involves shopping carts and baskets and is less pertinent to VADA members. See [the Guidelines](#) for more.

time. Because others outside your organization may question your compliance with the new occupancy limitation, you should obtain and/or maintain documentation proving your lowest occupancy load.)

- (4) Assist customers in keeping at least six feet of space between individuals or households while shopping and waiting in line. Mark floors in six-foot increments in areas where customers will be congregating or standing in line such as cashier areas.
- (5) If seating is available, provide a minimum of six feet between tables; if tables are not movable, parties must be spaced at least six feet apart.
- (6) Meeting rooms and other enclosed spaces should be closed to customers.
- (7) Employees working in customer-facing areas are required to wear face coverings over their nose and mouth, such as using [CDC Use of Cloth Face Coverings guidance](#).
 - **(Note: Executive Order 61 and the Guidelines taken together, it is our reading employers must provide employees with face coverings, and employees must wear them when facing customers and where social distancing cannot be strictly maintained. To avoid confusion, it is a best practice to have all your employees wear face coverings, even when interacting with other employees. It is also a best practice to encourage customers to wear face coverings while entering, exiting, or otherwise traveling throughout the store. Use common sense.)**
- (8) Clean and disinfect frequently contacted surfaces — *e.g.*, countertops and bathroom surfaces — at a minimum, every two (2) hours.
- (9) No self-service food. Self-service beverage areas must use beverage equipment designed to dispense through a contamination-free method.

Essential Retail Businesses (Service Departments)

- Like Executive Order 53, Executive Order 61 treats automotive parts, accessories, and tire retailers as well as automotive repair facilities as “essential retail businesses.”
- Service departments should comply with the Guidelines for All Business Sectors as best practices.
 - That means continued physical distancing, enhanced cleaning and disinfection, and enhanced workplace safety plus a posting of CDC materials as stipulated in [the Guidelines](#).
 - Other requirements listed above that are mandatory for sales and finance departments do not extend to service departments under Executive Order 61 or the Guidelines.
- The only limitation on the number of service and parts customers in the dealership is the practical one of ensuring proper physical distancing.
- Executive Order 61 and the Guidelines taken together, it is our reading employers must provide employees with face coverings, and employees must wear them when facing customers and where social distancing cannot be strictly maintained. To avoid confusion, it is a best practice to have all your employees wear face coverings, even when interacting with other employees. It is also a best practice to encourage customers to wear face coverings while entering, exiting, or otherwise traveling throughout the store. Use common sense.

Social Gatherings and Enforcement of Executive Order 61

- All public and private in-person gatherings of more than 10 individuals are prohibited; however, the presence of more than 10 individuals performing functions of their employment is not considered a “gathering.”
- Failure to adhere to the requirements in Executive Order 61 may result in store closure and/or a Class 1 misdemeanor and up to one year in jail. Any state agency with regulatory authority over Virginia’s franchised auto dealerships may also enforce Executive Order 61 to the extent permitted by law. Further, noncompliance could jeopardize the continued ability of any VADA member to remain open during this difficult time. **Do not underestimate the government’s power to shut down franchised auto dealership operations. Use common sense, and err on the side of caution.**

The [slide deck](#)² from Governor Northam’s press conference last Friday (May 8) provides data and helpful information about the differences between what’s required today and what will be required under Executive Order 61.

Northern Virginia

Sunday (May 10), political leaders from Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria [wrote](#) Governor Northam, requesting the Governor hold off bringing Northern Virginia into Phase I until the region — as a region, not part of the statewide calculation — achieves [metrics outlined in the Governor’s “Forward Virginia” plan](#).

The Governor has expressed openness to allowing localities hit hardest by the coronavirus to enter Phase I more slowly than the rest of the Commonwealth. Today (May 12), he issued [Executive Order 62](#) to that effect. In a [press release](#), his administration noted, “Executive Order [62] allows the Northern Virginia localities to delay implementation of Phase [I] until midnight on Thursday, May 28, to allow those localities more time to meet the health metrics.”

The delayed start to Phase I applies to the Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, as well as the Towns of Dumfries, Herndon, Leesburg, and Vienna, collectively referred to in the Order as “Northern Virginia Region.”

For VADA members in the Northern Virginia Region, Executive Order 62 does not impose new restrictions on your business(es). Rather, the Order keeps in place the restrictions your business has been subject to since the Governor issued Executive Order 53 on March 23 — or “Phase Zero,” as the Governor calls it — until midnight May 28.

If you have questions about any of the above, please contact Anne Gambardella, Esq. or Tommy Lukish, Esq. Anne is available at (804) 545-3006 or AGambardella@vada.com. You can reach Tommy at (804) 545-3028 or TLukish@vada.com.

More than ever, it is a pleasure to serve the new car and truck dealers of Virginia.

Sincerely,



Donald L. Hall
President and CEO

² Please note, the chart on page 15 of the slide deck suggests there is currently a 10-*person* limit for non-essential brick and mortar retail (like sales and finance departments) rather than a 10-patron/customer limit. It remains VADA’s understanding given the language of Executive Order 53, still in effect through this coming Thursday (May 14), that the limit applies only to patrons and customers and not dealership personnel.