

New York's Cluster Update: Frequently Asked Questions

This week has brought some major changes to New York's cluster action initiative. Gov. Andrew Cuomo has released guidance about how cluster zones are designated and how the cluster zone designation may be changed. Further, the Governor has updated the already-existing cluster zones and added new cluster zones. Below, we discuss frequently asked questions about the clusters and updated maps for the cluster zones.

What are the current cluster zones?

On October 21, Gov. Cuomo updated the cluster zones. There are now eight active cluster zones in New York.

Brooklyn's cluster is expansive, containing red and yellow zones and spanning much of the borough. You may view the cluster on [this map](#).

Queens has two clusters which are smaller than the Brooklyn cluster. The map of the Forest Hills cluster, which is now a yellow zone only, may be found [here](#). The map of the Far Rockaway cluster, which is also a yellow zone only, may be found [here](#).

The map of the Orange County cluster may be found [here](#). This cluster has only a red zone and a yellow zone, centering on the town of Kiryas Joel.

The map of the Rockland County cluster may be found [here](#). Like the Orange County cluster, there is only a red zone and a yellow zone. This cluster centers on Hillcrest, Monsey and New Square.

The Broome County cluster, which can be seen on [this map](#), is a yellow zone only. It includes parts of Binghamton, Johnson City, Endicott, Endwell and Vestal.

The clusters in Steuben and Chemung Counties were identified on October 21. The Steuben County cluster is a yellow zone only, centering on Corning. The map of the Steuben cluster may be found [here](#). Chemung County has an orange and a yellow zone, centering on Elmira and Horseheads. The map of the Chemung cluster may be found [here](#).

When do the cluster zone restrictions take effect?

When the cluster zone restrictions take effect appears to vary based on locality. Executive Order 202.68 provides that the original cluster zone designations must take effect no later than the Friday following the designation, but that localities may choose to have the cluster designation take effect sooner. For the new clusters in Chemung and Steuben Counties, the local governments have announced that the cluster restrictions begin on October 22.

What are the different cluster zone restrictions?

There are different restrictions in place depending on the color of the zone.

Red zones restrictions are similar to the initial days of New York Pause. Red zone restrictions are:

- All non-essential gatherings of any size cannot take place.

- All non-essential businesses must reduce the in-person workforce by 100%.
- All houses of worship must reduce their capacity to the **lesser of** 25% of maximum occupancy or 10 people.
- All restaurants or taverns must close in-person service but may remain open for takeout or delivery.
- All schools must go to remote learning.

Orange zones have the following restrictions:

- All non-essential gatherings must be limited to 10 people.
- Some non-essential businesses may reopen, but others, including gyms, fitness centers or classes, barbers, hair salons, spas, tattoo or piercing parlors, nail technicians and nail salons, cosmetologists, estheticians, the provision of laser hair removal and electrolysis, and all other personal care services, must reduce their in-person workforce by 100%.
- All houses of worship must reduce their capacity to the **lesser of** 35% of maximum occupancy or 25 people.
- All restaurants or taverns must close indoor dining. Outdoor dining is allowed, but every table must be limited to four people. Takeout and delivery may still operate.
- All schools must go to remote learning.

Yellow zones have the following restrictions:

- All non-essential gatherings must be limited to 25 people.
- Some non-essential businesses may reopen, but others, including gyms, fitness centers or classes, barbers, hair salons, spas, tattoo or piercing parlors, nail technicians and nail salons, cosmetologists, estheticians, the provision of laser hair removal and electrolysis, and all other personal care services, must reduce the in-person workforce by 100%.
- All houses of worship must reduce their capacity to 50% of maximum occupancy.
- Indoor and outdoor dining are allowed, but every table must be limited to four people. Takeout and delivery may still operate.
- Schools that reopen for in-person learning must follow to be issued guidance from the Department of Health regarding the mandatory testing of students and school personnel.

Please note: non-essential gatherings are defined by Executive Order 202.14 as “parties, celebrations, games, meetings or other social events.”

How are cluster zones designated?

According to a press release issued by the governor’s office on October 21, 2020 (which may be found [here](#)), there are different “target metrics” for entering a cluster zone based on geographic area. The chart below details the metrics released by the Governor’s office:

Geographic Area	Yellow Zone Metrics	Orange Zone Metrics	Red Zone Metrics
<p>Tier 1 Geographic area (ZIP, census tract, etc.) is located within a county of 900,000 or more people or located within city of 90,000 or more people.</p> <p>Tier 1 areas: NYC boroughs; Nassau, Suffolk, Westchester, Erie counties; cities of Buffalo, Rochester, Syracuse, Albany, Yonkers</p>	<p>Geographic area has 7-day rolling average positivity > 2.5% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 10 or more new daily cases per 100,000 residents on 7-day average</p>	<p>Geographic area has 7-day rolling average positivity > 3% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 10 or more new daily cases per 100,000 residents on 7-day average</p>	<p>Geographic area has 7-day rolling average positivity > 4% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 10 or more new daily cases per 100,000 residents on 7-day average</p>
<p>Tier 2 Geographic area (ZIP, census tract, etc.) is located within a county of 150,000 or more people (and jurisdiction is not included in Tier 1).</p> <p>Tier 2 counties: Monroe; Onondaga; Orange; Rockland; Albany; Dutchess; Saratoga; Oneida; Niagara; Broome; Ulster; Rensselaer; and Schenectady</p>	<p>Geographic area has 7-day rolling average positivity > 3% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 12 or more new daily cases per 100,000 residents on 7-day average</p>	<p>Geographic area has 7-day rolling average positivity > 4% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 12 or more new daily cases per 100,000 residents on 7-day average</p>	<p>Geographic area has 7-day rolling average positivity > 5% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 12 or more new daily cases per 100,000 residents on 7-day average</p>
<p>Tier 3 Geographic area (ZIP, census tract, etc.) is located within a county of 50,000 or more people.</p> <p>Tier 3 Counties: Chautauqua; Oswego; Jefferson; Ontario; St. Lawrence; Tompkins; Putnam; Steuben; Wayne; Chemung; Clinton; Cayuga; Cattaraugus; Sullivan; Madison; Warren; Livingston; Herkimer; Washington; Otsego; Columbia; Genesee; Fulton; Franklin</p>	<p>Geographic area has 7-day rolling average positivity > 3.5% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average</p>	<p>Geographic area has 7-day rolling average positivity > 4.5% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average</p>	<p>Geographic area has 7-day rolling average positivity > 5.5% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average</p>
<p>Tier 4 Geographic area (ZIP, census tract, etc.) is located within a county of less than 50,000 people</p> <p>Tier 4 Counties: Montgomery; Tioga; Cortland; Chenango; Greene; Allegany; Delaware; Orleans; Wyoming; Essex; Seneca; Schoharie; Lewis; Yates; Schuyler; Hamilton</p>	<p>Geographic area has 7-day rolling average positivity > 4% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average</p>	<p>Geographic area has 7-day rolling average positivity > 5% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average</p>	<p>Geographic area has 7-day rolling average positivity > 6% for 10 days</p> <p><u>AND</u></p> <p>Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average</p>

In addition, there are other factors the state must consider when designating a cluster in **all** areas of the state.

1. Whether the geographic area has a minimum of five new cases per day on seven-day average for geographic areas with 10,000 or more residents or a minimum of three new cases on seven-day average per day for areas with less than 10,000 residents; and
2. Whether the increase in positive cases or positivity reflect community spread and cannot be mostly explained by a cluster in a single institution (e.g. nursing home, factory, college, etc.) or household transmission; and
3. Whether the State Department of Health (DOH), in consultation with the local department of health, finds that based on the above listed metrics, and other epidemiological factors, including an upward trend in total and daily hospital admissions, that a zone designation is appropriate.

How does an area exit a cluster zone?

Fourteen days after a cluster zone is designated, DOH, in coordination with the local department of health, must determine whether the area has successfully reduced the viral spread enough to either receive a new cluster designation or exit the zone entirely. The factors that DOH must examine are as follows:

Geographic Area	Exiting Yellow Zone Metrics	Exiting Orange Zone Metrics	Exiting Red Zone Metrics
<p>Tier 1 Geographic area (ZIP, census tract, etc.) is located within a county of 900,000 or more people or located within city of 90,000 or more people.</p> <p>Tier 1 areas: NYC boroughs; Nassau, Suffolk, Westchester, Erie counties; cities of Buffalo, Rochester, Syracuse, Albany, Yonkers</p>	<p>Geographic area demonstrates decline in positivity (daily 7-day rolling average) over 10-day period AND has positivity < 1.5% (7-day rolling average) for at least 3 consecutive days at end of 10-day period.</p>	<p>Geographic area demonstrates decline in positivity (daily 7-day rolling average) over 10-day period AND has positivity < 2% (7-day rolling average) for at least 3 consecutive days at end of 10-day period.</p>	<p>Geographic area demonstrates decline in positivity (daily 7-day rolling average) over 10-day period AND has positivity < 3% (7-day rolling average) for at least 3 consecutive days at end of 10-day period.</p>
<p>Tiers 2, 3, 4 Counties: Monroe; Onondaga; Orange; Rockland; Albany; Dutchess; Saratoga; Oneida; Niagara; Broome; Ulster; Rensselaer; Schenectady; Chautauqua; Oswego; Jefferson; Ontario; St. Lawrence; Tompkins; Putnam; Steuben; Wayne; Chemung; Clinton; Cayuga; Cattaraugus; Sullivan; Madison; Warren; Livingston; Herkimer; Washington; Otsego; Columbia; Genesee; Fulton; Franklin; Montgomery; Tioga; Cortland; Chenango; Greene; Allegany; Delaware; Orleans; Wyoming; Essex; Seneca; Schoharie; Lewis; Yates; Schuyler; Hamilton</p>	<p>Geographic area demonstrates decline in positivity (daily 7-day rolling average) over 10-day period AND has positivity < 2% (7-day rolling average) for at least 3 consecutive days at end of 10-day period.</p>	<p>Geographic area demonstrates decline in positivity (daily 7-day rolling average) over 10-day period AND has positivity < 3% (7-day rolling average) for at least 3 consecutive days at end of 10-day period.</p>	<p>Geographic area demonstrates decline in positivity (daily 7-day rolling average) over 10-day period AND has positivity < 4% (7-day rolling average) for at least 3 consecutive days at end of 10-day period.</p>

In addition, DOH may consider the following factors before a new zone designation may occur:

1. trends in the daily hospital admissions from the geographic area;
2. a finding that new cases are tied to a specific congregate facility, or defined cluster;
3. increased compliance and enforcement actions taken by local government; or
4. community cooperation to reduce viral spread.

What happens when an area exits a cluster zone?

Currently, there is not much guidance about the next steps when an area exits a cluster zone. [According to a tweet from Melissa DeRosa](#), the secretary to the governor, businesses shifting to yellow zones from a red zone may reopen the day after the designation occurs. This means that businesses in areas going from red zones to yellow zones on October 21 may reopen on October 22. Remember, some businesses must continue to remain closed in yellow zones.

For schools in areas going from an orange or red zone to a yellow zone, such schools may reopen for in-person instruction on October 26. Schools open for in-person instruction in yellow zones must follow guidance regarding testing (which may be found [here](#)). Such schools must test at least 20% of all students, teachers and staff per week.

If you have questions, or want to effect the standards applicable to your industry, please contact [Hermes Fernandez](#), [Caitlin Anderson](#) or the attorney at the firm with whom you are regularly in contact.



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