New York's Cluster Zones:
Frequently Asked Questions UPDATE (11/20)

There have been significant changes to New York's cluster action initiative. Gov. Andrew Cuomo has updated the already-existing cluster zones and added new cluster zones in the Bronx, Queens and the Hudson Valley, as well as in Erie and Niagara Counties. Below, we discuss frequently asked questions about the clusters and updated maps for the cluster zones.

What are the current cluster zones?

On November 19 and 20, Gov. Cuomo updated the cluster zones. The Broome County and Orange County yellow zones were removed. There are now twenty active cluster zones in the state of New York.

New York State Clusters:

1. Brooklyn's cluster is now a yellow zone. You may view the cluster on this map. *As of the time of this publication, New York State had yet to revise Brooklyn's cluster map.*

2. The Bronx has two yellow zone clusters. The first may be found here, and the second may be found here.

3. Chemung County has an orange and a yellow zone, centering on Elmira and Horseheads. The map of the Chemung cluster may be found here.

4. Erie County has an expansive orange and yellow cluster. The orange cluster includes Buffalo and many of its suburbs. The map of this cluster may be found here.

5. Highland Falls has a yellow cluster, which may be found here.

6. Middletown has a yellow cluster. The map may be found here.

7. The Monroe County yellow cluster is also expansive. It stretches down from Lake Ontario and beyond the town of Henrietta. The map of the Monroe cluster may be found here.

8. The Newburg yellow cluster may be found here.

9. The New Rochelle cluster is yellow and the map may be found here.

10. Niagara County has a small yellow zone centered on North Towanda. The map may be found here.

11. The Onondaga County cluster is also a yellow zone. It stretches from Syracuse to the border of Oswego County. The map may be found here.

12. Ossining has a yellow zone cluster, and the map may be found here.

13. Peekskill has a yellow cluster. The map may be found here.

14. Queens' Forest Hills cluster was expanded this week. It is a yellow zone and may be found here.

15. The Rockland County cluster is a yellow zone. The map of the cluster may be found here.

16. Staten Island now has an expansive yellow zone. It covers most of the island. The map may be found here.

17. Tarrytown now has a yellow zone. The map may be found here.

18. Tioga County's yellow zone is relatively small, focusing on the town of Waverly along the New York and Pennsylvania border. The map may be found here.

19. Westchester County's yellow and orange zone covers the Port Chester area along the Connecticut border. The map may be found here.

20. Yonkers has a yellow cluster, which 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.

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:

- No non-essential gatherings of any size may 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 but may follow the state's guidelines for red and orange zones that allow the school to reopen for in-person classes under strict protocols. Such guidance may be found here.

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** 33% 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 but may follow the state's guidelines for red and orange zones that allow the school to reopen for in-person classes under strict protocols. Such guidance may be found here.

Yellow zones have the following restrictions:

- Non-essential gatherings are limited to no more than 25 people.
- Houses of worship are subject to a capacity limit of 50% of its maximum occupancy and shall adhere to Department of Health guidance.

- Restaurants and taverns must limit any one seated group or party size to 4 people.
- Schools open for in-person instruction in yellow zones must follow guidance regarding testing (which may be found here).

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
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. Tier 1 areas: NYC boroughs; Nassau, Suffolk, Westchester, Erie counties; cities of Buffalo, Rochester, Syracuse, Albany, Yonkers	Geographic area has 7-day rolling average positivity > 2.5% for 10 days AND Geographic area has 10 or more new daily cases per 100,000 residents on 7-day average	Geographic area has 7-day rolling average positivity > 3% for 10 days AND Geographic area has 10 or more new daily cases per 100,000 residents on 7-day average	Geographic area has 7-day rolling average positivity > 4% for 10 days AND Geographic area has 10 or more new daily cases per 100,000 residents on 7-day average
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). Tier 2 counties: Monroe; Onondaga; Orange; Rockland; Albany; Dutchess; Saratoga; Oneida; Niagara; Broome; Ulster; Rensselaer; and Schenectady	Geographic area has 7-day rolling average positivity > 3% for 10 days AND Geographic area has 12 or more new daily cases per 100,000 residents on 7-day average	Geographic area has 7-day rolling average positivity > 4% for 10 days AND Geographic area has 12 or more new daily cases per 100,000 residents on 7-day average	Geographic area has 7-day rolling average positivity > 5% for 10 days AND Geographic area has 12 or more new daily cases per 100,000 residents on 7-day average
Tier 3 Geographic area (ZIP, census tract, etc.) is located within a county of 50,000 or more people. 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	Geographic area has 7-day rolling average positivity > 3.5% for 10 days AND Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average	Geographic area has 7-day rolling average positivity > 4.5% for 10 days AND Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average	Geographic area has 7-day rolling average positivity > 5.5% for 10 days AND Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average

Tier 4	Geographic area has 7-day rolling average positivity > 4% for 10 days AND Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average	Geographic area has 7-day rolling average positivity > 5% for 10 days AND Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average	Geographic area has 7-day rolling average positivity > 6% for 10 days AND Geographic area has 15 or more new daily cases per 100,000 residents on 7-day average
Geographic area (ZIP, census tract, etc.) is located within a county of less than 50,000 people Tier 4 Counties: Montgomery; Tioga; Cortland; Chenango; Greene; Allegany; Delaware; Orleans; Wyoming; Essex; Seneca; Schoharie; Lewis; Yates; Schuyler; Hamilton			

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
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. Tier 1 areas: NYC boroughs; Nassau, Suffolk, Westchester, Erie counties; cities of Buffalo, Rochester, Syracuse, Albany, Yonkers	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.	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.	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.

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	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.	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.	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.

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. Remember, some businesses must continue to remain closed in yellow zones.

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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