

New York's Cluster Zones: Frequently Asked Questions UPDATE (12/16)

There have been significant changes to New York's cluster action initiative. Gov. Andrew Cuomo has changed the metrics for designating a cluster zone and changed the applicable restrictions in cluster zones. Additionally, the Governor announced on Monday, December 14 three new yellow zones in Genesee, Niagara and Oneida Counties. Below, we discuss frequently asked questions about the clusters and updated maps for the cluster zones.

What are the current cluster zones?

On December 14, Gov. Cuomo updated the cluster zones. There are now twenty-eight active cluster zones in the state of New York.

New York State Clusters:

1. The Bronx east cluster is a yellow zone. The map may be found [here](#).
2. The Bronx west cluster is also a yellow zone, and the map may be found [here](#).
3. Brooklyn's cluster is now a yellow zone. You may view the cluster on [this map](#).
4. Chemung County has an orange and a yellow zone, centering on Elmira and Horseheads. The map of the Chemung cluster may be found [here](#).
5. 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](#).
6. Genesee County has a yellow zone. The map may be found [here](#).
7. Great Neck has a yellow zone. The map may be found [here](#).
8. Hampton Bays has a yellow cluster. The map may be found [here](#).
9. Highland Falls has a yellow cluster, which may be found [here](#).
10. The Manhattan yellow cluster focuses on the Washington Heights. The map may be found [here](#).
11. Massapequa Park now has a yellow cluster. The map may be found [here](#).
12. Middletown has a yellow cluster. The map may be found [here](#).
13. The Monroe County yellow cluster is expansive, and now includes an orange zone centered on Rochester. It stretches down from Lake Ontario and beyond the town of Henrietta. The map of the Monroe cluster may be found [here](#).
14. The Newburg and New Windsor yellow cluster may be found [here](#).
15. The New Rochelle cluster is yellow and the map may be found [here](#).
16. Niagara County's yellow cluster has been expanded. The map may be found [here](#).

17. Oneida County's yellow cluster centers on Utica and Rome. The map may be found [here](#).
18. The Onondaga County cluster is a yellow and orange zone, with the orange zone centered on Syracuse. The cluster stretches from Syracuse to the border of Oswego County. The map may be found [here](#).
19. Ossining has a yellow zone cluster, and the map may be found [here](#).
20. Peekskill has a yellow cluster. The map may be found [here](#).
21. Queens' Forest Hills cluster was expanded this week. It is a yellow zone and may be found [here](#).
22. Riverhead has a yellow cluster, which may be found [here](#).
23. The Rockland County cluster is a yellow zone. The map of the cluster may be found [here](#).
24. Staten Island now has an expansive cluster zone. The upper half of the island is a yellow zone, while the lower half is an orange zone. The map may be found [here](#).
25. Tarrytown now has a yellow zone. The map may be found [here](#).
26. 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](#).
27. Westchester County's yellow and orange zone covers the Port Chester area along the Connecticut border. The map may be found [here](#).
28. 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 like 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.¹
- All restaurants or taverns must close in-person service but may remain open for takeout or delivery.
- Schools in red and orange zones do not have to close in-person instruction. In red zones, schools may remain open so long as a total of 30% of in-person students, faculty and staff are tested for COVID-19 over a one-month period following the zone designation. The tests should be proportionately spread across the month, with 15% being the maximum/minimum to be tested biweekly. The guidance for schools may be found [here](#).

¹ Based on the Supreme Court's November decision to strike down New York's capacity limitations for religious institutions in red and orange zones, the State will no longer enforce such limitations in cluster zones. The restrictions remain posted on the State's website. See Tarinelli, Ryan, *NY State Tells Court It Will Not Enforce 2 Key Capacity Limits on Houses of Worship*, N.Y. Law Journal, Dec. 14, 2020, [here](#).

Orange zones have the following restrictions:

- All non-essential gatherings must be limited to 10 people.
- Under [Executive Order 202.81](#), gyms, fitness centers or classes may reopen in orange zones on December 14, 2020 at 25% capacity.
- Barbers, hair salons, 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 may reopen on December 14, 2020, but must first have all employees performing services directly on or to customers receive negative COVID-19 tests within the preceding 7 days of providing such service. Further, employees performing services directly on or to customers must be tested for COVID-19 on a weekly basis while the business remains in an orange zone.
- All houses of worship must reduce their capacity to the **lesser of** 33% of maximum occupancy or 25 people.²
- 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.
- Schools in red and orange zones do not have to close in-person instruction. In orange zones, schools may remain open so long as a total of 20% of in-person students, faculty and staff are tested for COVID-19 over a one-month period following the zone designation. The tests should be proportionately spread across the month, with 10% being the maximum/minimum to be tested biweekly. The guidance for schools 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?

On December 10, 2020, Gov. Cuomo announced new metrics for entering a cluster zone.

A red zone is established when a **region** is 21 days away from reaching 90% hospital capacity on the current 7-day growth rate. This is only calculated after such region cancels all elective procedures and implements a 50% increase in hospital capacity.

An orange zone is established when a **geographic area** has either (1) a 4% positivity rate (7-day average) over the last ten days and is located within a **region** that has reached 85% hospital capacity OR (2) if the Department of Health determines the **region's** hospital admissions rate is “unacceptably high” and a zone designation is “appropriate to control the rate of growth.”

² See footnote 1.

A yellow zone is established when a **geographic area** has a 3% positivity rate (7-day average) over the past 10 days, is in the top 10% in the state for hospital admissions per capita over the past 7 days, and is experiencing “week-over-week” growth in daily admissions.

Please note, regions are based on the [Empire State Development regional councils of New York](#), and geographic areas are areas within such regions.

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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