

Health officials lift cap on worship size diocese saw as 'unjust'

MADISON, Wis. (CNS) – Health officials in the city of Madison and in Dane County June 5 lifted a 50-person cap instituted for houses of worship, a limitation that Madison Bishop Donald J. Hying earlier called unjust and said was stifling the church's "pastoral mission."

Bishop Hying said the diocese was pleased city and county officials "have ended the unequal 50-person cap on religious gatherings."

"As bishop, it is my duty to ensure that Sunday Mass be available as widely as possible to the Catholic faithful, while following best practices when it comes to public health," he said. "Indeed, in a time of deep division, it is more important than ever for the church to provide solace and comfort to all, in the great tradition of American religious freedom."

"We look forward to working together with the county and city to continue the reopening process in a safe, cooperative and responsible manner," he added.

The city and county officials announced the modification of an earlier public order outlining a reopening process for a range of public and private entities in response to the slowing of COVID-19. This modification "means churches that wish to have services can do so up to 25% of their capacity," they said.

They also acknowledged they made the change to avoid a "costly legal battle" with three Washington-based law firms who wrote a letter to them June 3 on behalf of Bishop Hying and the diocese decrying the earlier cap on worship spaces implemented

May 22 – which was a stricter cap than one issued May 18.

The letter – from Becket, a nonprofit religious liberty law firm, and the Sidley Austin and Troutman Sanders global law firms – demanded “equal treatment” for the Catholic Church. They said that government protocols restricting crowd size treated protests and movie theaters “better than churches.”

The letter said the Catholic Church had “no particular interest in litigation or in a protracted dispute or an uncooperative relationship with civil authorities,” and wanted to work with officials to ensure Mass is celebrated with all safety precautions already laid out by the diocese.

However, it stated the firms’ attorneys hoped for “a resolution by Friday, June 5, so that churches may prepare appropriately for upcoming weekend Masses.”

The letter was sent by email and also hand-delivered to Dane County Executive Joseph T. Parisi, Madison Mayor Satya Rhodes-Conway and Janel Heinrich, who is public health director for Madison and for Dane County.

On May 18, these officials issued an executive order they called “Forward Dane” that listed houses of worship as “essential services,” allowing them to resume in-person services at 25% capacity. The Madison Diocese “quickly put together a plan for safely reopening with rigorous social distancing and hygiene protocols developed in accordance with the Centers for Disease Control and the World Health Organization guidelines,” the firms noted.

But after the diocese “announced its careful plan,” said Becket and the other two firms, government officials “in an abrupt and inexplicable reversal” added a new restriction on houses of worship – limiting them to just 50 people at each religious service regardless of the size of the building.

For some churches this meant a 5% capacity, “while trampoline

parks, movie theaters and virtually all other entities can operate to at least 25%," the firms said.

"In the wake of the coronavirus pandemic and the racial injustice of the past week, our community is crying out for unity, for grace and for spiritual healing," Bishop Hying said in his earlier statement about the restrictions. "We are ready and able to answer that call, but the 50-person cap has unjustly stifled our pastoral mission."

In their letter, the Becket, Sidley Austin and Troutman Sanders firms said the church "has been a good public citizen" through the pandemic.

"It suspended public worship before the law required, and continues to impose greater operational restrictions than required," the letter said. "At the same time, the church has continued its ministry to the sick, the poor, and the incarcerated as best as possible, while generally supporting the unprecedented restrictions that public health officials have deemed necessary to combat the novel coronavirus."

The firms said that thankfully the city of Madison and Dane County are "beginning the process of reopening." However, they said, in the government order outlining reopening protocols, "only religious organizations are singled out by having their core "everyday operation" – religious worship services – uniformly designated as "'mass gatherings' automatically subject to the 50-person cap without regard to the size or configuration of the venue."

They also noted that "for months, religious entities in Dane County – and indeed, throughout Wisconsin and the entire United States – have accepted extraordinary restrictions on their religious freedom" because of a nearly universal shutdown caused by the pandemic.

The Madison Diocese's territory includes Dane County and 10 other counties in the southwest corner of Wisconsin. The city

of Madison is the county seat and also the state capital. Population wise, Dane County is the largest county in the diocese and second-most populous county in Wisconsin. It has a population of close to 547,000.