

Ethics of Gathering When Not All of Us May Attend in Person

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Prepared by Rabbi Pamela Barmash, with contributions by Rabbi Ashira Konigsburg and Rabbi Jan Uhrbach

Please note that this is not an official responsum of the CJLS.

A quandary lies before us as rabbis, hazzanim, and lay leaders. Should our congregations offer in-person davenning for the High Holidays 5781/2020 when not all of us may attend in person? The transmission through aerosolization of COVID-19 means that physical distancing and risk will limit the number of people able to be present and that those at greater risk may be advised not to attend or even forbidden from attending. This quandary applies in general, but the High Holidays 5781/2020 present a special challenge because of the sense that they are a high point of our spiritual year, the greater number of participants, and our intuition that through them, we can estimate how well our communities are doing, whether in terms of religious identity, spiritual fulfillment, or financial viability.

The issue of inclusiveness is not limited to COVID-19: we are aware of the need in general to be inclusive of those of us with disability, whether of mobility, hearing, sight, or sensory perception, and in this time of pandemic, we must continue to strive to be inclusive. We are seeking to make communal decisions that are best for the whole community while remembering that a community is made of individuals and that we must not lose sight of individual needs. Among our central challenges and aspirations is our ethical obligation to craft and lead services such that no group is "second class". No matter how difficult this is, with planning and mindful and innovative leadership, we can strive for inclusiveness.

The contexts in which we find ourselves as rabbis, hazzanim, and lay leaders are as diverse as we are. As a result, in deciding whether and how to hold in-person davenning for the High Holidays 5781/2020, the factors that need to be weighed, and the balance that will be struck, will vary considerably. Our congregations in the United States, Canada, Central and Latin America, Israel, Europe, Japan, Uganda, Australia, and elsewhere face different trajectories of COVID-19. The curve of infection and fatality due

to COVID-19 has flattened in some areas and not in others, and some localities with currently low rates are wary of a flare-up or have experienced a resurgence.

Rabbis and communities have chosen to remain offline or go online on Shabbat and yom tov and are thinking through what to do for the High Holidays. Some of us avoid technology and/or electricity on Shabbat and yom tov, and others of us feel we can make use of them in certain restricted ways during Shabbat and yom tov. While praying in community is highly valued in our tradition (O.H. 90:8), the principle of *sakkanat nefashot*, avoiding danger to life (Y.D. 116:5), has guided us as the pandemic has spread. We are acutely aware that the religious, emotional, and communal import of the High Holy Days, as well as the larger numbers of people involved, raise unique challenges and may demand different decisions.

Moreover, ***because medical science and guidelines are developing and changing, rabbis, hazzanim, and lay leaders are advised to consult with the congregation's medical advisors (medical scientists and medical doctors currently practicing medicine in appropriate specialties), as well as their national and local medical authorities, for guidance as it is updated and revised.*** It is important also to reiterate that in-person services should be considered only where the curve of COVID-19 has flattened for at least 14-21 days, and that any congregation considering holding in-person services has an ethical obligation to reasonably mitigate the transmission of COVID-19. See the letters on [Clergy and Shelihei Tzibbur](#), on [Choirs](#), on [Services for Children, Teenagers, and Families](#), on [Abbreviating Prayer Services for the High Holy Days of 5781/2020](#), on [Torah Reading During COVID-19](#), and on [Shofar Blowing for Rosh Hashanah 5781/2020](#) as well as the [cross-movement guide to reopening synagogue buildings](#).

The question of whether to reopen or not also intersects with the issue of competition between congregations: a congregation that follows one path toward reopening may inadvertently compete with another congregation that follows another path, especially if they are near one another. See the letter on [Live Streaming and Competition](#).

This letter of guidance is intended to help us think through the issues in making decisions and plans for the High Holidays.

Here are three questions with halakhic resources to help us navigate specific practical considerations:

1. Is it ethical to open given the need to exclude based on risk or limited seating capacity?

The ethics of opening given the need to exclude some people demands balancing a number of factors. Given the wide range of practical opportunities and constraints, as well as halakhic perspectives, among our rabbis, hazzanim and communities, different communities will inevitably balance those factors differently.

Among the values and factors to be considered:

1. Fulfilling the halakhic obligation to pray on the High Holy Days. One factor to be considered is the community's obligation to assist its members in fulfilling their prayer obligations on the High Holy Days.
2. Fulfilling the spiritual, emotional and communal needs on the High Holy Days. Focusing only on the halakhic obligation to pray is, of course, incomplete. Gathering for prayer on the High Holy Days serves many other purposes, both for individuals and communities, and we are obligated to strive to meet those needs as well. For individuals these days nurture the work of teshuvah and character development, help people to repair damaged relationships, deepen the connection with God, inspire deeds of *gemilut hasadim* and *tikkun olam*. They help make us better people. Communally, the High Holy Days reinforce Jewish identity and commitment and strengthen institutional ties and communal belonging.
3. Honoring God through an assembly and kevod habriyyot. The principle of בְּרִבְעָם הִדְרַת-מֶלֶךְ (Proverbs 14:28), that the glorification of God and our sense of divine presence are heightened when we are together as a community in prayer (Berakhot 53a), and the principle of human dignity, that respect needs to be shown toward each and every person (Berakhot 19b), are both at play in determining whether and how we resume davenning in person.

In weighing these factors, some of us may conclude that in-person services in which significant groups of people cannot attend are ethically impermissible. Options to fulfill prayer obligations while safeguarding life exist: by praying individually or creating a liturgical connection and/or Torah study through technology. The democracy of our institution of minyan in which 10 adult Jews constitute a quorum for public davenning without any other required characteristic or need for formally ordained clergy may signal that any restriction on physical presence necessitates that we do not hold davenning in-person for the High Holidays 5781/2020 since reopening may mean excluding people based on risk or limited seating capacity.

Some of us -- perhaps many of us -- will extrapolate from the democracy and number of participants of the minyan that having smaller gatherings is appropriate, whether outdoors or indoors, even if not everyone can attend who would otherwise be able to as

in previous years. Options do exist for us to safeguard life by physical distancing and other protective actions. Some communities may hold many small in-person gatherings, either simultaneously with different leadership, or shorter sequential services. If presence at those services is allocated among community members fairly (see below), this is an ethical option. Indeed, complete accessibility for everyone is a moving target. Our congregation should strive to meet the needs of those who are unable to attend due to increased risk, and this may be done in a variety of ways, as described below.

Some communities may conclude that limited in-person davenning counted as a minyan, with live-stream or videoconferencing for everyone else, is the best way to fulfill everyone's obligations. This, too, is an ethical option, provided that the leadership makes an effort to ensure that neither the group watching by livestream, nor the group constituting the minyan in person, is offered a "second best" experience. Every effort should be made to create an experience that is equally engaging, inclusive, and inspiring for both groups.

Finally, for those communities offering virtual services as all or part of their High Holy Day worship, participant's financial means and technological skills (or the lack thereof) must also be considered. As part of each community's ongoing ethical obligation to ensure that no one is excluded from Jewish community due to financial reasons, each community should strive to ensure that each member who wishes to participate virtually has good access to wifi and/or an appropriate computer/smartphone and/or (regular) telephone. If necessary, the community should help underwrite that cost, just as the community effectively underwrites participation by waiving or reducing membership dues and High Holiday ticket fees for reasons of need.

Some congregations have resumed limited congregational davenning for Shabbat and daily minyanim, and leaders may want to consider a number of smaller gatherings for the High Holidays, both for Rosh Hashanah and Yom Kippur and for events during the month of Elul leading up to the High Holidays and the days of Aseret Yemei Teshuvah (the Ten Days of Repentance) between Rosh Hashanah and Yom Kippur.

2. If a congregation decides to open with limited in-person davenning, what is the most ethical way to assign limited spots when there are more people than places?

A lottery was seen in biblical times as a fair way of distributing resources. The tribes are depicted as receiving their land through a lottery held at Shiloh by Joshua. (Joshua 18:8-10; Numbers 26:55-56) The priestly families received their duty slots through a lottery, according to 1 Chronicles 24:5.

In modernity, Rabbi Akiva Eiger (Germany, 1761 – 1837), cognizant of physical distancing, advised Jewish communities to hold small minyanim during an epidemic and to use a lottery to distribute seats for the High Holidays:

זה אמת שהקיבוץ במקום צר אינו נכון, אבל אפשר להתפלל כתות-כתות, ובכל פעם במתי מעט ערך טו אנשים, ויתחילו כאור הבוקר, ואחריה כת אחרת, ויהי' מיוחד לאנשים אלו באיזהו זמן יבואו להתפלל שם, וכן במנחה... ולחוש שלא ידחקו אנשים יותר מהסך הנאמר למעלה לבא לבית הכנסת

It is true that gathering in a small space is inappropriate, but it is possible to pray in groups, each one very small, about 15 people. They should begin with the first light of day and then have another group, and each one should have a designated time to come pray there. The same for minhah... and they should be careful not to be crowded from the number mentioned above in coming to the synagogue. (Iggeret Rabbi Akiva Eiger, 7)

בכל בתי כנסיות הן בעזרת אנשים והן בעזרת נשים מותר יהי' בראש השנה וביום כפורים לתפוס רק את מחצית המקומות, בצורה כזו שליד כל מקום שיושבים בו המקום השני הגובל עמו לא יהא תפוס. ועל כן רק מחצית מבעלי המקומות בבתי הכנסת יהיה להם גישה לבתי כנסיות בימים הקדושים האלה. ומכיון שלכל בעלי המקומות הזכויות שוות ומי נדחה מפני מי, לכן המחצית האחת תתפוס את מקומותיה בבתי כנסיות בשני ימים טובים של ראש השנה, והמחצית השניה ביום הכפורים לילה ויום

In every synagogue, whether in the men's section or the women's section, it is permitted only to fill half of the seats on Rosh Hashanah and Yom Kippur, such that next to every person there will be an empty seat. Therefore, only half of the seats will be available on the High Holidays. Since everyone has equal right to a seat, half will get their seats on the two days of Rosh Hashanah and the other half will get their seat on Yom Kippur, day and night. (Pesakim Vetakkanot Rabbi Akiva Eiger, in Gestetner's edition, Hanhagot vetakkanot, #2)

As practical advice, Eiger also suggested that those invited to a particular service should receive a card in special shape and that only those who have the appropriate ticket for each day should be let in. Otherwise, he noted, those without invitations should pray in private house minyanim with physical distancing. (For his service during the 1831 epidemic, Eiger received a royal message of thanks from Frederick William III, the king of Prussia. See also Rabbi Avraham Steinberg, *The Coronavirus Pandemic 2019-20 – Historical, Medical, and Halakhic Perspectives*).

With the biblical and modern examples of lottery in mind, the most ethical way for us to assign seats is by having a lottery through which seats for in-person davening is distributed to households, whether a household consists of one or many individuals. Each congregation is urged to figure out a fair way to allot seats by lottery, even if not

everyone will receive the slot they wish (and see the next section on general inclusiveness).

Clergy, shelihei tzibbur, Torah readers, and others with responsibilities for managing davenning may be excluded from the lottery since their presence is necessary.

Prioritizing those with an obligation to recite *kaddish yatom* poses special issues: some are content with a prayer in lieu of *kaddish yatom*, some who have been reciting a prayer in lieu of *kaddish yatom* may feel that they would like to recite *kaddish yatom* during the Aseret Yemei Teshuvah, and some who already have been joining with an online minyan to recite *kaddish yatom* may feel that it is sufficient (or not) for Rosh Hashanah and/or Yom Kippur. Reciting *kaddish yatom* at a yizkor service held on another day may serve as a solution. See the letter on [Yizkor during the High Holidays 5781/2020](#).

Communities may want to let their members indicate first if they wish to be in the lottery at all instead of inviting everyone. One way to carry out a lottery might be as follows: Those who receive an invitation should be asked to confirm their participation with no questions asked or assumptions made if they decline. This lottery for seats should take place with sufficient time for the seats to be distributed, for those receiving an invite to decide whether to attend, and those on a waitlist to move to the service time they wish.

A lottery may mean that a household may receive a ticket for a service and time the household members may not prefer: for example, a congregation may decide to hold three abbreviated services on the first day of Rosh Hashanah, and a household may receive an invitation for a time slot other than the one wished for. It may also mean, for example, that a household might receive an invitation to minhah and ne'ilah on Yom Kippur rather than one to a morning service on Yom Kippur.

At the risk of making matters overly complicated and time consuming, one way to address this problem is to do a general lottery first for the total number of seats at all services. Those selected might then be asked to rank their first choice of service to attend. A second lottery could then be held for over-subscribed services among those who put that first. In that way, the greatest number of people would be able to have their preferences accommodated.

Because accessibility of services is sometimes a function of need rather than choice or preference, treating everyone equally does not necessarily mean treating everyone the same. For this reason, in determining who will attend which service, some provision ought to be made to accommodate individual needs. For example, services at night

might be impossible for some people to attend for reasons of health, age, or care for young children. It would not be equitable for such people to be assigned Kol Nidrei by lottery; rather effort should be made to match them with a service that would in fact be accessible to them. Similarly, in communities offering multiple simultaneous or sequential services, there would be an ethical obligation to structure some of those services in order to make them safer for those who wish to attend who have a disability.

3. The focus during this time of pandemic has been on those at greater risk for COVID-19. What about the general issue of inclusion for those of us with disability, whether of mobility, hearing, sight, or sensory processing, among other concerns?

In this time of pandemic, we must continue to strive to be inclusive of all, not just those at risk of COVID-19. This issue for us is nuanced and multifaceted because inclusivity is not only an issue for the High Holidays 2020/5781 in a time of pandemic, nor is it just about those who are at greater risk of COVID-19.

Inclusiveness has been an important area of activity for the Conservative/Masorti movement, and the CJLS has approved teshuvot on questions of inclusion (see [1](#), [2](#), [3](#) and [4](#)).

As we anticipate High Holy Days 2020/5781 and beyond, inclusiveness in all ways should be paramount in our planning process, not only the specific issues raised by Covid-19. Other issues of inclusion are as relevant in this unusual time as ever, and they should not be swept under the rug. For example:

- A congregation meeting in person or online should provide for access, whether davenning on the usual synagogue premises or in private homes or backyards or other places. For example, one backyard may be handicapped accessible while another is not, and our communal buildings are a mixed bag of accessibility.
- As set forth above, a purely random lottery is not necessarily fair and may not meet everyone's needs;
- If multiple in-person simultaneous or sequential services will be held, perhaps one or more of them should be specifically designed for those with specific disability, whether of mobility, hearing, sight, or sensory processing (e.g. a service for those with mobility issues may have people stationed in certain spots to provide assistance).

- Virtual services should include professional closed captioning. (Auto transcribe on video conferencing platforms, for example, may be so inaccurate as to provide more comedy than accuracy. For information on professional captioners, please contact Rabbi Ilana Garber, Director of Global Rabbinic Development, at the Rabbinical Assembly.)
- As set forth above, financial inequalities or technological obstacles may prohibit some from participating in virtual services. This is analogous to the financial inequalities current and past that prohibit individuals and households from paying full synagogue dues or High Holiday ticket costs, and communities should strive to provide connecting access, whether by internet or phone.

Placing these Ethical Considerations in a Broader Context

Meaningful prayer and Torah study come in different forms. Our regular in-person davenning, for example, has options for those for whom the entire davenning is spiritually meaningful as well as those for whom a brief period is enough, and for those with varieties of spiritual needs in between. And there are options for those who want congregational singing, those who seek to listen to solo hazzanut, and those seeking a balance in varying degrees in between.

One useful way of thinking is to conceive of our High Holiday davenning and Torah study as a retreat, with sessions in community and sessions in private, time slots in person and time slots live streaming, at certain times in one way and reconvening in other ways at other times, taking place during the month of Elul, on Rosh Hashanah, during the days between Rosh Hashanah and Yom Kippur, on Yom Kippur, and perhaps lingering on long afterwards.