

Governor's Disaster Declarations

3/19/2020

Has the State of Texas declared a public health disaster?

Yes. The Texas Department of State Health Services has determined that, as of March 19, 2020, COVID-19 represents a [public health disaster](#) within the meaning of [Chapter 81](#) of the Texas Health and Safety Code.

What action has Governor Abbott taken in response to the declaration of public health disaster?

The Governor has issued [Executive Order No. GA-08](#) which provides that:

- every person in Texas shall avoid social gatherings in groups of more than 10 people;
- people shall avoid eating or drinking in bars, restaurants, and food courts, or visiting gyms or massage parlors; however, the use of drive-thru, pickup, or delivery options are allowed and highly encouraged;
- people shall not visit nursing homes or retirement or long-term care facilities unless to provide critical assistance; and
- schools shall temporarily close.

What is the duration of the Governor's executive order?

The executive order is for a limited duration. For now, the order is effective 11:59 p.m. on March 20 and continues until 11:59 p.m. on April 3, 2020. The restrictions could be extended in the future.

Does this mean all businesses in our city must shut down?

No, this is not a shelter in place order. The Governor's order does not prohibit people from visiting a variety of places, including grocery stores, gas stations, parks, and banks, so long as necessary precautions are maintained to reduce the transmission of COVID-19. Businesses will continue to provide essential services.

Does the governor's order require that we close all city operations?

No. All critical infrastructure remains operational, domestic travel remains unrestricted, and governmental entities will continue providing essential services.

For offices and workplaces that remain open, employees should practice good hygiene and, where feasible, work from home in order to achieve optimum isolation from COVID-19. Trusted sources for information about such practices are available at <https://www.dshs.texas.gov/coronavirus> and <https://www.cdc.gov/coronavirus>.

Is the Governor providing additional information about Executive Order GA-08?

[Nexstar Broadcasting](#) will host a live virtual town hall meeting with Governor Abbott tonight at 7:00 p.m. CT. The one-hour virtual town hall will air exclusively on 14 Nexstar stations across the state. Click [here](#) to find a way to view the meeting.

The governor will address the statewide response to the current coronavirus outbreak and will be joined by top state government officials from the departments of health, infectious diseases, education, and emergency management.

The town hall will open with Governor Abbott providing the latest information about the state's response to the coronavirus crisis, followed by a 15-minute question and answer session between the Governor and the other state officials. The broadcast will then allow approximately 45 minutes of questions submitted by viewers around the state.

Viewers can pose a question to Governor Abbott or any of the show's guests via a variety of social media platforms using the hashtag #AskAbbott. Preference will be given to those questions submitted as videos rather than texts.

An article summarizing the town hall meeting can be found [here](#).

3/20/2020

Does Executive Order GA-08's mandate to temporarily close schools include day cares?

Governor Abbott issued [Executive Order No. GA-08](#) which, in part, mandates that schools temporarily close. In a [virtual town hall](#) held March 19, 2020, the governor stated that the school closure applies to both public and private K-12 schools, as well as institutions of higher education (with some exceptions for certain college facilities).

He also explained that the temporary closure of schools does not apply to day cares, which are encouraged to stay open but follow certain higher standards. The Texas Health and Human Services [website](#) advises as follows: "This executive order does NOT apply to child care facilities including a day care center, group day care home, or family home. All child care facilities should continue to follow the guidance from HHSC Child Care Licensing ([see COVID-19 Guidance to Child Care Providers](#)), the Center for Disease Control (CDC) and the Texas Department of State Health Services (DSHS)."

In addressing the operations of day cares in any particular city, officials should also consider any local disaster declaration and regulations.

Does Executive Order GA-08's mandate to avoid social gatherings in groups of more than 10 people apply to church services?

Governor Abbott issued [Executive Order No. GA-08](#) which, in part, mandates that every person in Texas shall avoid social gatherings in groups of more than 10 people. In a [virtual town hall](#) held March 19, 2020, the Governor stated that, while churches are encouraged to find alternate

means to hold services (e.g., remote services) or provide seating in a way that allows individuals to sit a sufficient distance from one another, they are not subject to Executive Order GA-08. CDC guidance for faith-based organizations is available [here](#).

In addressing the operations of churches in any particular city, officials should also consider any local disaster declaration and regulations.

How should certain directives in Executive Order GA-08 be enforced?

Governor Abbott issued [Executive Order No. GA-08](#) which provides, in part, that people shall avoid eating or drinking in bars, restaurants, and food courts, or visiting gyms or massage parlors; however, the use of drive-thru, pickup, or delivery options are allowed and highly encouraged. In a [virtual town hall](#) held March 19, 2020, the Governor stated that this directive might be enforced in various ways against establishments and/or individuals.

For instance, the Governor suggested that a bar violating this directive might be reported to the [Texas Alcoholic Beverage Commission](#), which is authorized to revoke the bar's alcoholic beverage license for failure to comply. He also suggested that a restaurant violating this directive might be reported to the [Texas Department of State Health Services](#), which regulates food establishments.

Finally, the Governor mentioned law enforcement may play a role in enforcing Executive Order GA-08. A city may enforce a penalty of a fine not to exceed \$1,000 or confinement in jail for a term not to exceed 180 days for a failure to comply with a local disaster declaration, but only if the city's emergency management plan includes a provision establishing an offense under Government Code Section 418.173. If a city wants the ability to enforce this penalty as to Executive Order GA-08, TML recommends that: (1) the city's emergency management plan provide that a failure to comply with the plan, or a rule, order, or ordinance adopted under the plan is punishable as authorized in Government Code Section 418.173; and (2) that any local disaster declaration expressly incorporate state orders (e.g., Executive Order GA-08).

Does Executive Order GA-08 prohibit a city council from holding an in-person meeting?

TML does not understand [Executive Order GA-08](#) to prohibit a city from holding an in-person meeting. First, GA-08 prohibits "social" gatherings of groups of more than 10 people, and a meeting of the city council does not appear to be a social function. *Cf., e.g.,* Tex. Gov't Code § 551.001 (providing that the term meeting does not include a social function unrelated to public business). Second, even if "social gatherings" of more than a certain number of people are prohibited, that [order](#) would - [according to CDC guidance](#)

- arguably apply only to conferences, festivals, parades, concerts, sporting events, weddings, and other types of assemblies. Without an express provision otherwise, it would not apply to government meetings. Finally, GA-08 expressly provides that government entities "will continue providing essential services."

In addressing this question, city officials should also: (1) consider any local disaster declaration; and (2) remember the Governor suspended various provisions of the Open Meetings Act, and [the suspensions](#) may assist cities in holding meetings without face-to-face interaction (i.e., by telephone or videoconference).

How does Executive Order GA-08 relate to a local disaster declaration order?

A mayor serves as the governor's designated agent in the administration and supervision of disaster management duties set out in state law and may exercise the same powers granted to the governor under the Texas Disaster Act of 1975 (Chapter 418 of the Government Code) on an appropriate local level. Tex. Gov't Code § 418.1015(b). TML understands this to mean that a mayor could issue a local disaster declaration that is more stringent than [Executive Order GA-08](#).

In addition, a city may have in place other regulations that impact the issues addressed in Executive Order GA-08. For instance, with respect to disease management, cities can take any action that is necessary to promote health and suppress disease, including quarantine, examining and regulating hospitals, regulating ingress and egress from the city, and fining those who do not comply with the city's rules. *See* Tex. Health & Safety Code §§122.005 (Type A general law cities) and 122.006 (home rule cities).

May our mayor ask the state to provide legal counsel regarding Executive Order GA-08?

The Texas Disaster Act of 1975 provides that a mayor may request the attorney general to provide legal counsel to a city subject to a declared state of disaster "on issues related to disaster mitigation, preparedness, response, and recovery applicable to the area subject to the disaster declaration" during the declared state of disaster and the 90-day period following expiration or termination of the disaster declaration. *Id.* § 418.193.

3/26/2020

In the event of conflicting orders from the governor's office and local jurisdiction, which controls?

Depending on the subject matter, the answer to this question could get complicated. In any case, the Texas attorney general issued a [letter](#) yesterday providing that: (1) state agencies and their contractors are not subject to local declarations; and (2) the governor's orders are superior to cities and counties.

Each city should consult local legal counsel with specific conflict-of-law questions.

3/27/2020

Has Governor Abbott taken any action imposing quarantine on individuals traveling by plane into Texas from other states?

Yes. On March 26, 2020, Governor Abbott issued an [executive order](#) requiring individuals traveling by plane with a point of last departure in New York, New Jersey, Connecticut, or the

City of New Orleans to self-quarantine. The time for self-quarantine is 14 days from the time of entry into Texas or the duration of the person's presence in Texas, whichever is shorter. A person subject to this quarantine is responsible for all associated costs, including transportation, lodging, food, and medical care. Governor Abbott's order calls a person subject to quarantine a "covered person."

Does the order apply to people driving into the state from a designated point of origin?

No. It only applies to individuals arriving by plane.

What must a covered person do upon arrival?

Texas Department of Public Safety (DPS) troopers, or other approved peace officers, shall collect a completed form prescribed by DPS from each covered person immediately upon disembarking and verify it against the person's driver license or passport. The DPS form will designate a quarantine location in Texas, such as a residence or a hotel, and provide a full name, date of birth, home address, telephone number, and driver license or passport information. Providing false information on this form is a criminal offense under Section 37.10 of the Texas Penal Code. Questions about this form should be directed to DPS at 800-525-5555.

A covered person shall proceed directly from the airport to the designated quarantine location entered on the DPS form. Any covered person exhibiting symptoms of COVID-19 shall be escorted to the designated quarantine location by a DPS trooper.

What must a covered person do during the quarantine?

A covered person shall remain in the designated quarantine location for a period of 14 days or the duration of the person's presence in Texas, whichever is shorter, leaving only to seek medical care or to depart from Texas. During that period, a covered person shall not allow visitors into or out of the designated quarantine location, other than a health department employee, physician, or healthcare provider, and shall not visit any public spaces.

Are there any exceptions to the requirement to self-quarantine?

Yes. The order exempts people traveling in connection with military service, emergency response, health response, or critical-infrastructure functions, as may be determined by the Texas Division of Emergency Management.

Are there criminal penalties for a covered person who violates the mandated quarantine under the order?

DPS special agents will conduct unannounced visits to designated quarantine locations to verify compliance by confirming the physical presence of covered persons. Any failure to comply with this order to self-quarantine shall be a criminal offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 days, or both.

Does the order apply to municipal airports?

It appears so. The order makes no distinction between public or private air travel or type of airport. It is unclear what happens if a person arrives from one of the listed locations and no peace officer is there to order a quarantine and take the person's information. It does appear that the person must self-quarantine in any case. The League has reached out to the governor's office for further guidance and will report back if any is received.

3/30/2020

Since his order on March 26, 2020 (GA-11), has Governor Abbott taken any additional action imposing quarantine on individuals traveling by plane into Texas from other states?

Yes. On March 29, 2020, Governor Abbott issued an additional [executive order](#) requiring individuals traveling by plane with a point of last departure in the State of California; State of Louisiana; State of Washington; City of Atlanta, Georgia; City of Chicago, Illinois; City of Detroit, Michigan; and City of Miami, Florida to self-quarantine. This order is effective at noon on March 30th.

We reported on the requirements of the quarantine in a [previous Q&A](#), which apply to these locations as well.

Has Governor Abbott issued an order that applies to people driving into the state from a designated point of origin?

Yes. On March 29, 2020, Governor Abbott issued an [executive order](#) requiring individuals traveling from any location in Louisiana to self-quarantine for 14 days. The order is effective at noon on March 30th. The requirements for quarantine, including the criminal penalties, are the same as for individuals traveling by plane, which the League reported in a [previous Q&A](#).

Who will enforce the order requiring people driving in from Louisiana to self-quarantine?

The Texas Department of Public Safety (DPS) shall enforce the executive order along the Texas-Louisiana border.

3/31/2020

Has the governor issued a new executive order that supersedes his previous social distancing order?

Yes. Today the governor issued a [new executive order](#) that supersedes his original social distancing order (GA-08). The new order extends through April 30, 2020. Also, he has closed all Texas schools through May 4, 2020, and that date may be extended.

Each city official should read the entire order (linked above), but in summary the order provides that:

-Every person in Texas shall, except where necessary to provide or obtain essential services, minimize social gathering and minimize in-person contact with people who are not in the same household.

-Essential services are those [defined by TDEM](#) according to the [U.S. Department of Homeland Security](#).

-All Texans should follow the President's and CDC's hygiene guidelines.

-All Texans should avoid eating out, but take advantage of carry out and drive-thru restaurants.

-It does not prohibit people from accessing essential services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential services, visiting parks, hunting or fishing, or engaging in physical activity like jogging or bicycling, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.

-Texans should stay away from nursing homes and similar facilities.

-Schools shall remain temporarily closed to in-person classroom attendance and shall not recommence before May 4, 2020.

Does the governor's new order supersede local (e.g., city and county) orders?

Yes, at least partially. It clearly supersedes "any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services allowed by this executive order or allows gatherings prohibited by this executive order." That means a city may not define essential services differently than [TDEM](#) and the [U.S. Department of Homeland Security](#) have, but even their guidance leaves unanswered questions. It appears that the most significant preemptive effect of the new order is to allow religious gatherings conducted in churches, congregations, and houses of worship, so long as appropriate social distancing guidelines are followed.

The governor then suspended [Section 418.108 of the Texas Government Code](#) (The Texas Disaster Act) and several other laws, some of which are unnamed, "to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order." Section 418.108 is the core authority for mayors to declare, and city councils to extend, local states of disaster, including movement of persons and occupation of premises. This suspension would appear to mean that a city's stay home/work home order is superseded by the order's edict that "every person in Texas shall, except where necessary to provide or obtain essential services, minimize social gathering and minimize in-person contact with people who are not in the same household."

League staff will continue to analyze the order and report further in tomorrow's update.

Where do we stand right now with regard to federal and state guidance and orders, including the new order in the question above?

The federal government has not "ordered" anything. Instead, President Trump and the Center for Disease Control issued the following [guidance](#), which is in effect through April 30: (1) listen to

and follow the direction of your state and local health authorities; (2) if you feel sick, stay home; (3) if someone in your household has tested positive for coronavirus, keep the entire household at home; (4) if you are an older person, stay home and away from other people; (5) if you are a person with a serious underlying health condition putting you at risk, stay home and away from other people; (6) work or engage in schooling from home whenever possible; (7) if you work in a [critical infrastructure](#) industry, you have a special responsibility to continue to go to work; (8) avoid social gatherings in groups of more than 10 people; (9) avoid eating and drinking at bars, restaurants, and food courts—use drive thrus, pick up, or delivery options; (10) avoid discretionary travel, shopping trips, and social visits; (11) do not visit nursing homes or retirement or long-term care facilities unless to provide critical assistance; and (12) practice good hygiene.

With regard to state-level orders, Governor Abbott has today [ordered](#) compliance with the items in the bulleted list in the first question above.

Because the federal government has issued only guidance, the only non-local (e.g. city or county) mandatory restrictions are those imposed by Governor Abbott’s new order.

What action has the governor taken with respect to first responders and testing?

Yesterday, the governor issued the following [press release](#):

Governor Greg Abbott has waived certain statutory provisions to ensure public safety employees who contract COVID-19 during the course of their employment will be reimbursed for reasonable medical expenses related to their treatment of COVID-19. Because the nature of their duties has caused them to increase their risk of contracting COVID-19, the Governor has waived these statutory provisions so that public safety employees who contract COVID-19 are not also financially penalized.

“Texas’ public safety employees are vital to our COVID-19 response,” said Governor Abbott. “These brave men and women are on the front lines and risking potential exposure to keep our communities safe. By waiving these regulations, Texas will ensure that those who may contract COVID-19 will have the support they need to pay for medical expenses.”

While the actual order is not posted on the governor’s website, League staff obtained this language from his office:

In accordance with section 418.016 of the Texas Government Code, the Office of the Governor grants DWC’s request to suspend Texas Government Code 607.002(1) and (2) to the extent necessary to allow those public safety employees, who were likely to have been exposed to COVID-19 while in the course of their employment, to be entitled to the reimbursements set forth in 607.002 of the Government Code.

Those subsections provide that:

Sec. 607.002. REIMBURSEMENT. A public safety employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

- (1) the disease is not an "ordinary disease of life" as that term is used in the context of a workers' compensation claim;
- (2) the exposure to the disease occurs during the course of the employment; and
- (3) the employee requires preventative medical treatment because of exposure to the disease.

The apparent intent of the order is to remove any impediments to a city providing and paying for testing for its first responders.

4/1/2020

Has the governor issued clarification regarding his order from yesterday?

Yes, although not in relation to how the order interacts with local orders or whether local orders can be more stringent than the governor's. Yesterday, the governor issued a [new executive order](#) that supersedes his original social distancing order. The Texas Division of Emergency Management today issued further [guidance](#) regarding which businesses are essential services. Beyond that, what cities can and cannot do relative to the governor's order remains unclear. The League is attempting to obtain clarification from the Governor's office.

In yesterday's action, the governor suspended [Section 418.108 of the Texas Government Code](#) (The Texas Disaster Act) and several other laws, some of which are unnamed, "to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order." Section 418.108 is the core authority for mayors to declare, and city councils to extend, local states of disaster, including movement of persons and occupation of premises. One thing that seems clear is that a city can at least continue its basic local declaration (which is probably needed to seek future FEMA reimbursement).

Has the governor issued guidance with respect to his most recent order relative to religious services?

Yes. The governor and the attorney general provided [joint guidance](#) yesterday stating that houses of worship are essential services. His press release, with a link to a guidance memo, is reproduced verbatim here:

Governor Greg Abbott and Attorney General Ken Paxton today issued joint guidance regarding the effect of Executive Order GA 14 on religious services conducted in congregations and houses of worship.

"All Texans must work together to stop the spread of COVID-19, and houses of worship face a particular challenge as we work to combat this pandemic," said Attorney General Paxton. "This guidance provides clear direction for houses of worship to protect the health and safety of Texans as they continue to hold religious services, exercise their religious liberty, and serve their faith communities."

The Executive Order GA 14 defines essential services to include “religious services conducted in churches, congregations, and houses of worship.” Orders given by state or local governments prohibiting people from providing or obtaining certain services must ensure that the orders do not violate the First Amendment of the United States Constitution, Article I of the Texas Constitution, and the Texas Religious Freedom Restoration Act, which protect the rights of Texans to freely exercise their religion.

4/2/2020

Has the governor or attorney general issued any further clarifications on the governor’s latest executive order and how it interacts with local orders?

Not beyond the religious information provided above. However, the Hood County attorney [requested an attorney general opinion](#) asking for clarification on the scope of local orders. From the tone of the request, it appears the county attorney thinks local orders go beyond a city’s or county’s authority:

“In the wake of the Covid-19 virus, Governor Greg Abbott issued an executive order on March 19, 2020, and many counties and cities have issued more far-reaching orders since that time. The question is whether the contents of such orders are legal under the statute, Texas Constitution, and United States Constitution. An order from Hood County, dated March 25, 2020, is attached as Exhibit A. It is substantially similar to other orders issued in counties such as Tarrant, Dallas, Travis, Bexar, and Harris.”

The county attorney goes on to ask several questions about local authority. But the attorney general, citing litigation on those issues, is declining to provide an opinion. As an example of such litigation, the County Judge in the North Texas County of Collin issued a social distancing order that appeared to be lax in its directives relative to a city in the county. The Mayor of the City of McKinney, located in Collin County, issued a more stringent order. Shortly thereafter, a local realtor sued the city, claiming that the county order – even though less stringent – controls over any city order. Earlier this week, a district court judge refused to issue a temporary restraining order against the mayor’s order. The refusal served as a victory for city authority, but how it interplays with the governor’s most recent order remains unclear.

The attorney general indicates that he will answer one question that the county attorney submitted, that being: “May local governments commandeer private property under [Government Code Section] 418.108, when this authority is only vested in the governor under [Section] 418.017(c)?”

What’s the answer? In the past, the League has taken the position that a mayor may do so in certain, limited circumstances. That reasoning was based on previous executive orders declaring hurricane disasters. Those typically provided that “*These mayors...shall serve as the Governor’s designated agents in the administration and supervision of the Act, and may exercise the powers, on an appropriate local scale, granted the Governor therein.*”

But the governor's most recent order doesn't contain language like that. In fact, it does the opposite: It actually suspends some part (it doesn't expressly say which part) of a mayor's authority to issue local disaster. We will report back when the attorney general issues the opinion.

Where can a city obtain guidance regarding whether a particular provision in its local order is enforceable in light of the governor's most recent order?

According to the [attorney general's office](#):

“Authorized local officials may now receive legal advice from the Office of Attorney General concerning Coronavirus.

In light of the Governor's recent disaster declaration, the following local officials may now request legal advice from the Office of the Attorney General concerning the coronavirus:

- the emergency management director designated under Section 418.1015 for the political subdivision;
- the county judge or a commissioner of a county subject to the declaration; or
- the mayor of a municipality subject to the declaration.

Only these officials are authorized to request advice. Moreover, legal advice may only be requested concerning issues related to disaster mitigation, preparedness, response, and recovery concerning the coronavirus. Authorized local officials may request such legal advice by sending an email to disaster-counsel@oag.texas.gov, or by making a [web request online](#).”

It's unclear whether the limiting language above means a mayor can or can't ask about whether provisions in a local order conflict with those in the governor's most recent order.

In any case, city officials should always remember that the city attorney's advice should always be the final word on advice related to your city. If your city decides to submit a question, please copy gencounsel@tml.org.

4/3/2020

What action has the governor taken to increase the emergency medical services workforce?

Yesterday (April 2), the governor issued a [press release](#) stating that he has suspended certain regulations to increase the EMS workforce. The release is reprinted verbatim here:

“Governor Greg Abbott today suspended regulations to increase the amount of Emergency Medical Services (EMS) workers and first responders in Texas during the state's response to COVID-19. Under the Governor's direction, local medical directors for licensed EMS providers can permit individuals who are qualified, though not formally certified, to provide critical emergency response services for patients treated and transported by the EMS provider.

The Governor has also suspended certain skills testing requirements for EMS personnel in Texas and for out of state Advanced Emergency Medical Technicians seeking reciprocity in Texas so that these individuals who are qualified, but currently unable to take the skills test, are able to provide essential EMS services. Additionally, Governor Abbott has also suspended regulations to allow first responder organizations to delay submission on their renewal application and completion requirements for licensure.

‘Our EMS providers and first responders play a critical role in the front-line fight against COVID-19, and these waivers remove barriers that could otherwise prevent a much-needed availability of essential EMS workers and first responders in our communities,’ said Governor Abbott. ‘The State of Texas is committed to supporting the EMS and first responder workforce and maximizing the number of available response services for Texans.’

As of now, no accompanying proclamation is available.

4/7/2020

What action did the governor take with respect to state parks and historic sites?

Today (April 7, 2020), Governor Abbott directed the Texas Parks and Wildlife Department (TPWD) and the Texas Historical Commission (THC) to close all state parks and historic sites as part of the state’s efforts to strengthen social distancing practices and prevent gatherings of large groups of people. Historic sites and state parks will close to the public starting at 5:00 PM this evening and will reopen at the direction of the Governor.

"Social distancing is our best tool to curb the spread of COVID-19 and save lives," said Governor Abbott. "The temporary closure of our state parks and historic sites will help us achieve this goal by preventing the gathering of large groups of people. I urge all Texans to continue to stay at home except for essential services as we respond to COVID-19. By following these social distance practices, we will overcome this challenge together."

Does the governor’s state parks closure affect municipal parks?

No. As of now, each city decides whether to close all or a portion of its parks. That’s because his existing shelter in place order provides the following:

“This executive order does not prohibit people from accessing essential services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential services, **visiting parks**, hunting or fishing, or **engaging in physical activity like jogging or bicycling**, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household."

4/8/2020

Does the governor’s disaster order affect golf courses?

Yes. We reported yesterday (April 7, 2020) that the governor's state parks closure doesn't affect municipal parks. That remains generally true. However, the governor stated yesterday on a call with county judges and mayors across the state that golf course employees don't provide essential services under his [existing order](#). The argument all along for golf courses staying open wasn't that they are essential services. Rather, it was the exception for essential daily activities found in the governor's order:

“This executive order does not prohibit people from accessing essential services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential services, **visiting parks, hunting or fishing, or **engaging in physical activity like jogging or bicycling**, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.”**

League staff reached out to the governor's office for clarification, and his office reiterated that the golf course operations (pro shop, café, tee time scheduling, golf carts, etc.) are not “essential services” and thus may not remain open. We were also reminded that, according to the [attorney general's office](#), a mayor can seek clarification about the governor's order. Of course, city officials should always remember that the attorney general's office does not represent your city. Your city attorney does that, and should always be the final word on advice related to your city. If your city decides to submit a question to the attorney general, please copy gencounsel@tml.org.

The bottom line appears to be that golf course offices and operations should now be closed, although a city could allow people to use a course for walking or jogging. Could the city just allow golfing without employees present? That's unclear, but probably would pose enough logistical problems to make it impractical. Certainly, a city that allows the use of a golf course for any activity should ensure the safety of patrons. Beyond golf courses, each city decides whether to close all or a portion of its parks.

4/9/2020

Has the governor provided any further information regarding golf courses?

Not formally. We reported yesterday (April 8, 2020) that the governor stated on a call with county judges and mayors across the state that golf course employees don't provide essential services under his [existing order](#). The argument all along for golf courses staying open wasn't that they are essential services. Rather, it was the exception for essential daily activities found in the governor's order:

“This executive order does not prohibit people from accessing essential services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential services, visiting parks, hunting or fishing, or engaging in physical activity like jogging or bicycling, so long as the necessary precautions are maintained to reduce the

transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.”

League staff reached out to the governor’s office for clarification, and his office reiterated that the golf course operations (League staff assumes that means the pro shop, café, tee time scheduling, golf carts, etc.) are not “essential services” and thus may not open. We were also reminded that, according to the [attorney general’s office](#), a mayor can seek clarification about the governor’s order. The mayors of the Cities of Kerrville and San Angelo did just that: They submitted a letter requesting clarification, and we await a response. Also, a staff member at the governor’s office confirmed by text this afternoon that “They [golf courses] can’t conduct business. No personnel.” Of course, that in-and-of-itself isn’t binding on anyone without a formal action by the governor himself.

The bottom line today appears to be about the same as it was yesterday: golf course offices and operations should now be closed, although a city could allow people to use a course for walking or jogging. Could the city just allow golfing without employees present or with minimal scheduling and cart staff? That’s unclear. Certainly, a city that allows the use of a golf course for any activity should ensure the safety of patrons. Beyond golf courses, each city decides whether to close all or a portion of its parks.

Unless and until a formal opinion from the governor’s or attorney general’s office is released, our bottom line advice remains the same. Of course, we defer to each mayor – on the advice of his or her city attorney – on local enforcement protocols.

4/13/2020

Has the governor extended his disaster proclamation for all Texas counties?

Yes, the governor [extended](#) his original disaster declaration for all Texas counties. The order is unclear on its face, but it presumably extends the declaration for 30 days pursuant to Texas Government Code Section 418.014(c). The disaster declaration is not the same as his stay home/work home [executive order GA-14](#). That order will expire on April 30, unless renewed.

Has the governor or attorney general provided any further information regarding golf courses?

Yes. At a press briefing last Friday (April 9), the governor further explained his position on golf courses. City officials can watch [the video](#) of his explanation, read a [formal letter](#) issued by the attorney general last Saturday (April 11), and decide what action to take. Apparently, the formal letter will be the only written guidance on the issue. Mayors who submitted their own clarification request are receiving an email referring to the form letter or a call from the attorney general’s office to discuss their unique circumstances.

One thing bears mention. In the video above, the governor said that “people are free to walk along, or even with a golf club and a golf ball, go along a golf course.” Of minor concern, he said that on “a public golf course anybody can,” and on a private golf course “members who are

authorized to be on those premises, can walk along the golf course even with a golf club and a golf ball.”

This portion of his answer is imprecise: He states that “anybody can go on a public golf course.” If a city authorizes the public to use its course, that’s correct. But a city, as owner of its course, maintains the right to close, open, partially open, or any permutation thereof, its golf course or other parks.

4/16/2020

Will the governor announce new guidelines soon related to opening the economy?

Yes. The governor has confirmed that he will hold a press conference tomorrow (April 17). He has not yet shared any details about his plan, other than to say that, “This is not going to be a ‘rush the gates, everybody is able to suddenly reopen all at once... We have to understand that we must reopen in a way in which we are able to stimulate the economy while at the very same time ensuring that we contain the spread of COVID-19.” He went on to say that, “We’re going to be introducing Texas to this comprehensive team that we have put together, that will very comprehensively, carefully, strategically evaluate what must be done for Texas to open back up,” he explained Monday, “ensuring that what we’re doing is consistent with data with medical analysis, as well as strategies about which type of businesses will be able to open up.”

President Trump is conducting a press conference as this update goes out on his plan to “open up America.” The League will report on both as details become available.

4/20/2020

Can you summarize the governor’s orders that apply right now?

Yes. The following are in effect now:

-STAY HOME/WORK HOME: Stay home/work home, with exceptions for essential businesses and activities, is still in place ([GA-14](#), expires April 30). Updated [federal critical workers guidance](#) released April 17. (Also see [TDEM guidance](#).)

-BUSINESS OPENINGS: re-emphasizes stay home/work home (with exceptions), provides that any business may open only if it can provide pickup or delivery service and follows CDC guidelines ([GA-16](#), begins April 24 and expires April 30), and directs the governor’s “[Strike Force to Open Texas](#)” to make recommendations on more openings by May 1 ([GA-17](#), no expiration).

-SCHOOLS: schools shall remain closed until the end of the 2019-2020 school year ([GA-16](#), expires April 30).

-NURSING HOMES: people shall not visit nursing homes, state supported living centers, assisted living facilities, or long term care facilities, unless to provide critical assistance ([GA-16](#), expires April 30).

-STATE PARKS: now open with requirements, including requiring visitors to wear face coverings, maintain a six-foot distance from individuals outside of their party, and prohibiting the gathering of groups larger than five ([GA-17](#), no expiration).

-MEDICAL PROCEDURES: Health care professionals and facilities can begin to provide medical procedures that: (1) would not deplete the hospital capacity or personal protective equipment; or (2) if a licensed health care facility has certified in writing to the Texas Health and Human Services Commission both: (a) that it will reserve at least 25 percent of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients; and (b) that it will not request any personal protective equipment from any public source, whether federal, state, or local, for the duration of the COVID-19 disaster ([GA-15](#), begins April 21 and expires May 8).

On Monday April 27, the governor will announce additional ways to open Texas. In the next 10 days, the strike force will prepare a phased in strategy considering testing and hospital preparedness.

Does GA-16 supersede local orders?

Yes, at least partially. It provides verbatim that:

“This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order or allows gatherings prohibited by this executive order. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.”

What does the legalese above mean?

Let's break it down and see if we can make sense of it:

-The first part provides that “This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order or allows gatherings prohibited by this executive order.”

That means a city may not define essential services differently than TDEM and the U.S. Department of Homeland Security. For example, can a city impose additional requirements on

“retail to go” establishments authorized by the order? It’s possible, but which additional requirements we can’t definitively say.

-The governor then suspended Sections 418.1015(b) and 418.108 of the Texas Government Code (The Texas Disaster Act). Those sections are the ones that delegate authority to county judges and mayors to act locally during a disaster.

Section 418.1015(b) provides that: “An emergency management director [i.e., county judge or mayor] serves as the governor's designated agent in the administration and supervision of duties under this chapter. An emergency management director may exercise the powers granted to the governor under this chapter on an appropriate local scale.” Prior COVID-19 orders did not suspend this section. Because of that, GA-16 appears to be more restrictive with respect to local actions.

[Section 418.108](#) is much longer, so it’s not included here in its entirety. But it is the core authority for county judges and mayors to declare, and city councils and commissioners courts to extend, local states of disaster, including movement of persons and occupation of premises. It has many other provisions also, and the order is unclear as to which of them are being suspended.

This suspension would appear to mean that a county’s or city’s stay home/work home order is superseded by the order’s edict that “every person in Texas shall, except where necessary to provide or obtain essential services, minimize social gathering and minimize in person contact with people who are not in the same household.”

-The governor then suspended “Chapter 81, Subchapter E, of the Texas Health and Safety Code, and any other relevant statutes.” Subchapter E relates to how the Department of State Health Services imposes disease protection controls. Presumably, he suspended that chapter to give the state more flexibility with disease control measures.

-Most importantly, the order states that the statutes above are suspended **“to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.”**

That language is difficult to decipher. If local action is “consistent” with the order, but it can’t be “inconsistent,” what does that leave? It would appear to mean that a city should essentially be enforcing the governor’s order on a local scale. Any mayor or city council who wishes to impose additional local requirements should consult with their city attorney prior to doing so.

Also, the Texas attorney general previously issued a [letter](#) providing that: (1) state agencies and their contractors are not subject to local declarations; and (2) the governor’s orders are superior to cities and counties. And the Hood County attorney [requested an attorney general opinion](#) asking for clarification on the scope of local orders. From the tone of the request, it appears the county attorney thinks some local orders go beyond a city’s or county’s authority. The attorney general, citing litigation, declined to answer all of his questions except “May local governments

commandeer private property under [Government Code Section] 418.108, when this authority is only vested in the governor under [Section] 418.017(c)?"

Finally, it's unclear whether the governor is suspending [Chapter 122](#) of the Health and Safety Code as "other relevant statutes." That chapter contains broad authority for general law and home rule cities in relation to disease control.

In any case, neither the governor nor the attorney general have expressed much concern thus far over various local regulations, other than those relating to gun shops, churches, and golf courses.

4/21/2020

We've seen some cities issue orders that are either more restrictive or less restrictive than the governor's orders. For example, some cities may wish to add a business to the list of essential services, while other cities may wish to expand the availability of all services, with certain restrictions. Can they do that?

As reported in previous updates, opinions vary. Because of that, the League's attorneys will – as always – defer to each city attorney's advice to their client. Yesterday's (April 20) update stated that "a city may not define essential services differently than TDEM and the U.S. Department of Homeland Security."

Some city attorneys disagree with that black-and-white statement. Their position is that, by carefully parsing the preemptive language in GA-16, a city can – as a legal proposition – add to the TDEM/CISA list of essential services locally. That opinion is based on the following language:

"This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, **but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order or allows gatherings prohibited by this executive order.** I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order."

(Emphasis added.) In other words, the city attorneys argue that allowing a local business that is not on the TDEM/CISA list to re-open is not "restricting" essential services. Rather, it is expanding essential services.

Of course, the order states that the statutes listed in it are suspended "**to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.**"

(Emphasis added.) That language is difficult to decipher. If local action is “consistent” with the order, but it can’t be “inconsistent,” where does that leave cities? At a press conference this afternoon (April 21), the governor was asked about an [order issued by the mayor of the City of Colleyville](#), and whether it was congruent with his order. The Colleyville order allows, for example: (1) retail services that are not “essential services” to open and make sales through in-person appointments, so long as distancing is followed; (2) gyms, massage establishments, and salons to re-open for one-on-one appointments only, with appropriate precautions; and (3) restaurants with patios can allow outside dining, so long as distancing is followed.

In response to the question, the governor said that:

“I had the chance to read his [the mayor’s] proclamation. From everything that I can tell, what he wrote in the proclamation he made deference to my executive order, and was trying to write policies in a way that would parallel or be in agreement with my order. To the extent that there may be a strategy that he thinks is consistent with my order, my staff will talk to him and see what’s in agreement. If there’s something not in agreement, we will be happy to talk to him about it.”

The governor also mentioned that his Strike Force is reviewing which types of businesses can safely reopen and will have recommendations in a few days, which will lead to a new order on April 27. (Order GA-17 states that those recommendations should be made in time for the governor to issue a new order relating to business openings by May 30.)

What’s the bottom line? We are witnessing a rapidly-changing landscape with differing legal and political opinions. While we try to provide the basic information you need, these updates are not meant to be legal advice to any particular city. That’s why city officials should always base their ultimate decisions on the advice of their local legal counsel. That counsel is in a unique position to understand the goals of their city officials, explain the local costs and benefits of a particular course of action, and advise based on that and more local information.

City attorneys should contact Scott Houston, TML general counsel, at 512-231-7464 or gencounsel@tml.org with questions or comments.

Has the state issued additional guidance on houses of religious worship?

Yes, the governor and attorney general issued [updated joint guidance](#) regarding the effect of Order GA-16 on religious services conducted by congregations and houses of worship. According to an attorney general’s press release:

“It recommends strategies for houses of worship to effectively slow the spread of the Coronavirus (COVID-19) while serving their respective communities of faith.

‘Government and faith communities throughout Texas must work together to care for our neighbors and slow the spread of COVID-19,’ said Attorney General Paxton. ‘This updated guidance provides clear direction for houses of worship to protect the health and safety of their

congregations as they continue to hold religious services, exercise religious liberty and serve their faith communities.’

All emergency orders must comply with the First Amendment of the United States Constitution, Article I of the Texas Constitution, and the Texas Religious Freedom Restoration Act, which protect the rights of Texans to freely exercise their religion. Consistent with those protections, Executive Order GA-16 defines essential services to include ‘religious services conducted in churches, congregations, and houses of worship.’ Orders given by state or local governments, therefore, may not prohibit people from providing or obtaining those religious services. And importantly, under GA-16, local government may not close houses of worship.”

4/22/2020

Has the state issued guidance on how businesses may conduct “retail to go”?

Yes. [GA-16](#) is the governor’s order that will authorize retail sales by non-essential businesses for pickup and delivery beginning on Friday, April 24. The service must be provided in strict compliance with the terms required by the Texas Department of State Health, which issued [guidance](#) yesterday (April 22).

4/24/2020

When will we learn more about the governor’s plan to re-open Texas?

The governor said that he will unveil several new orders at a press conference on Monday, April 27. The exact time has yet to be announced. League staff will listen to his press conference, review those orders, and provide additional details as soon as possible

4/28/2020

Did the governor’s order last Monday (Executive Order GA-18, April 27) “lift” or “let expire” his “stay home/work home” order? Can you summarize very briefly what it allows?

No, it did not. And yes, we can! In spite of various media headlines, [Executive Order GA-18](#) has similar stay home/work home language as previous orders:

“In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, every person in Texas **shall**, except where necessary to provide or obtain essential services or reopened services, **minimize social gatherings and minimize in-person contact with people who are not in the same household**. People over the age of 65, however, are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.”

(Emphasis added.) The highlighted language means that Texans should stay home/work home, unless (while following [DSHS/CDC prevention guidelines](#)):

- Accessing essential businesses (as defined by [TDEM](#) and the [U.S. Department of Homeland Security](#)).
- Starting on May 1, accessing “re-opened services” as listed in the order.

In addition, the order allows (while following [DSHS/CDC prevention guidelines](#)):

- Attending religious services according to attorney general’s [guidelines](#).
- Participating in “essential daily activities,” such as going to the grocery store or gas station, providing or obtaining other essential or re-opened services, visiting parks, hunting or fishing, or engaging in physical activity like jogging, bicycling, or other outdoor sports.

(Editor’s note: The above is meant to be a simplified answer, which is difficult considering that GA-18 is a complicated order. The [April 27 update](#) explains it in more detail.)

What activities does Executive Order GA-18 expressly prohibit?

[Executive Order GA-18](#) provides that:

-People shall avoid visiting bars, gyms, public swimming pools, interactive amusement venues such as bowling alleys and video arcades, massage establishments, tattoo studios, piercing studios, or cosmetology salons.

-In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC).

-In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students and shall not recommence before the end of the 2019-2020 school year.

In addition, the superseding language in the order provides, in part, that:

“This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list of essential services or the list or scope of reopened services as set forth in this executive order.”

What does that mean? Opinions vary substantially, but it would seem to indicate that a city’s order may not restrict how a business classified as essential or expressly re-opened by the order operates any more than the order (which incorporated DSHS/CDC prevention guidelines)

does. And it would seem to indicate that a city order may not open a business that is not classified as essential, re-opened, or part of an essential activity.

(Editor's note: The above is meant to be a simplified answer, which is difficult considering that GA-18 is a complicated order. The [April 27 update](#) explains it in more detail.)

Can we get our hair cut yet?

According to guidance issued today (April 28) by the Texas Department of Licensing and Regulation:

“Cosmetology Salons, Nail Salons, Estheticians, Mini-Salons and Massage Therapy Establishments Remain Closed:

Under [Executive Order GA-18](#) issued by Gov. Greg Abbott on April 27, all cosmetology salons (including nail salons, estheticians, and mini-salons), barber shops, and massage establishments shall continue to remain closed. Executive Order GA-18 overrides all local and county orders.

Whether a salon or shop is a sole proprietorship or not, they are to remain closed until Executive Order GA-18 is amended or rescinded.”

Of course, that guidance is imprecise in light of the language in Executive Order GA-18. Nothing in the order mandate that those businesses be “closed.” The order provides only that people “shall avoid” them:

“**People shall avoid visiting** bars, gyms, public swimming pools, interactive amusement venues such as bowling alleys and video arcades, massage establishments, tattoo studios, piercing studios, or **cosmetology salons.**”

Also, that guidance doesn't necessarily address “retail to go” or “re-opened” retail services as a component of one of the prohibited businesses. In other words, if a salon sells beauty products as well, can that component of the store open in according with occupancy limits and appropriate prevention measures? It would seem the answer ultimately depends on local enforcement.

4/30/2020

Once more: Does the governor's “stay home/work home” order “expire” on Friday?

No, it does not. In spite of various media headlines about the “governor's stay home order expiring on Friday (May 1),” his newest order ([Executive Order GA-18](#)) has similar stay home/work home language as previous orders:

“In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, every person in Texas **shall**, except where necessary to provide or obtain essential services or reopened services, **minimize social gatherings and minimize in-person contact with people who are not in the**

same household. People over the age of 65, however, are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.”

(Emphasis added.) The highlighted language means that Texans should stay home/work home, unless an exception applies (e.g., accessing essential services or activities, retail-to-go, re-opened businesses, or religious services).

What is the status of Texas beaches under Executive Order GA-18?

According to the [Galveston County Daily News](#) and other media sources, “state officials say beaches will open on Friday (May 1).”

The Daily News reported that “County and city officials confirmed they were in direct contact with Abbott’s office and the land office Wednesday [April 29] and learned about the directive around 2:30 p.m. At about 5 p.m., the land office sent directions to beach managers across the state, announcing its stance on opening.”

The League has not yet obtained a copy of the directions, and they aren’t posted on the GLO website, but the Daily News quoted them as stating that:

“The GLO is rescinding its approval for local governments to close beaches due to COVID-19, effective April 30, 2020 at 11:59 p.m.,” the land office letter stated. “The GLO understands that conditions may change, and local governments are required to contact the GLO for prior approval for any future closures of the beach to vehicles or pedestrians, closures of beach access points, time limitations, or restrictions on particular uses or activities on the beach.”

The governor had previously said the opening of beaches would be a part of Executive Order GA-18, but the text of the order did not expressly do so. Galveston business owners then contacted the governor’s office and reported they were told beaches would open. Later, the GLO issued its directions to beach managers.

The beach situation is indicative of confusion surrounding the application of GA-18. Similar confusion arose when one city’s mayor declared restaurant patios open prior to GA-18 becoming effective. According to several media reports, the governor said he understood the confusion and would issue clarifications to resolve the questions about GA-18.

5/1/2020

Has the attorney general issued further guidance regarding Executive Order GA-18 and how it supersedes local orders? In other words, can I now get my hair cut?

He has. But that much-needed haircut? Still can’t get one as of now.

The Texas Department of Licensing and Regulation issued guidance today (May 1) regarding barbershop, cosmetology salon, nail salon, esthetician salon, massage establishment, and laser hair establishment closures:

“Yesterday, the Texas Attorney General's Office [released a guidance letter](#) to address questions relating to Governor Abbott's Executive Order GA-18. Barbershops, cosmetology salons (including nail and esthetician), massage establishments, and laser hair establishments must remain closed until further notice. The Governor's order overrides conflicting local and county orders.”

The guidance letter referenced by TDLR has clarifying language that is **applicable well beyond haircuts about how [Executive Order GA-18](#) should be interpreted**, and the attorney general's advice generally tracks what's been in previous TML updates.

Passages in the letter of particular interest are reprinted here verbatim:

-Your question concerns numerous public reports suggesting that the Governor's order is vague and unenforceable. As explained below, **the Governor's order is neither vague nor unenforceable**, and local governments are prohibited from allowing businesses to reopen unless they are recognized as essential or reopened services under the Governor's order.

-Executive Order GA-18 expressly provides that it supersedes “any conflicting order issued by local officials” to the extent such order “expands the list of essential services or the list or scope of reopened services as set forth in this executive order.” Exec. Order GA-18 at 5. **A local order that purports to allow businesses that are neither essential services nor reopened services under GA-18 to reopen would “expand the list of essential services or the list or scope of reopened services.” Therefore, such an order would be superseded by GA-18 and would be invalid.** See Exec. Order GA-18 at 5; see also Tex. Const. art. XI, § 5(a) (providing that local regulation may not be inconsistent with the State Constitution or laws); Tex. Gov't Code § 418.012 (providing that the Governor's executive orders “have the force and effect of law”); City of Laredo, Tex. v. Laredo Merchants Assoc., 550 S.W.3d 586, 592 (Tex. 2018) (recognizing municipal ordinances may not be inconsistent with the Constitution or state law); Tex. Att'y Gen. Op. KP-0296 (2020) (concluding municipal and county officials lack emergency authority to regulate or restrict the sale of firearms).

How does a city calculate the percentage of dine-in occupancy for restaurants re-opened by Executive Order GA-18?

It's hard to tell. [Executive Order GA-18](#) provides in relevant part that:

“‘Reopened services’ shall consist of the following to the extent they are not already ‘essential services:’

b) Dine-in restaurant services, for restaurants **that operate at up to 25 percent of the total listed occupancy of the restaurant**; provided, however, that (a) this applies only to restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages and are therefore not required to post the 51 percent sign required by Texas law as determined by the

Texas Alcoholic Beverage Commission, and (b) valet services are prohibited except for vehicles with placards or plates for disabled parking...

f) For Texas counties that have filed with DSHS, and are in compliance with, the requisite attestation form promulgated by DSHS regarding five or fewer cases of COVID- 19, those in-store retail services, **dine-in restaurant services**, movie theaters, shopping malls, and museums and libraries, as otherwise defined and limited above, **may operate at up to 50 percent (as opposed to 25 percent) of the total listed occupancy.**”

City officials across the state have experienced differing interpretations about how to calculate the 25 or 50 percent occupancy. For example, should restaurant employees be considered in that number? Most cities had worked it out locally by cross-referencing a restaurant’s certificate of occupancy.

However, yesterday (April 30), the governor’s office issued a [two-sentence letter](#) to the Texas Restaurant Association. It stated that:

“As you know, Governor Abbott’s executive order GA-18 limits the occupancy of restaurants for dine-in restaurant services to 25% of the total listed occupancy. **This limitation is for the number of restaurant customers in the restaurant, and does not include essential employees of the restaurant.**”

Many cities have adopted building and fire codes, and they issue certificates of occupancy to businesses based on those codes. While each city’s C.O. can be different, many provide that the total listed occupancy includes all people, including staff. How to ultimately interpret the percentage is up to each city based on the advice of local legal counsel.

5/5/2020

What “clarifications and modifications” has the governor offered on the executive orders he issued last week?

At a press conference today, the governor announced “clarifications and modifications” regarding the executive orders issued last week. As of distribution of this email, we haven’t yet seen an actual order or written clarification. When we obtain that, we’ll report further. The governor stated at his press conference that:

- Funerals, memorials, burials, and weddings should be treated the same as church-type gatherings with regard to limited seating arrangements. At-risk populations are strongly encouraged to participate remotely.
- Park-like settings such as beaches, lakes, and rivers (including river-rafting) should follow the same guidelines as required for parks regarding social distancing.
- The 25 percent seating capacity limitation applicable to restaurants applies only to indoor seating, not outdoor seating. However, outdoor seating must comply with distancing standards.

What is the status of barbershops, cosmetologists, nail salons, and tanning salons? Or, can I get a haircut yet?

Almost! The governor announced today that barbershops, cosmetologists, nail salons, and tanning salons may open on Friday (May 8). Any of these services must comply with rules in what the governor referred to as his “policy manual” (presumably, that is the previously-released “[Report to Open Texas](#)” document, but we will clarify when we obtain any new orders). The governor stated at his press conference that the following applies:

- One customer per stylist.
- Appointment system only is recommended.
- If allowing walk-ins, customers are allowed to wait inside only if they are keeping six feet of separation.
- Six feet of separation between stations.
- Wearing facemasks is strongly recommended.

What is the status of gyms and exercise facilities?

At today’s press conference, the governor announced that gyms and exercise facilities may open beginning on May 18. The governor stated at his press conference that the following applies:

- Gyms may not operate at more than 25 percent capacity (this doesn’t include outside activity).
- Showers and locker rooms must remain closed.
- Equipment must be disinfected after each use.
- Customers must wear gloves that cover fingers.
- Must maintain six foot social distancing inside the gym.
- If a customer brings equipment, like a yoga mat, the equipment must be disinfected before and after use.

What about manufacturing facilities and office buildings?

The governor also announced that manufacturing facilities and office buildings that are not deemed essential services may open in limited ways beginning on May 18. The governor stated at his press conference that the following applies:

- Manufacturers may open with a 25 percent occupancy limitation and staggered workforce, if necessary.
- Manufacturing employees must maintain a six foot separation.

If a six foot separation cannot be achieved, the employer must use controls like Plexiglass between work stations.

Businesses located in office buildings may also open on May 18. These businesses may open their offices to either five employees or 25 percent of the workforce, whichever is greater, provided that employees maintain appropriate social distancing.

Has the Texas Medical Board adopted any rules in the wake of Executive Order GA-19? How do they affect “med spas” and similar health care facilities?

Yes. The Governor adopted [Executive Order GA-19](#) on the same day as Executive Order GA-18. The latter is the order that, among other things, retains stay home/work home while allowing essential services and activities, allowing retail-to-go, and “re-opening” certain businesses.

The former didn’t garner as much attention among city officials. It essentially allows health care providers to re-open for most procedures, so long as certain conditions are met:

“All licensed health care professionals shall be limited in their practice by, and must comply with, any emergency rules promulgated by their respective licensing agencies dictating minimum standards for safe practice during the COVID- 19 disaster...”

In the wake of the order, some confusion arose about certain health providers, such as “med spas” that offer treatments and services for Botox, skin care, laser hair removal, and similar services. To address the confusion, the Texas Medical Board issued [an emergency rule containing guidance](#) for health care facilities. The rule mandates, among many other things, mask protocols, pre-appointment screenings, and other items.

5/6/2020

Did the governor issue a new executive order to follow up on the “clarifications and modifications” he made at his May 5 press conference?

Yes. At a press conference yesterday (May 5), the governor announced “clarifications and modifications” regarding the executive orders issued last week. We summarized his verbal explanations in the [May 5 update](#). As a follow-up to his verbal explanations, he issued written guidance in the form of a new [executive order](#) and a [press release](#) last night. (We’ve been told by the governor’s office that it is GA-21, but it’s not officially posted as such on his website. It’s referred to here for now as “the new executive order.”)

What does the new executive order provide?

As with previous executive orders, the [newest order](#) maintains the stay home/work home provision:

“In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, **every person in Texas shall, except where necessary to provide or obtain essential services or reopened services, minimize social gatherings and minimize in-person contact with people who are not in the same household.**”

(Emphasis added.) The highlighted language means that Texans should stay home/work home, unless (while following [DSHS/CDC prevention guidelines](#)):

-Accessing essential businesses (as defined by [TDEM](#) and the [U.S. Department of Homeland Security](#)).

-Accessing “re-opened services” as [listed in the order](#). In addition to services already re-opened by previous order, the following are added to the list:

-**Wedding venues** and the services required to conduct weddings; provided, however, that for weddings held indoors other than at a church, congregation, or house of worship, the facility may operate at up to 25 percent of the total listed occupancy of the facility.

-**Wedding reception services**, for facilities that operate at up to 25 percent of the total listed occupancy of the facility; provided, however, that the occupancy limits do not apply to the outdoor areas of a wedding reception or to outdoor wedding receptions.

-Starting on Friday, May 8, 2020, the following are added to the list:

a. **Cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade**; provided, however, that all such salons, shops, and establishments must ensure at least six feet of social distancing between operating work stations.

b. **Tanning salons**; provided, however, that all such salons must ensure at least six feet of social distancing between operating work stations.

c. **Swimming pools**; provided, however, that (i) indoor swimming pools may operate at up to 25 percent of the total listed occupancy of the pool facility; (ii) outdoor swimming pools may operate at up to 25 percent of normal operating limits as determined by the pool operator; and (iii) local public swimming pools may so operate only if permitted by the local government.

-Starting on Monday, May 18, 2020, the following are added to the list:

a. **Services provided by office workers** in offices that operate at up to the greater of: (i) five individuals; or (ii) 25 percent of the total office workforce; provided, however, that the individuals maintain appropriate social distancing.

b. **Manufacturing services**, for facilities that operate at up to 25 percent of the total listed occupancy of the facility.

c. **Gyms and exercise facilities and classes** that operate at up to 25 percent of the total listed occupancy of the gym or exercise facility; provided, however, that locker rooms and shower facilities must remain closed, but restrooms may open.

In addition, the order allows (while following [DSHS/CDC prevention guidelines](#)):

-Attending religious services according to attorney general’s [guidelines](#).

-Participating in “essential daily activities,” such as going to the grocery store or gas station; providing or obtaining other essential or reopened services; visiting swimming pools, parks, beaches, rivers, or lakes; hunting or fishing; or engaging in physical activity like jogging, bicycling, or other outdoor sports.

According to the governor's May 5 [press release](#), "these newly opened services are subject to recommended minimum standard health protocols outlined by DSHS. These protocols will be available on the [Open Texas webpage](#)."

Does the new executive order provide additional guidance as to occupancy limits?

Yes. In an attempt to alleviate confusion under prior orders, the [new executive order](#) expressly defines occupancy in this way: "the total listed occupancy limits described above refer to the maximum occupant load set by local or state law, but for purposes of this executive order, staff members are not included in determining operating levels except for non-essential manufacturing service providers and services provided by office workers."

In addition, re-opened businesses may operate at up to 50 percent (as opposed to 25 percent) capacity in rural Texas counties that meet certain requirements and have [certified that](#) to the Department of State Health Services.

What activities does the new executive order expressly prohibit?

The [new executive order](#) provides that:

-People shall avoid visiting bars, massage establishments, tattoo studios, piercing studios, sexually oriented businesses, or interactive amusement venues such as bowling alleys, video arcades, amusement parks, water parks, or splash pads, unless these enumerated establishments or venues are specifically added as a reopened service by proclamation or future executive order of the governor.

-In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC).

-In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students and shall not recommence before the end of the 2019-2020 school year.

Does the new executive order supersede local orders?

Yes, according to the [new executive order's](#) plain superseding language, which provides in part that:

"This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list of essential services or the list or scope of reopened services as set forth in this executive order. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and

any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that are inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.”

What does that mean? Opinions vary substantially, but it would seem to indicate that a city’s order may not restrict how a business classified as essential or expressly re-opened by the order operates any more than the order (which incorporated DSHS/CDC prevention guidelines) does. And it would seem to indicate that a city order may not open a business that is not classified as essential, re-opened, or part of an essential activity.

Does the new executive order expressly supersede local mask/face covering mandates?

Yes. The [new executive order](#) provides that “Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.”

Can a business (or a city as the owner of a facility) require a customer to adhere to additional hygiene measures?

Yes. The [new executive order](#) provides that “Nothing in this executive order or the DSHS minimum standards precludes requiring a customer wishing to obtain services to follow additional hygiene measures.” Presumably, that means a business could mandate the wearing of a mask/face covering to enter.

The provision appears to be directed at private businesses and their customers, but it’s reasonable to assume that a city could rely on it to impose additional requirements for residents accessing city facilities, like bill payment, libraries, etc.

Of course, one method of enforcement is probably criminal trespass, which could be preempted by the language in the question above stating that “no criminal penalty” may be imposed for the failure to wear a face covering. However, the prohibition on civil or criminal penalties does not seem to directly prohibit a city from denying service—acceptance of bill payment for example—to those not in compliance. The imprecision of the order’s language in this area will certainly be tested in practice.

What guidance relating to high school graduations has been released?

According to the governor’s press release yesterday (May 5):

“TEA Commissioner Morath also provided new guidance on class of 2020 graduation ceremonies for Texas school districts. The TEA is providing four different pathways for schools to celebrate their graduating seniors, and each district is at liberty to determine if any of these options best serve the needs and desires of their community:

- Completely virtual ceremonies that take place entirely online, with the use of videoconference or other technologies.
- Hybrid ceremonies, which consist of a compilation of videos of students being recognized in person as they celebrate graduation in small groups.
- Vehicle ceremonies, in which students and their families wait in their cars while other graduates are recognized one at a time with their families alongside them.
- Outdoor in-person ceremonies, which are currently permitted for counties as follows: (1) between May 15 and May 31, an outdoor ceremony may take place in a rural county that has an attestation as described in the [Governor's Report to Open Texas](#) that remains in effect 7 days prior to the ceremony; and (2) an outdoor ceremony may take place in any Texas county on or after June 1.

Full details of the TEA's graduation ceremony guidance [can be found on the TEA website.](#)”

What are the governor's “surge response teams?”

During the governor's May 5 press conference, TDEM Chief Kidd and Health and Human Services Commissioner Wilson provided details on the newly formed “Surge Response Teams.”

According to the governor's [press release](#):

“These teams are led by TDEM and HHSC and include representatives from the Texas Military Department, DSHS, the Texas Emergency Medical Task Force, and BCFS Health and Human Services. Surge Response Teams will serve nursing homes, prisons, packing plants, and other facilities that experience flare ups of COVID-19 by providing personal protective equipment, testing supplies, onsite staffing, and assessment assistance. These teams will also work with local officials to establish health and social distancing standards to contain these flare ups. Several Surge Response Teams have already been deployed to locations across the state.”

5/7/2020

Did the governor issue a new executive order to prohibit jail time for the violation of his disaster orders?

Yes. His office released the following today (May 7):

“Governor Greg Abbott today [modified his executive orders](#) related to COVID-19 to eliminate confinement as a punishment for violating these orders. These modifications are being applied retroactively.

‘Throwing Texans in jail who have had their businesses shut down through no fault of their own is nonsensical, and I will not allow it to happen,’ said Governor Abbott. ‘That is why I am modifying my executive orders to ensure confinement is not a punishment for violating an order. This order is retroactive to April 2nd, supersedes local orders and if correctly applied should free Shelley Luther [a Dallas-area salon owner who was jailed for contempt of court after refusing to close her business]. It may also ensure that other Texans like Ana Isabel Castro-Garcia and

Brenda Stephanie Mata who were arrested in Laredo, should not be subject to confinement. As some county judges advocate for releasing hardened criminals from jail to prevent the spread of COVID-19, it is absurd to have these business owners take their place.”

What was the impetus of the governor’s “no jail time” order, discussed above, and what does it mean for local enforcement?

A salon owner in the Dallas area refused to comply with the governor’s [previous order](#) that salons remain closed. (Note: A [more recent order](#) allows salon openings starting tomorrow (May 8) with certain limitations.)

The fact that the order required salons to remain closed is undisputed. In fact, the Texas attorney general's office, along with the Texas Department of Licensing and Regulation, [released a guidance letter](#) stating that GA-18 is “neither vague nor unenforceable” and that “barbershops, cosmetology salons (including nail and esthetician), massage establishments, and laser hair establishments must remain closed until further notice. The Governor's order overrides conflicting local and county orders.”

Executive Order GA-18 also provides as follows: “local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.”

The judge in the case of the salon owner sentenced her to seven days in jail for, according to news reports, contempt of court for refusing to apologize or show any remorse.

On the heels of the sentencing, several things happened:

- The attorney general wrote a [letter](#) to the judge stating that “your actions abused your discretion in holding Ms. Luther in contempt and ordering her to jail in a civil court proceeding.”
- All of the judges in the trial court’s judicial district wrote a letter back to the attorney general, stating that, “in this context, for you to ‘urge’ a judge towards a particular substantive outcome in this matter is most inappropriate and unwelcome. Please do not communicate with the Court in this manner further.”
- The governor made the statement that “I join the Attorney General in disagreeing with the excessive action by the Dallas Judge, putting Shelley Luther in jail for seven days. As I have made clear through prior pronouncements, jailing Texans for non-compliance with executive orders should always be the last available option.”
- The governor issued the new [executive order](#), discussed above, which prohibits confinement as a punishment for violating his orders.
- A petition for habeas corpus was filed with the Texas Supreme Court, which today (May 7) [ordered](#) the salon owner released from jail.

-The attorney general wrote [another letter](#) to the Dallas judges stating “Do not forget: Although judges are independent of the Executive Branch, they are not independent of the people.”

What does all this mean? It’s probably fair to say no one has any idea. It’s a certainty that the inconsistencies above send mixed signals to local law enforcement, business owners, and others.

Does it mean that a person who violates the social distancing mandate in the order can’t be arrested, even if doing so puts another’s life in danger? Does it mean that a business that should currently be closed, like a massage parlor, can remain open if the owner simply refuses to close it and pays his fines? Only time will tell.

Where can I find the protocols for the various businesses that have been re-opened by executive order GA-21?

They are available on the governor’s [Open Texas web page](#).

5/13/2020

What action has the governor taken with regard to nursing homes?

On May 11, the governor issued the following press release:

“Governor Greg Abbott today directed the Texas Health and Human Services Commission (HHSC), the Texas Division of Emergency Management (TDEM), and the Texas Department of State Health Services (DSHS) to test 100% of residents and staff in Texas nursing homes. The Governor instructed HHSC, TDEM, and DSHS to develop and implement a plan based on the guidance of Vice President Mike Pence and Doctor Deborah Birx.

‘The State of Texas is working to rapidly expand our testing capacity—especially among vulnerable populations in Texas nursing homes,’ said Governor Abbott. ‘This important collaboration among HHSC, TDEM, and DSHS will ensure that any potential clusters of COVID-19 cases in nursing homes are quickly detected and contained.’”

What action has the governor taken with respect to occupational licenses?

Today (May 13), the governor issued the following press release:

“Governor Greg Abbott has waived license renewal late fees that accrued between March 13 and June 15, 2020 for occupational licenses issued by the Texas Department of Licensing and Regulation (TDLR). This waiver applies to licenses associated with a variety of occupations such as barbers, cosmetologists, electricians, speech-language pathologists, and dyslexia therapists.

‘This waiver removes financial barriers that could prevent Texans from getting back to work as we safely and strategically open the economy,’ said Governor Abbott. ‘The COVID-19 pandemic has presented unique challenges for the Texas workforce, and we are committed to restoring these hardworking Texans’ livelihoods while protecting public health.’”

5/18/2020

What has the governor asked paid fire departments to do with regard to nursing home virus testing?

The governor issues the following press release last Friday (May 15):

“Governor Abbott, TDEM Announce Partnership With Local Fire Departments To Expand Testing In Nursing Homes:

Governor Greg Abbott and the Texas Division of Emergency Management (TDEM) today announced that local fire departments in Texas are partnering with local public health authorities to provide testing in nursing homes throughout the state. This partnership has been developed and is being implemented through an ongoing collaboration between TDEM, the Texas Commission on Fire Protection, the Texas Health and Human Services Commission, and the Texas Department of State Health Services. Costs associated with providing these tests are eligible for federal reimbursement.

‘This partnership builds upon our efforts to expand COVID-19 testing in the Lone Star State, especially among our most vulnerable Texans,’ said Governor Abbott. ‘I thank our local fire departments for continuing to serve their fellow Texans throughout the COVID-19 response. By serving their communities in this new capacity, we will continue to contain the spread of this virus and protect the health and safety of all Texans.’”

Following the press release and a conference call with some fire departments and others, the executive commissioner of the Texas Department of Health and Human Services issued a letter to paid fire departments:

“To All Fire Departments:

On May 11, 2020, Governor Greg Abbott directed that 100 percent of staff and residents in Texas nursing facilities be tested for SARS-CoV-2, the virus that causes COVID-19, in accordance with White House guidance.

Texas nursing facilities are licensed under the authority of the Texas Health and Human Services Commission (HHSC). The testing teams may consist of state and/or local government personnel, including first responders from local fire departments.

As the Executive Commissioner of HHSC, I authorize fire department personnel to enter licensed nursing facilities for the purpose of collecting specimens for testing for SARS-CoV-2, the virus that causes COVID-19.

Testing teams must self-screen before entering the nursing facility and are expected to bring their own personal protective equipment. The teams are implementing the governor’s direction and are authorized to enter the nursing facility.

If a nursing facility has questions about this authorization they should contact the HHSC Long Term Care Regulatory region for assistance.”

In addition HHS provided a [FAQ document](#) related to the program.

A regional TDEM representative emailed the following to emergency management coordinators regarding nursing home testing options for fire departments:

- Texas Commission on Fire Protection (TCFP) certified fire departments have been asked to assist with the testing process, if willing and able.
- This is not a mandate.
- It applies only for those fire departments that are willing and able.
- HHSC will be coordinating the process and TDEM will provide support and supplies necessary for the testing.
- Fire department testing processes will need to be closely coordinated to ensure timely delivery of compatible testing kits, lab processing, etc.

According to the TCFP, the San Antonio Fire Department prepared a [video](#) showing testing protocols for fire fighters, and the City of Austin prepared a [resolution](#) to implement testing by its Fire Department.

The League will continue to provide information on this developing partnership as it becomes available.

5/22/2020

Did the governor request most state agencies to prepare budget reductions in the current biennium?

Yes. The governor, along with the speaker of the house and lieutenant governor, sent a [letter](#) to most state agencies asking that they submit a plan identifying savings to reduce their budgets by 5 percent for the current biennium. The letter identified several agencies that are exempt from the reduction “given the importance of the state’s response to COVID-19 and the continuity of critical government functions.”

5/26/2020

What action did the governor take last week (on May 22) regarding jails?

Last week, the governor issued [Executive Order GA-25](#), which provides that:

“All county and municipal jails are closed to in-person visitation, and every person in Texas shall avoid in-person visitation at closed jails; provided, however, that this restriction does not apply to visitation by (i) an attorney meeting with a client; or (ii) a religious leader or member of the

clergy. Any visitation allowed under this executive order should be conducted in accordance with guidance issued by the Texas Commission on Jail Standards.”

The exact guidance to which the governor refers is unclear, but all of the Texas Commission on Jail Standards’ memoranda are available [here](#).

6/24/2020

What actions did the governor take yesterday (June 23) regarding the spread of COVID-19 in Texas and in my community?

First, the governor issued a proclamation that modifies Executive Order GA-26 with regard to Fourth of July celebrations. The order previously allowed a mayor or county judge, in consultation with the local public health authority, to impose additional restrictions on most outdoor celebrations estimated to be in excess of 500 people. Yesterday’s modification granted more authority to mayors and judges by lowering the crowd threshold from 500 to 100. Interested city officials should read the actual language of [Executive Order GA-26](#) as modified by [yesterday’s proclamation](#) prior to taking action relating to outdoor celebrations.

Second, the governor directed the Texas Health and Human Services Commission (HHSC) to enact emergency rules that provide strict health and safety standards and procedures related to COVID-19 for child care centers in Texas.

According to the governor’s office, “these two actions are based on data showing an increase in COVID-19 transmission stemming from large gatherings and child care centers.”

“These are just some of the steps Texas will take to contain the rise in COVID-19 cases and hospitalizations,” said Governor Abbott. “Today’s proclamation and emergency rules will aid in that effort in two key ways: allowing restrictions on large gatherings where COVID-19 is easily spread and implementing a statewide standard of infection control for child care centers. However, as we face this challenge, there is no substitute for personal responsibility. I urge all Texans to do everything in their power to reduce the transmission of the coronavirus by wearing a face mask, washing their hands often, and staying six-feet apart from others.”

6/25/2020

What actions did the governor take today (June 25) regarding the spread of COVID-19 in Texas and in my community?

He took two actions. First, he announced a temporary pause in the re-opening of Texas. According to his press release:

“Governor Greg Abbott today announced that the State of Texas will pause any further phases to open Texas as the state responds to the recent increase in positive COVID-19 cases and hospitalizations. Businesses that are permitted to open under the previous phases can continue to

operate at the designated occupancy levels and under the minimum standard health protocols provided by the Texas Department of State Health Services.

‘As we experience an increase in both positive COVID-19 cases and hospitalizations, we are focused on strategies that slow the spread of this virus while also allowing Texans to continue earning a paycheck to support their families,’ said Governor Abbott. ‘The last thing we want to do as a state is go backwards and close down businesses. This temporary pause will help our state corral the spread until we can safely enter the next phase of opening our state for business. I ask all Texans to do their part to slow the spread of COVID-19 by wearing a mask, washing their hands regularly, and socially distancing from others. The more that we all follow these guidelines, the safer our state will be and the more we can open up Texas for business.’”

Second, he issued an [Executive Order](#) relating to hospital bed availability. According to his press release:

“Governor Greg Abbott today issued an Executive Order to ensure hospital bed availability for COVID-19 patients as Texas faces an increase in COVID-19 cases and hospitalizations. The Governor’s order suspends elective surgeries at hospitals in Bexar, Dallas, Harris, and Travis counties. Under this order, the Governor directs all hospitals in these counties to postpone all surgeries and procedures that are not immediately, medically necessary to correct a serious medical condition or to preserve the life of a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient’s physician.

Through proclamation, the Governor can add or subtract from the list of counties included in the Executive Order to address surges in hospitalizations that may arise in other parts of the state.

‘As Texas faces a rise in COVID-19 cases, we are focused on both slowing the spread of this virus and maintaining sufficient hospital capacity for COVID-19 patients,’ said Governor Abbott. ‘These four counties have experienced significant increases in people being hospitalized due to COVID-19 and today’s action is a precautionary step to help ensure that the hospitals in these counties continue to have ample supply of available beds to treat COVID-19 patients. As we work to contain this virus, I urge all Texans to do their part to help contain the spread by washing their hands regularly, wearing a mask, and practicing social distancing.’”

6/26/2020

What actions did the governor take today (June 26) regarding the spread of COVID-19 in Texas and in my community?

He issued a new executive order. The new order, [GA-28](#), supersedes GA-26, which we summarized yesterday. Relative to previous orders, the new order does the following of most significance to city residents: (1) closes bars; (2) reduces maximum restaurant occupancy from 75 percent to 50 percent; and (3) limits outdoor gatherings to 100 persons (other than those expressly allowed by the order – see below), unless the mayor authorizes more.

Getting into specifics, the new order retains the core features of the previous order:

-“Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people should not be in groups larger than ten and should maintain six feet of social distancing from those not in their group.”

-“In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS.”

-“Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.”

Beyond those, the order allows people to access various businesses and take part in various activities. **It adds the following new restriction: “Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment...” But it then exempts various businesses, activities, and outdoor events from the restriction. In fact, the exemptions are too voluminous to paste in here.**

The order also prohibits people from visiting bars, and an updated, city-related provision regarding outdoor gatherings bears repeating:

“For any outdoor gathering in excess of 100 people, other than those set forth above in paragraph numbers 1, 2, or 4, **the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order.**”

[Note: according to correspondence between the League and the governor’s office, an individual mask mandate would be allowed as a condition of approving a gathering in excess of 100 people, but no penalty of any type could be imposed on an individual who refuses to comply. What other conditions would be allowed remains to be seen.]

The exemptions in GA-28’s paragraph numbers 1, 2, or 4 are many. Pursuant to GA-28 #1, a county judge or mayor has no express authority over the following outdoor gatherings:

1. any services listed by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.1 or any subsequent version;
2. religious services, including those conducted in churches, congregations, and houses of worship;
3. child-care services;

4. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths; and
5. recreational sports programs for youths and adults.

In other words, the above events can take place by right with no occupancy limits.

Pursuant to GA-28 #4, amusement parks are subject to a 50 percent occupancy limit.

Pursuant to GA-28 #2 and #5 regarding outdoor gatherings, the order is confusing. After much internal debate, the bottom line as interpreted by League attorneys is this:

1. Any outdoor gathering in the city limits in excess of 100 people is prohibited by the order (GA-28 #5), unless a mayor allows it.
2. A mayor may allow a gathering in excess of 100 people in the city limits, and may impose allowable conditions on the gathering (other than penalties for individuals who don't wear a mask)(GA-28 #5). The best way to do that would probably be a written proclamation.
3. The order's 50 percent occupancy limit does not apply to outdoor events, except those expressly listed in number 4 below (GA-18 #2).
4. A mayor has no control over the following, which can operate at a maximum of 50 percent of the normal operating limits as determined by the owner: (a) professional, collegiate, or similar sporting events; (b) swimming pools; (c) water parks; (d) museums and libraries; (e) zoos, aquariums, natural caverns, and similar facilities; and (f) rodeos and equestrian events (GA-28 #2).

Interested city officials should review the complicated new order in its entirety to determine what's open and with what restrictions. As before, the best way for a city official to determine what's open and which guidelines apply is to visit the governor's Open Texas [web page](#). That page indicates which activities are now allowed according to the guidance document linked for each type of business or activity.

The order continues to supersede local orders and prohibits confinement in jail for a violation.

6/30/2020

What's the latest on the lawsuit brought by bars against the governor and TABC for shutting them down?

The Texas Bar and Nightclub Alliance coordinated a lawsuit by several bars against the governor and the Texas Alcoholic Beverage Commission. Regardless of one's position on the issue, the league obtained a [copy of the pleadings](#), and they are pretty lame. Why? One of the primary claims is this:

“Defendants are Violating Article XI, § 5 of the Texas Constitution

Article XI, § 5 of the Texas Constitution provides that: [N]o charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or

of the general laws enacted by the Legislature of this State. Tex. Const. article XI, § 5. Governor Abbott's Order attempts to shut down Plaintiffs' businesses making it inconsistent with the "Constitution of the State." TEX. CONST. article XI, § 5."

The lawsuit is against the governor and TABC. The provision above is related to the authority of a home rule city. It has nothing to do with what the governor or a state agency has done.

7/1/2020

What did the governor say yesterday about the virus?

According to *News4SanAntonio*, [with regard to local face mask mandates](#):

Gov. Greg Abbott said in an interview with us Monday evening he would not be giving local authorities more control, because of what happened in Dallas.

Abbott said the incident in Dallas, which led to a salon owner's arrest when she did not follow local orders, is what's keeping him from giving back power.

"Let's say we give them the power." Gov. Abbott said. "How are they going to enforce it? A person was not following the citation, she got arrested. My point is, it almost inevitably leads to arrests."

And according to a [press release](#) from the governor's office:

"The Office of the Governor and Major League Baseball Hall-Of-Famer Iván 'Pudge' Rodríguez today issued a new public service announcement (PSA) on the importance of wearing a mask to mitigate the spread of COVID-19. In the PSA, Rodríguez urges Texans to wear a mask in public to protect themselves and others from the virus."

7/2/2020

Will the governor take any virus-related action heading into the Fourth of July weekend?

We don't know. Record case surges are taking place all over the state, but we haven't heard anything from the governor's office today about that. Unless he makes an announcement today, tomorrow, or over the weekend, you won't hear from us. Everyone please have a safe long weekend as we celebrate our independence.

Did the governor take any virus-related action relating to face masks heading into the Fourth of July weekend?

Yes. He issued [Executive Order GA-29](#), a face covering order, which becomes effective at 12:01 p.m. on July 3 and provides that:

“Every person in Texas shall wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain six feet of social distancing from another person not in the same household; provided, however, that this face-covering requirement does not apply [in 11 enumerated circumstances listed in the order].”

Certain counties are exempted from the requirement, and the order provides that TDEM will keep a list of those counties on its website at <https://tdem.texas.gov/ga29/>.

According to the order:

“Following a verbal or written warning for a first-time violator of this face covering requirement, a person’s second violation shall be punishable by a fine not to exceed \$250. Each subsequent violation shall be punishable by a fine not to exceed \$250 per violation.

Local law enforcement and other local officials, as appropriate, can and should enforce this executive order, Executive Order GA-28, and other effective executive orders, as well as local restrictions that are consistent with this executive order and other effective executive orders.

But no law enforcement or other official may detain, arrest, or confine in jail any person for a violation of this executive order or for related non-violent, non-felony offenses that are predicated on a violation of this executive order; provided, however, that any official with authority to enforce this executive order may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner. This executive order hereby prohibits confinement in jail as a penalty for the violation of any face-covering order by any jurisdiction.”

Did the governor take any virus-related action relating to large gatherings heading into the Fourth of July weekend?

Yes. He issued a [proclamation](#) amending [Executive Order GA-28](#) granting mayors additional authority over smaller gatherings. The proclamation becomes effective at 12:01 p.m. on July 3 and continues the social distancing requirement:

“Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people shall not be in groups larger than 10 and shall maintain six feet of social distancing from those not in their group.”

And it lowers the mayoral approval threshold for outdoor gatherings from those in excess of 100 to those in excess of 10:

“For any outdoor gathering in excess of 10 people, other than those set forth above in paragraph numbers 1, 2, or 4, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the

gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order.”

The exemptions in GA-28’s paragraph numbers 1, 2, or 4 are many. Pursuant to GA-28 #1, a county judge or mayor has no express authority over the following outdoor gatherings:

1. any services listed by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.1 or any subsequent version;
2. religious services, including those conducted in churches, congregations, and houses of worship;
3. child-care services;
4. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths; and
5. recreational sports programs for youths and adults.

In other words, the above events can take place by right with no occupancy limits.

Pursuant to GA-28 #4, amusement parks are subject to a 50 percent occupancy limit.

Pursuant to GA-28 #2 and #5 regarding outdoor gatherings, the order remains confusing. After much internal debate, the bottom line as interpreted by League attorneys is this:

1. Any outdoor gathering in the city limits in excess of 10 people is prohibited by the order (GA-28 #5), unless a mayor allows it.
2. A mayor may allow a gathering in excess of 10 people in the city limits, and may impose allowable conditions on the gathering (including a now-enforceable mask requirement)(GA-28 #5). The best way to do that would probably be a written proclamation.
3. The order’s 50 percent occupancy limit does not apply to outdoor events, except those expressly listed in number 4 below (GA-18 #2).
4. A mayor has no control over the following, which can operate at a maximum of 50 percent of the normal operating limits as determined by the owner: (a) professional, collegiate, or similar sporting events; (b) swimming pools; (c) water parks; (d) museums and libraries; (e) zoos, aquariums, natural caverns, and similar facilities; and (f) rodeos and equestrian events (GA-28 #2).

7/9/2020

Has the governor taken recent action to expand hospital capacity to deal with COVID-19 patients?

Yes. Today (7/9), Governor Abbott [issued a proclamation](#) suspending elective surgeries in over 100 counties in order to increase hospital capacity for COVID-19 patients. Prior to the proclamation, elective surgeries were banned only in Bexar, Cameron, Dallas, Harris, Hidalgo,

Nueces, Travis, and Webb counties. A full list of the counties added to the list can be found in the proclamation text, linked above.

7/13/2020

Did the governor take any virus-related action heading into last weekend?

Yes. He issued the following press release last Friday (July 10):

“Governor Greg Abbott has been working with Vice President Mike Pence and members of the Trump Administration to ensure the medical needs of Texans will be met as the State responds to COVID-19. He announced tonight that additional federal resources have been activated and are being sent to the Houston region to combat COVID-19.

The additional resources include an Urban Area Medical Task Force from the U.S. Department of Defense (DOD) that will arrive in the region on Monday and a Disaster Medical Assistance Team from U.S. Health and Human Services that has just been deployed. These resources add to a DOD Urban Area Medical Task Force that just began operating in Bexar County as well as seven federal assessment teams operating in Dallas, Houston, Austin, San Antonio, McAllen, Laredo, and El Paso this past week. The Governor continues daily collaboration with Texas' federal partners to expand resources for any regions to respond to COVID-19.

‘Texas is grateful to the federal government as well as the President and Vice President for working swiftly to provide additional resources to the state as we work to mitigate COVID-19 and care for our fellow Texans,’ said Governor Abbott. ‘We will continue to work with our local and federal partners to ensure all resources and needs are met throughout the state.’”

Where can I go to see exactly what business and activities are allowed by the governor’s orders as of now?

Check out www.open.texas.gov. This is the governor’s Open Texas web page. On it, you’ll find a list of each allowable business or activity, along with a link to the Department of State Health Services guidance on allowable occupancy limits, the most recent statewide mask order, and more.

7/14/2020

Did the governor take any virus-related action this week?

Yes. He issued the following press release yesterday (July 13):

“Governor Greg Abbott today announced that the U.S. Department of Defense has activated additional U.S. Army Urban Augmentation Medical Task Forces (UAMTF) to assist the state's efforts to combat COVID-19. At the Governor's request and as part of a whole-of-nation approach, one UAMTF arrived in San Antonio on July 6th, an additional task force arrived in Texas to support the Houston region today, and four UAMTFs, along with a U.S. Navy Acute

Care Team and four U.S. Navy Rapid Rural Response teams, will be deployed to additional locations across Texas as identified by ongoing assessments. These teams consist of medical and support professionals which are being deployed to support medical needs in hospitals throughout the state.

‘Our ongoing partnership with the federal government is crucial to meeting the medical needs of Texans as we combat COVID-19 in our communities,’ said Governor Abbott. ‘Texas is grateful to the U.S. Department of Defense as well as President Trump and Vice President Pence for providing these additional resources and for working alongside our communities to keep Texans safe and mitigate the spread of this virus.’”

7/15/2020

What’s happening with school re-opening dates?

School re-opening isn’t technically a municipal issue, but it is very important for all employers with child-rearing employees which of course includes cities.

According to [The Texas Tribune](#), the Texas Education Agency announced today (July 15) that classrooms can stay closed this fall without losing state funding if a local health official orders it, and so long as a district offers virtual classes.

Yesterday, the governor said on a local Houston television news interview that the time would be extended: “This is going to have to be a local-level decision, but there will be great latitude and flexibility provided at the local level.”

Even before that statement, *The Texas Tribune* reported, “some local public health officials had moved to mandate that schools remain closed at least through Labor Day, saying it would be unsafe to reopen school buildings while the pandemic was raging. El Paso and Laredo health officials were among the first to issue those mandates last week. And Tuesday, Travis County health officials ordered all public and private schools to delay on-campus instruction at least until Sept. 7. It was unclear last week whether Abbott or the TEA would let those orders stand.”

According to TEA, the actual plan is forthcoming. Interested city officials should be able to find information from the [Texas Education Agency](#) when it becomes available.

7/16/2020

Has the governor taken action to assist the Rio Grande Valley with virus response?

Yes, he issued the following press release yesterday (July 15):

“Governor Greg Abbott today announced that the Department of Defense (DOD) will surge resources to the Rio Grande Valley to help combat COVID-19. The DOD will send a U.S. Army Urban Augmentation Medical Task Force (UAMTF) to provide medical and support professionals needed in Rio Grande Valley hospitals.

Additionally, the Texas Division of Emergency Management is coordinating with local officials to identify alternate sites, such as area hotels, and contract medical staff to care for and house patients that are recovering from COVID-19. This will ensure additional hospital capacity in both Cameron and Hidalgo counties.

‘As the State of Texas mitigates the spread of COVID-19, we are continuing to work closely with our local and federal partners to identify outbreaks and provide our communities with the resources they need to keep Texans safe,’ said Governor Abbott. ‘I am grateful to our federal partners at the Department of Defense for sending these teams to the Valley and working within the community to protect public health and combat this virus. These teams, coupled with our newly established partnership with local hotels, will aid in our efforts to slow the spread of COVID-19 and ensure adequate hospital capacity in the Valley.’

Additional DOD teams are prepared to support the state and will be announced as teams are assigned.”

7/20/2020

We’ve heard differing interpretations about whether a city can enforce the governor’s mandatory mask order. Does it all hinge on whether a police officer may “detain” a person to issue a citation?

It does, and the answer remains unclear. On July 2, Governor Abbott issued Executive Order [GA-29](#), which is his order that requires face coverings, with certain exceptions. The order was adopted pursuant to [Section 418.173 of the Texas Government Code](#) (The Texas Disaster Act), which allows criminal penalties in the form of fines and jail time up to 180 days for a violation of an order issued under Chapter 418. Executive Order GA-29, however, limits the punishment to a fine only:

“Following a verbal or written warning for a first-time violator of this face covering requirement, a person’s second violation shall be punishable by a fine not to exceed \$250. Each subsequent violation shall be punishable by a fine not to exceed \$250 per violation.”

However, the order also provides that:

“[N]o law enforcement or other official may detain, arrest, or confine in jail any person for a violation of this executive order or for related non-violent, non-felony offenses that are predicated on a violation of this executive order; provided, however, that any official with authority to enforce this executive order may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner.”

According to the [Texas District & County Attorneys Association](#) (TDCAA):

“[T]he order specifically states that ‘no law enforcement or other official may detain, arrest, or confine in jail any person for a violation of this executive order . . .’ (emphasis added). That

language does perhaps leave the door open for a consensual encounter and a warning – although the word ‘perhaps’ is doing a lot of work in that statement – but we cannot for the life of us figure out how a law enforcement officer is supposed issue a citation to someone they are not allowed to detain for that purpose. Not only is this a problem for enforcing the statewide mask edict, but if an officer’s initial mask-based encounter elevates to an investigation of a jailable offense (possession of a controlled substance, for example), that type of contraband evidence may be suppressed before trial if the sole basis for the encounter was a mask violation under GA-29.”

The above is why we’ve seen news articles related to law enforcement refusing to even attempt to criminally enforce the governor’s mask mandate.

Does law enforcement have any options with regard to enforcement?

Maybe. The TDCAA has an interesting twist on the subject, and the following is entirely their analysis:

“Just as every mask has two loopholes for your ears, GA-29 has two loopholes for potentially getting around the problems it creates, if you or your community are so inclined.

First, by its own terms, GA-29 still allows officers to ‘enforce trespassing laws and remove violators at the request of a business establishment or other property owner.’ That has been the preferred practice under [GA-28](#), which in paragraph 15 said:

‘Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.’

This was the original loophole that allowed local governments to rely on – or in some places, require – businesses to enforce mask requirements, and it remains one avenue for enforcement under GA-29. However, GA-29 also includes the following new provision:

‘Executive Order GA-28 is hereby amended to delete from paragraph number 15 [see above] the phrase: *but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.*’

As a result, even though the statewide mask mandate may largely be a sham, local jurisdictions MAY now impose direct penalties for failure to wear a face covering, in addition to penalties on businesses that fail to enforce their own mask mandates on their premises. And furthermore, the limitation on detentions in GA-29 says, ‘No law enforcement or other official may detain, arrest, or confine in jail any person for a violation of this executive order’ (emphasis added), but it silent as to detention, arrest, or confinement for the purposes of enforcing a local mask order.

So, while the local penalties for violating local orders must still be limited to fines or other non-jailable remedies under other language in GA-28 that bars jail as a punishment for violating any

executive order during the pandemic, the “no detention” language apparently does not apply to local mask orders, making them enforceable. As of yesterday, this is apparently what the City of Austin will do, and the same governor who overrode Austin and other urban jurisdictions’ local mask ordinances back in April is apparently on board with them now.” (End analysis by TDCAA).

City officials should consult with local legal counsel regarding any action related to the above.

Has the attorney general issued guidance to private religious schools for fall re-openings?

Yes. Last Friday (July 17), the attorney general issued the following press release:

“Attorney General Ken Paxton today issued a [guidance letter](#) to religious private schools in Texas, informing them that local public health orders attempting to restrict their re-openings violate the United States and Texas Constitutions and the Texas Religious Freedom Restoration Act. Moreover, local orders seeking to restrict the reopening of religious private schools or institutions is inconsistent with Governor Abbott’s executive orders, and therefore, are invalid.

‘As the U.S. Supreme Court reaffirmed just last week, there are robust constitutional and statutory protections unique to religious individuals and communities, specifically including religious private schools,’ said Attorney General Paxton. ‘In accordance with the protections granted by the First Amendment and Texas law, this guidance allows religious private schools to determine for themselves when to reopen free from any government mandate or interference.’”

While the legal analysis in the attorney general’s letter is suspect, it’s not much different than what he has [previously issued](#) for places of worship. His arguments sound fine, but they aren’t legally sound.

Both the Texas and U.S. Constitutions and Texas religious freedom protection laws create a higher legal burden for government to meet prior to substantially burdening a person’s free exercise of religion. The burden is sometimes referred to as “strict scrutiny.” To meet it, the government should demonstrate that the regulation: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that interest. Virus-protection measures for teachers, staff, and students during a global pandemic may satisfy that two-part test.

Of course, no local entity is required to take any action whatsoever with regard to any type of school. Whether any particular city regulation meets the burden is a question for your city attorney. Reliance on an open letter (that is, outside the usual opinion process to state officials) from the attorney general, who has no duty to your city (or a private religious school for that matter), would be misplaced.

What’s the latest from TEA with regard to public school openings this fall?

On Friday (July 17), in the wake of outcry from many Texans, the Texas Education Agency issued additional reopening guidance. School systems will now be able to temporarily limit

access to on-campus instruction for the first four weeks of school. After the first four weeks, a school system can continue to limit access to on-campus instruction for an additional four weeks, if needed, with a board-approved waiver request to TEA. Because school opening is largely governed by the local health authority, the state, and each individual district, the League won't report on it in great detail. The [TEA COVID-19 website](#) has additional information.

7/21/2020

Has the governor's office issued additional virus-related public service announcements?

Yes, he issued a [Spanish-language PSA](#) today (July 21).

7/22/2020

What action has the governor taken to respond to virus spikes in the Rio Grande Valley?

The governor issued the following press release yesterday (July 21):

“Governor Greg Abbott today held virtual meetings with mayors, county judges, emergency managers, hospital executives, state legislators, and other local officials from Cameron and Hidalgo Counties to discuss the unified efforts to combat COVID-19 in these communities. The Governor and local leaders discussed the ongoing needs of the Valley and the ways the State of Texas can continue to assist these communities as they fight to protect public health and mitigate the spread of COVID-19. The Governor also discussed the assets and resources that have been deployed to the Valley and asked for feedback on other needs. Additionally, the Governor and local leaders discussed the expansion of hospital capacity and staffing needs. Governor Abbott also agreed to support Hidalgo County's efforts to contract with a hotel to provide more beds for recovering COVID-19 patients.

‘Our ongoing collaboration with local officials in the Rio Grande Valley is critical to effectively combating COVID-19 and keeping these communities safe,’ said Governor Abbott. ‘The State of Texas will continue to provide the support and resources that Valley leaders need to protect public health and mitigate the spread of this virus. By continuing to work together, we will overcome this challenge.’

Governor Abbott's Chief of Staff Luis Saenz and Texas Division of Emergency Management Chief (TDEM) Nim Kidd attended these meetings in person. Following the virtual meeting with Cameron County and Hidalgo County leadership, Saenz continued to visit with local elected officials, and Chief Kidd visited with local emergency management and hospital personnel to discuss their ongoing needs.

Substantial resources have already been provided to the Rio Grande Valley with more on the way.

[On Sunday \(July 19\), Governor Abbott announced](#) that the U.S. Department of Defense (DOD) has deployed five U.S. Navy teams to four locations in South and Southwest Texas to help

combat the spread of COVID-19. One U.S. Navy Acute Care Team is providing support at the Valley Baptist Medical Center in Harlingen and four U.S. Navy Rural Rapid Response Teams are supporting hospitals in Del Rio, Eagle Pass, and Rio Grande City. The DOD has also deployed a [U.S. Army Urban Augmentation Medical Task Force](#) to provide medical and support professionals needed in Rio Grande Valley Hospitals. Previously, the Governor [increased hospital capacity](#) in Cameron and Hidalgo Counties by suspending elective surgeries.

The Texas Department of State Health Services has fulfilled several State of Texas Assistance Requests for ventilators, hospital staffing, nursing home staffing, testing teams, epidemiology staff, lab staff, test collection kits and supplies, ambulance strike teams, oxygen concentrators, oxygen cylinders, morgue trailers, assorted medical supplies and various types of personal protective equipment (PPE). Additionally, [numerous cases](#) of Remdesivir have been sent to the Rio Grande Valley.

TDEM has distributed PPE to Cameron and Hidalgo Counties as well. These distributions include over 3 million surgical masks, over 1.4 million pairs of medical gloves, over 280,000 face shields, over 2.1 million n95 masks, and more.”

7/27/2020

Has TABC issued clarification for wineries and breweries?

Yes. TABC is allowing certain license holders to apply for a temporary permit to sell alcohol for consumption outdoors and outside of the originally-permitted area. In other words, TABC is allowing – with approval – restaurants to serve alcohol on a patio or outdoor area.

Some wineries and breweries read the TABC guidance as allowing them to automatically sell wine or beer to go for customers to drink in outdoor areas surrounding the winery or brewery.

TABC [issued a clarification](#) prohibiting that practice.

7/28/2020

What’s the latest on school reopening this fall?

Oddly, the attorney general issued “[legal guidance](#)” on school reopening today (July 28), a field that is usually the purview of the [Texas Education Agency](#). The legal reasoning in the guidance letter is likely not binding as it was issued outside of the formal attorney general opinion process, and therefore represents nothing more than one attorney’s opinion on the subject matter.

As always, city officials (and county, health authority, and school officials for that matter) should rely on the advice of their attorney, who has a fiduciary and ethical responsibility to them.

Nevertheless here’s the press release that accompanied the letter describing its intent:

“Attorney General Ken Paxton today issued guidance on the opening of local schools for the upcoming school year, during the ongoing COVID-19 pandemic, responding to a request from Stephenville Mayor Doug Svien. While playing an important role in protecting the health of school children and employees, local health authorities may not issue sweeping orders closing schools for the sole purpose of preventing future COVID-19 infections. Rather, their role is limited by statute to addressing specific, actual outbreaks of disease. School officials, both public and private, are the appropriate ones to decide whether, when, and how to open school.

‘Education of our children is an essential Texas value and there is no current statewide order prohibiting any school from opening,’ said Attorney General Paxton. ‘While local health authorities may possess some authority to close schools in limited circumstances, they may not issue blanket orders closing all schools on a purely preventative basis. That decision rightfully remains with school system leaders.’”

7/29/2020

What’s the latest on school reopening this fall?

We thought figuring out what to do about golf courses and masks was a tough question. Those are simple puzzles compared to the saga of public school re-opening procedures. The plan for public school re-openings has changed at least four times this month. The governor’s first few disaster orders closed down public schools indefinitely, but that changed with his more recent one. The following guidance outlines the plans and how they’ve changed:

1. On July 7, the Texas Education Agency released health guidelines for the 2020-2021 school year. (The link to those original guidelines is now deleted.) Among other things, the guidance required school districts to offer daily on-campus instruction, but also allowed parents to opt-in to virtual instruction from a school district that offered it.
2. On July 14, local health authorities – in conjunction with school districts – began to take local action related to the fall school start date. The authority for the City of Austin and Travis County [issued an order](#) that school districts should not reopen schools for face-to-face instruction until after Sept. 7. Several local health authorities around the state issued similar orders. After initial resistance, the TEA at that time confirmed that local public health officials could close schools for in-person instruction this fall without losing state education funding, so long as they offered online learning for all students.
3. On July 17, the TEA issued additional reopening guidance that gave tacit approval to what the LHAs mentioned above had been doing. (The link to those additional guidelines is now deleted.) School systems would have been able to temporarily limit access to on-campus instruction for the first four weeks of school. After the first four weeks, a school system could have continued to limit access to on-campus instruction for an additional four weeks, if needed, with a board-approved waiver request to TEA.
4. On July 28, the attorney general stepped into the fray by issuing “[legal guidance](#)” on school reopening. The guidance letter concluded that “local health authorities may not issue sweeping

orders closing schools for the sole purpose of preventing future COVID-19 infections.” As a legal matter, the “informal” letter should have been irrelevant. “Should” being the operative word. Shortly after the letter was released, the TEA once again revised its [guidance](#) to fall in line with the letter. The guidance was updated in several places, but this is probably the most relevant FAQ:

“My Local Education Agency (LEA) was subject to a blanket closure order issued by my local health authority. Will solely remote instruction be funded for the time period of the order?”

No. The Texas Attorney General issued a guidance letter on July 28, 2020, that stated that “... local health authorities may not issue blanket orders closing all schools in their jurisdiction on a purely prophylactic basis.” The guidance letter further provides that health authority orders may not conflict with executive orders of the governor and must apply control measures required by statute. Consequently, a blanket order closing schools does not constitute a legally issued closure order for purposes of funding solely remote instruction as described in this document. However, another valid funding exception may apply, such as a start-of-year transition period as described further below, that would be available to the LEA if it did not offer on-campus instruction.”

Some local health authorities, in conjunction with their districts, may ignore the letter and TEA guidance and do what they believe will protect teachers, students, and others. Because school opening is largely governed by the local health authority, the state, and each individual district, the League won’t report on it in great detail going forward. As always, city (and county, health authority, and school for that matter) officials should rely on the advice of their attorney, who has a fiduciary and ethical responsibility to them.

7/31/2020

We thought there wouldn’t be an update today?

So did we, but the governor likes to take action on Friday afternoons.

What’s the very latest with regard to public schools opening this fall?

We reported on July 29 that the plan for re-opening public schools changed four times in the last couple of weeks. It started with Texas Education Agency (TEA) guidance, then some local health authorities and school districts wanted something different, which the TEA agreed with. But then the attorney general swooped in with something new.

This afternoon (July 31), several additional folks – Governor Abbott, Lt. Governor Patrick, Speaker Bonnen, Chairman Taylor, and Chairman Huberty (the Texas Senate and House education committee chairs) – decided to weigh in. So far as we can tell, these state leaders’ and legislators’ determination is that: (1) school boards control when school opens; (2) school boards should consult with the local health authority to make the decision; and (3) neither a city, a county, nor a local health authority can issue blanket school closure orders. According to them, the only authority at all lies with a local health authority, who can “during the course of the school year, determine that a school building must be closed in response to an outbreak.”

The folks mentioned above released the following joint “Statement on School Re-Openings.” We bolded the most important portions:

"The Texas Education Agency’s (TEA) guidance for opening public schools in Texas for the 2020-21 school year **remains the same as announced two weeks ago**. This guidance followed a letter issued jointly by the Governor, Lieutenant Governor, Speaker, and Chairs of the Senate and House Education Committees.

The top priority is protecting the safety and health of students, teachers, staff, and families. To achieve that goal, the TEA provided local school boards the flexibility they need to open schools in ways that ensure public safety while also providing the best education options for students during this challenging school year.

The TEA guidance applies long-standing state law and Executive Orders to conclude that the authority to make decisions about when and how schools safely open rests with the constitutionally and statutorily established local school boards.

The authority to decide when the school year will begin lies with local school boards. They can choose dates in August, September, or even later. But, whenever the local school board chooses to open, the board must comply with the requirement to provide the necessary number of days and hours of instruction for students.

The authority to decide how schools will safely open this year, again, lies with local school boards. It can be with students in schools, it can be through remote learning, or a combination of the two. In making that decision, **school boards have the ability to base their decisions on advice and recommendations by local public health authorities but are not bound by those recommendations.**

As the TEA previously announced, school boards have up to a 4-week back to school transition period during which they can offer a solely remote instructional setting if that is deemed needed for the health and safety of students, teachers, staff and parents. After 4 weeks, the school district can extend the transition period up to another 4 weeks with a vote of the school board and receiving a waiver. If any school district believes they need an extension beyond 8 weeks due to COVID-19 related issues, the TEA will review that request on a case-by-case basis.

If at any time during the school year a COVID-19 case is confirmed on a school campus, the school board has the ability to close the campus for up to 5 days to sanitize the campus. Schools that close under this scenario will continue to be funded for providing remote-only instruction.

Additionally, during the course of the school year, a local public health authority may determine that a school building must be closed in response to an outbreak. If that occurs, that school will continue to receive funding for providing remote-only instruction during the period of that closure.

Local school boards also have the flexibility to achieve health and safety goals by offering alternating on-campus/remote instruction for high school students in order to reduce the number of students in campus buildings at one time.

The TEA and the Attorney General correctly note that local health authorities play an important role in school closure determinations during the course of a school year if it is determined that a contamination has occurred necessitating closure, but **local health authorities do not have the power to issue preemptive, blanket closures of schools weeks or months in advance of when a school may open its doors to students. Pre-existing Executive Orders have repeatedly made clear that local government operations, such as public schools, are permitted to be open.**

School boards established by the Texas legislature play a unique and pivotal role in school decisions that must not be superseded by other local authorities unless expressly allowed. It is clear that school boards can and should work collaboratively with, but not be subject to the advance directives of, local public health authorities, to ensure a safe and effective learning environment for Texas students."

At present, the TEA has nothing about the above on its website.

Have a nice weekend.

8/7/2020

Has the governor made additional statements about school re-opening in the fall?

No, but confusion remains. *The Texas Tribune* [reported on the issue](#) today (August 7).

8/10/2020

What is a bar and what is a restaurant, and why does it matter?

Seems like a simple question, right? No, sir. Any establishment that is licensed by the Texas Alcoholic Beverage Commission (TABC) and for which alcohol sales account for more than half of its gross receipts is a "51 percent establishment." In other words, it's a "bar." Or is it?

One state representative recently gave the example of a burger restaurant, where a patron might buy a burger and two beers. Oftentimes, the beer will cost more than the food, but that doesn't necessarily make the restaurant a bar.

Because of the confusion, TABC issued guidance to license holders:

“Qualifying as a Restaurant Under GA-28:

Businesses that have a 51% designation with TABC or that have not traditionally been considered a restaurant by TABC may apply to qualify as a restaurant under GA-28 in order to

provide dine-in services. Follow [this process](#) to apply and establish that your business derives less than 51% from the sale of alcoholic beverages.

The following information does not allow a business to circumvent the requirements in [Executive Order GA-28](#) or any subsequent executive order.”

Has the governor made additional statements about school re-opening in the fall?

No, but confusion remains. *The Texas Tribune* [reported on the issue](#) last Friday (August 7).

8/11/2020

What the latest from the governor on the pandemic and related items?

In an [interview with KVUE News](#) (Austin’s ABC news affiliate) yesterday (August 10), the governor discussed many issues, including schools opening this fall, the spread of the virus in Texas and COVID-19 vaccine trials, the president’s executive orders, and college football returning this fall.

8/14/2020

What’s the latest from the governor on the virus in Texas?

Governor Abbott met with local officials yesterday (August 13) in Lubbock and El Paso to discuss regional COVID-19 updates.

According to [KXAN News](#) (Austin’s NBC affiliate), when asked in Lubbock about the state’s climbing positivity rate:

“Abbott said the Texas Department of State Health Services has brought on investigators to look into possible reasons for growth in that category. He said the state has so far found a few possible key points. He said fewer people had been tested in the past few weeks, compared to previous months, adding that surge testing plus more interest led to more tests being conducted.”

With Labor Day weekend and flu season approaching, Abbott said health leaders worry about hospital systems being overrun with patients:

“‘It’s so important for people to not let their guard down during the Labor Day holiday, like they did during Memorial Day,’ Abbott said. ‘If Texans and people in Lubbock refuse to let their guard down, especially on holidays, they will be able to contain the spread of COVID-19, they will be able to prevent hospitals from becoming overrun with patients.’”

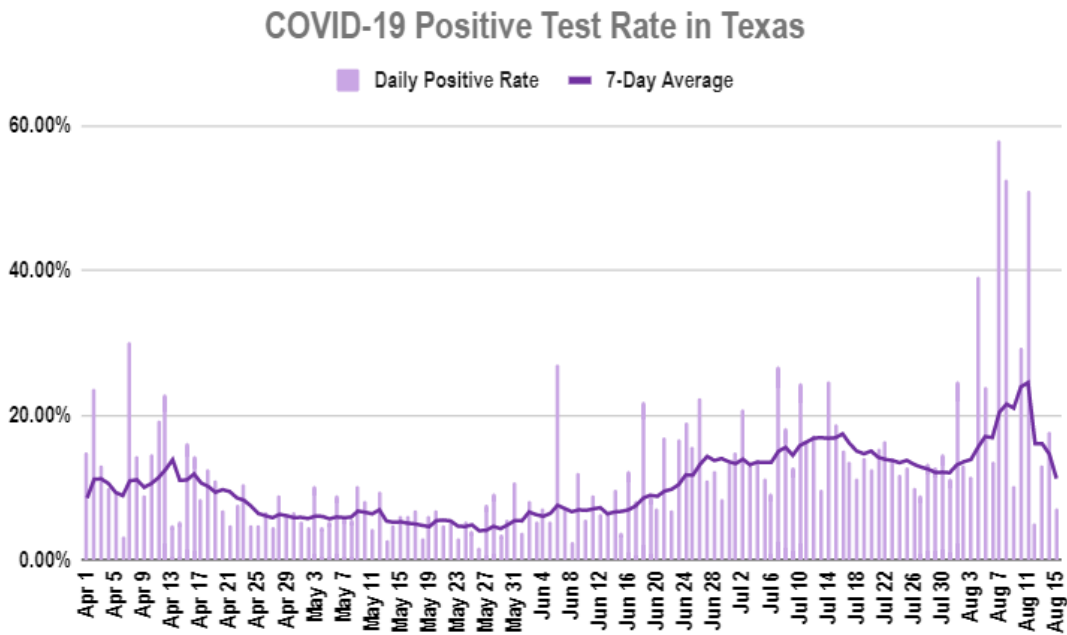
In El Paso, the governor highlighted the concept of “COVID-fatigue” again. “‘The COVID disease doesn’t care about COVID fatigue,’ he stated, mentioning that the virus does not discriminate in the people it might manifest itself in.”

8/17/2020

What's the latest from the governor on the virus in Texas?

According to [The Texas Tribune](#), Governor Abbott says said bars could potentially reopen once coronavirus metrics improve significantly. He said reopening would require the state's positivity rate to drop below 10 percent for a sustained period of time and for hospitalizations to decrease.

We reported in a recent update that the state's positivity rate was as high as 25 percent for the week ending August 11. However, according to [KXAN News](#) (reporting Department of State Health Services data), the current rate is much lower at just over 11 percent. The following chart shows how erratic the rate has been in recent weeks.



Abbott alleged that fewer people getting tested and a drop in July surge testing operations in various coronavirus hotspots contributed to the former high rate.

The governor also applauded Big 12 Conference officials' decision to allow college football this fall.

What's the latest with school openings, and how does it relate to cities?

The school re-opening debate is, apparently, a gift that keeps on giving. Last Friday (August 14), the Cy-Fair American Federation of Teachers [sued](#) the Cypress-Fairbanks Independent School District. The teacher's union alleged that the district is in violation of a joint order issued by the Harris County/City of Houston health authorities prohibiting in-person instruction/professional development until September.

The trial court granted the union's request for a temporary restraining order the same day the lawsuit was filed. The judge's order stated that, no matter what the district says, the joint local health authority order means teachers can't be made to attend in-person professional development before September 7.

Why should city officials care? The underlying issue in the lawsuit is whether a city's or county's health authority can shut down a school district based on local metrics and local health and safety authority.

So far as we understood (or thought we understood) it, the governor's and TEA's position remains that: (1) school boards control when school opens; (2) school boards should consult with the local health authority to make the decision; and (3) neither a city, a county, nor a local health authority can issue blanket school closure orders. According to them, the only authority at all lies with a local health authority, who can "during the course of the school year, determine that a school building must be closed in response to an outbreak."

The attorney general, who *really* likes writing letters, wrote yet another one today (August 17) in the form of an [amicus \("friend of the court"\) letter](#) to the trial judge. We assumed his letter would state that the local orders are preempted by the governor's order, statements, and TEA actions. He didn't.

He argues that the Health and Safety Code provisions relied on by the city and county don't authorize a blanket closure. Why he left out executive order preemption is anyone's guess. Perhaps he doesn't think those suspensions would hold up in court?

"Teachers' unions have no authority to override the decisions of schools administrators about how to return to school safely," said the attorney general. That's a mischaracterization of the dispute. The union isn't suggesting that "it" should determine how to return to school safety. Through its lawsuit, rather, the union is suggesting that doctors should.

The whole thing has folks confused. Seems like listening to two doctors might be better than one attorney? (Let the jokes commence: Two doctors and an attorney walk into a bar...)

In any case, we'll let the courts sort it out and go from there.

8/24/2020

What action has the governor taken with regard to the approaching storms and COVID-19?

All eyes are on tropical storms Laura and Marco as they move towards the Texas Gulf Coast. Marco appears to be weakening, but Laura is expected to get stronger and reach hurricane designation soon. Exact landfall locations remain to be seen, but forecasters predict they are likely to split the Texas/Louisiana border.

In the event that Marco defies forecasters and becomes a hurricane, and Laura follows suit, that would – in fact – be the first time in recorded history that two *hurricanes* stirred the waters of the Gulf at the same time. According to [KSAT News](#) (San Antonio’s ABC affiliate), the following are the only times two tropical cyclones were in the Gulf of Mexico simultaneously:

1. September 5-6, 2002 (18 hour overlap): (1) Tropical Storm Fay (in the northwest Gulf of Mexico); and (2) Tropical Depression Edouard (weakened after crossing Florida from east to west).

2. June 17-18, 1959 (8 hour overlap): (1) Tropical Storm Beulah (made landfall well south of the US-Mexican border); and (2) “Hurricane 3” (was a tropical storm in the Gulf, before crossing the Florida Peninsula and intensifying over the Atlantic).

In preparation, the governor [declared a state of disaster](#) for 23 Texas counties. The declaration includes all 22 coastal surge counties identified by the National Weather Service, and it also includes Bexar County (which is included for staging and sheltering).

According to [KXAN News](#) (Austin’s NBC affiliate), the governor said that mitigating the spread of COVID-19 throughout any evacuation efforts is a top priority:

“As we continue to respond to the COVID-19 pandemic, we are fully prepared to respond to the oncoming hurricanes of Marco and Laura,” Abbott said.

Abbott explained that the Texas Division of Emergency Management has activated the Alamo Regional Command Center and has ordered 100 buses to arrive at the center by Sunday. Additionally, Texas Department of Public Safety, Parks and Wildlife, and Texas Task Force 1 will all be on hand to assist.

TDEM has also activated fuel and hygiene services, based on need during previous hurricanes, like Hurricane Harvey. This is in addition to the activation of resources to shelter at least 5,000 evacuees.

The Texas Department of Health and Human Services has activated 50 ambulances and identified two facilities — one in San Antonio and the other north of Houston — that will be able to care for COVID-19 patients during the storms.

More than 800 personnel from the Texas Military Division, including the National Guard, are being assigned to sheltering teams, disinfecting teams, and mobile testing squads.

The state is also preparing for flooding, especially on I-10. The Texas Department of Transportation is on standby with seven miles of barriers and pumps.”

The President and FEMA today [approved the governor’s request](#) for a federal disaster declaration. More information is available on the [Texas Hurricane Center](#) website.

Let’s all send good thoughts to our fellow Texans in the unusual path of *two* storms.

8/26/2020

What's the latest on the Gulf storms?

Hurricane Laura is now a category 4 (at least) hurricane and appears to moving slightly east as it approaches the Texas/Louisiana border, according to [The Weather Channel](#). Many more cities have issued voluntary evacuation orders since yesterday. Visit this website for up-to-date information: <https://gov.texas.gov/hurricane>.

We'll be thinking of all of those in her path tonight. The Texas Municipal League Intergovernmental Risk Pool (IRP) has [resources available for cities](#), including a link to the main TML's [emergency management web page](#). If you need further TML IRP assistance, please contact one of the following:

- Mike Rains 512-491-2342
- David Nix 512-491-2347
- David Goldston 512-491-2426

City officials who need immediate assistance from TML legal can contact Scott Houston, TML general counsel, at gencounsel@tml.org or by phone at 512-231-7464.

The Governor [announced](#) that [he has added 36 counties](#) to his State Disaster Declaration due to the threat of severe rain, wind, and flooding. He also discussed evacuation efforts throughout the state, and announced that reception centers in San Antonio, Dallas-Fort Worth, and Austin will open later today. The state is providing buses to transport Texans who are evacuating. There are also over 225,000 hotel rooms available across the state to provide shelter to evacuees. A full list of mandatory and voluntary evacuations can be found on the [Texas Hurricane Center](#) web page. Governor Abbott urged Texans to take action now to protect themselves and their property.

9/14/2020

What's going on with nursing homes?

[According to KXAN](#) (Austin's NBC affiliate), two families have sued the governor, Texas Health and Human Services Commission, and individual nursing homes housing their loved ones. The lawsuit claims the defendants are "violating constitutional and statutory rights" of the residents and their loved ones by "prohibiting essential family visitors, damaging the health of residents in these facilities, and costing precious time to the residents and their families."

The lawsuit seeks to modify the governor's disaster declarations limiting nursing home access, and the HHSC restrictions that followed. No pleadings are available at this time.

9/17/2020

What action has the governor taken on re-openings?

Governor Abbott was joined today by Lt. Gov. Dan Patrick, House Speaker Dennis Bonnen, and several state health officials to announce certain re-openings for different parts of the state. The governor issued two new executive orders, [GA-30](#) and [GA-31](#), to carry out his new re-opening plan.

Acknowledging that a one-size-fits-all approach isn't ideal in a state as large as Texas, the governor's plan authorizes certain businesses to reopen based on the COVID-19 hospitalization rate within the [trauma service area](#) in which the business is located. If the COVID-19 hospitalization rate is less than 15% for seven consecutive days within a trauma service area, that indicates that the region is safe enough to allow for additional re-openings. Of the 22 trauma service areas in Texas, 19 of those are under the 15% indicator. The three regions that are not included, and therefore may not yet expand business re-openings, are Victoria, Laredo, and the Rio Grande Valley.

The following businesses within the 19 regions with 15% or lower COVID-19 hospitalization rates may reopen to 75% capacity beginning on Monday, September 21: retail, restaurants, office buildings, manufacturing, museums, libraries, and gyms. Elective surgeries in those regions may resume, effective immediately. Additionally, nursing homes facilities, assisted living centers, state supported living centers, and other long-term facilities in those regions are allowed to reopen for visitation on September 24, providing they comply with certain health protocols and no new outbreaks occur. Bars are still not able to re-open.

The League will provide a more detailed analysis of GA-30 and GA-31 in tomorrow's update.

9/18/2020

Can you explain the governor's new main order in more detail?

You bet. The new "main" order, [GA-30](#), supersedes GA-28. Relative to previous orders, the new order does the following of most significance to city residents: (1) keeps bars closed; (2) increases maximum restaurant occupancy from 50 percent to 75 percent; and (3) limits outdoor gatherings to 10 persons (other than those expressly allowed by the order – see below), unless the mayor authorizes more.

Getting into specifics, the new order retains the core features of the previous order:

-“Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, people should not be in groups larger than ten and should maintain six feet of social distancing from those not in their group.”

-“In providing or obtaining services, every person (including individuals, businesses, and other legal entities) should use good-faith efforts and available resources to follow the minimum standard health protocols recommended by DSHS.”

-“Nothing in this executive order or the DSHS minimum standards precludes requiring a customer to follow additional hygiene measures when obtaining services.”

Beyond those, the order allows people to access various businesses and take part in various activities, but prohibits people from visiting bars. It has the following restriction: “Every business establishment in Texas shall operate at no more than 50 percent of the total listed occupancy of the establishment...” But it then exempts various businesses, activities, and outdoor events from the restriction:

“For any outdoor gathering in excess of 10 people, other than those set forth above in paragraph numbers 1, 2, 3 or 5, the gathering is prohibited unless the mayor of the city in which the gathering is held, or the county judge in the case of a gathering in an unincorporated area, approves of the gathering, and such approval can be made subject to certain conditions or restrictions not inconsistent with this executive order.”

The exemptions in GA-30’s paragraph numbers 1, 2, 3, or 5 are many. Pursuant to GA-30 #1, a county judge or mayor has no express authority over the following outdoor gatherings:

1. any services listed by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) in its Guidance on the Essential Critical Infrastructure Workforce, Version 4.0 or any subsequent version;
2. religious services, including those conducted in churches, congregations, and houses of worship;
3. child care services;
4. youth camps, including but not limited to those defined as such under Chapter 141 of the Texas Health and Safety Code, and including all summer camps and other daytime and overnight camps for youths;
5. recreational sports programs for youths and adults.
6. any public or private schools, and any public or private institutions of higher education, not already covered above; and
7. drive-in concerts, movies, or similar events, under guidelines that facilitate appropriate social distancing, that generally require spectators to remain in their vehicles, and that minimize in-person contact between people who are not in the same household or vehicle. (How exactly does one “generally” remain in one’s car? Oh wait, this is Texas!! Back the truck in and lay down in that “eight-foot bed that never has to be made!” Sadly, when confirming the source of those lyrics online, we found out that the “Pickup Man,” Joe Diffie, passed away in March from complications related to COVID-19.)

In other words, the above events can take place by right with no occupancy limits.

Pursuant to GA-30 #2, the following types of business establishments may operate at up to 75 percent of the total listed occupancy of the establishment, except for those establishments in areas with high hospitalizations as [listed here](#):

1. in-store, non-CISA retail establishments;

2. dine-in restaurants, defined as “[o]nly restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages, and whose customers eat or drink only while seated, may offer dine-in services.”
3. non-CISA office buildings;
4. non-CISA manufacturers;
5. museums and libraries; and
6. gyms and exercise facilities and classes.

Pursuant to GA-30 #3 (which cross-references back to GA-28 #2) regarding outdoor gatherings, the order is confusing. After much internal debate, the bottom line as interpreted by League attorneys is this:

1. Any outdoor gathering in the city limits in excess of 10 people is prohibited by the order (GA-30 #6), unless a mayor allows it.
2. A mayor may allow a gathering in excess of 10 people in the city limits, and may impose allowable conditions on the gathering (other than penalties for individuals who don’t wear a mask)(GA-30 #6). The best way to do that would probably be a written proclamation.
3. The order’s 50 percent occupancy limit does not apply to outdoor events, except those expressly listed in number 4 below (GA-30 #3).
4. A mayor has no control over the following, which can operate at a maximum of 50 percent of the normal operating limits as determined by the owner: (a) professional, collegiate, or similar sporting events; (b) swimming pools; (c) water parks; (d) museums and libraries; (e) zoos, aquariums, natural caverns, and similar facilities; and (f) rodeos and equestrian events (GA-30 #3 referencing GA-28 #2).
5. Amusement parks shall operate at no more than 50 percent of the normal operating limits as determined by the owner (GA-30 #5).

Also, the following establishments that operate with at least six feet of social distancing between work stations have no occupancy limits:

1. cosmetology salons, hair salons, barber shops, nail salons/shops, and other establishments where licensed cosmetologists or barbers practice their trade;
2. massage establishments and other facilities where licensed massage therapists or other persons licensed or otherwise authorized to practice under Chapter 455 of the Texas Occupations Code practice their trade; and
3. other personal-care and beauty services such as tanning salons, tattoo studios, piercing studios, hair removal services, and hair loss treatment and growth services (GA-30 #4).

What remains expressly closed?

1. Bars or similar establishments that hold a permit from the Texas Alcoholic Beverage Commission; and
2. Commercial rafting or tubing services, including rental of rafts or tubes and transportation of people for the purpose of rafting or tubing.

Interested city officials should review the complicated new order in its entirety to determine what's open and with what restrictions. As before, the best way for a city official to determine what's open and which guidelines apply is to visit the governor's Open Texas [web page](#). That page indicates which activities are now allowed according to the guidance document linked for each type of business or activity.

Finally, GA-30 provides that “[a]ll existing state executive orders relating to COVID-19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders.”

9/22/2020

What action did the Texas Supreme Court recently take with regard to evictions?

Last Thursday (September 17), the Texas Supreme Court issued an [administrative order](#) clarifying certain aspects of the federal nationwide eviction moratorium.

As reported [on September 2](#), the Centers for Disease Control and Prevention (CDC) issued an [order](#) to temporarily halt residential evictions to prevent the further spread of COVID-19. Effective September 4, 2020, through December 31, 2020, the CDC order provides “rent deferral” for qualifying individuals. As reported by [The Texas Tribune](#), the federal moratorium left several unanswered questions.

The Texas Supreme Court's administrative order addresses three primary issues relating to the federal moratorium. The order:

- requires that, in an action for eviction to recover possession of residential property under Chapter 24 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure, the petition and citation include certain information to ensure that tenants are notified about the federal eviction moratorium;
- includes certain information to ensure that tenants are notified about the federal eviction moratorium;
- clarifies that the federal moratorium could prevent an eviction where the eviction has been granted, but the order to have the constable remove a person (the writ of possession) has not yet been issued; and
- provides a procedure for landlords to contest a tenant's declaration that he or she is qualified for rent deferral under the federal moratorium.

9/23/2020

Do the governor's motor vehicle registration statute suspensions affect junked vehicle ordinance enforcement?

That's a good question, and even the experts aren't sure. The ordinance enforcement issue relates to the use of an expired motor vehicle registration as evidence that a vehicle is “junked.” But the Texas Department of Licensing and Regulation says towing from private property is suspended, which may render enforcement moot.

Back in March, the governor [suspended various statutes and rules requiring registration for motor vehicles](#) that operate on public highways. (The idea is – presumably – that registration isn’t necessarily a safety issue, and the requirement to do so would lead to long lines and crowds at DMV offices.)

The statutory definition of a “junked vehicle” is a motor vehicle that is self-propelled, displays an expired license plate or does not display a license plate, and is: (1) wrecked, dismantled or partially dismantled, or discarded; or (2) inoperable and has remained inoperable for more than 72 consecutive hours, if the vehicle is on public property, or 30 consecutive days, if the vehicle is on private property. Transportation Code § 683.0711 allows a city to adopt a more inclusive definition of a “junked vehicle” than the statutory definition. Prosecutors typically use expired registration as evidence to prove that a vehicle meets the definition. Without it, the elements become much more difficult to prove.

None of that may matter, however, because TDLR [has advised](#) that the governor’s suspensions prevent a towing company from towing vehicles from private property for expired registration or renewals:

“Due to the extension granted for obtaining the initial registration or renewal of registration for a vehicle, tow companies may not tow vehicles from private property for expired registration or renewals until further notice.”

The bottom line is that the suspensions could be read to have created a sort of “grace period” for vehicle registration, making enforcement of a junked vehicle ordinance questionable. As with all complex legal matters, each city official should consult with their city attorney prior to acting (or not acting) on the above.

City attorneys with questions should contact Amber McKeon-Mueller, TML assistant general counsel, at amber@tml.org.

9/28/2020

What recent steps have been taken regarding eviction protection?

On Friday, September 25, Governor Abbott [announced](#) the allocation of \$171 million of federal CARES Act funding for rental assistance and the Texas Eviction Diversion Program. According to the press release, the funding will “allow the Supreme Court of Texas, the Office of Court Administration, and the Texas Department of Housing and Community Affairs (TDHCA) to work in partnership with local governments and non-profits and the newly created Texas Eviction Diversion Program to help renters stay in their homes, catch up on missed rental payments, and avoid an eviction on their records.”

At the moment, there are few details on the process for renters to access these funds. However, a spokesperson for the Texas Department of Housing and Community Affairs [has indicated](#) that cities, counties, and nonprofits will manage the application process. The state expects funding to

be available in late 2020 or early 2021. Some [preliminary information](#) on the Texas Eviction Diversion Program is available on the Texas Courts' website.

10/5/2020

Is there any new information on the Texas Eviction Diversion Program?

Yes. Back on September 25, Governor Abbott [announced](#) the allocation of \$171 million of federal CARES Act funding for rental assistance and the Texas Eviction Diversion Program (TEDP). The TEDP is a voluntary program that allows landlords and tenants to agree to resolve eviction lawsuits. TEDP funds may be used for up to five months of past-due rent payments, and for up to six months of future rent payments.

The Texas Department of Housing and Community Affairs [recently announced some new details](#) on the program. The first phase of the TEDP is a pilot program in which \$3.3 million is allocated to subrecipients covering 20 counties. The pilot program will help inform the statewide program, which is expected to begin in CDGB entitlement communities by the end of the year, and CDBG non-entitlement communities by early 2021.

10/8/2020

Did the governor issue a new executive order yesterday?

Yes. [Executive Order GA-32](#) is effective on October 14, and it does the following of most significance to city residents: (1) opens bars at 50 percent in certain state trauma regions, if the county judge submits an approval form to TABC; (2) increases maximum occupancy for most businesses to 75 percent; and (3) continues to limit outdoor gatherings in a city to 10 persons (other than those expressly allowed by the order), including rafting, tubing, and related services, unless the mayor authorizes more.

The governor issued the following press release to accompany the order:

“Governor Greg Abbott today issued an [Executive Order](#) to open bars and similar establishments at up to 50% capacity in conjunction with county officials. In hospital regions with [low COVID-19 hospitalizations](#), County Judges will be able to opt their county into opening bars beginning October 14th, provided they assist in enforcing [health protocols](#). The Governor's Executive Order also increases the occupancy levels for all business establishments other than bars to 75%.

‘Even as more businesses have opened and students return to school, Texans have shown we can contain the spread of COVID-19,’ said Governor Abbott. ‘Thanks to Texans following the best health practices, our state is prepared for additional openings, including bars. Working with industry leaders and our team of medical experts, the State of Texas has now developed strategies to safely open bars under certain health protocols. To ensure bars open safely, these openings will be done in conjunction with county officials. County Judges will be able to opt their county into opening bars so long as they assist in enforcing the health protocols. Opening

bars does not mean that COVID-19 is no longer a threat, and most Texans are still susceptible to the virus. As bars and similar businesses begin to open, we all must remain vigilant and show personal responsibility to protect ourselves and our loved ones.’

For Trauma Service Areas (TSAs) where COVID-19 hospitalizations are less than 15% of hospital capacity, a County Judge may authorize the opening of bars and similar establishments at 50% occupancy. If a County Judge authorizes the opening of these establishments, [certain protocols](#) must be followed. As recommended by trade associations representing bars, dance floors at bars and similar establishments must remain closed. Consistent with protocols for restaurants, **all patrons must be seated while eating or drinking** (with limited exceptions for sampling at breweries, distilleries, and wineries), and must wear masks when they are not seated at a table. Additionally, tables must be limited to six individuals or less and all establishments must follow specific curfew guidelines.

Beginning Wednesday, October 14, all counties where COVID-19 hospitalizations are less than 15% of hospital capacity can open all businesses other than bars to 75% capacity.

Additionally, the Governor released [a web video](#) with his Executive Order, encouraging Texans to continue following best practices to mitigate the spread of COVID-19 in their communities.”

[**Editor’s note:** As highlighted above, the new order requires bar patrons to be seated whilst imbibing. Did you know that drinking alcohol while sitting down may, in addition to purportedly preventing the spread of COVID-19, have an additional benefit? Indeed. When you drink alcohol while sitting down, you may feel more buzzed when you stand up! Why? Alcohol affects the part of your brain that controls your balance and coordination for standing/walking. Less coordination is required to sit than to stand. Thus, when you stand suddenly, you need to start balancing and coordinating more and you may notice – depending on how much you’ve had – that you’re just not as good at it. Yes, I am back. (P.S. Kudos to my stand in, who did an outstanding job in my absence!)]

11/19/2020

With COVID-19 infections and hospitalizations rising in many areas of the state, is the governor considering another shutdown?

No. In a [recent radio interview](#), the governor made it clear that another shutdown is not in the works: “We are not going to have any more lockdowns in the state of Texas. Our focal point is going to be working to heal those who have COVID, get them out of hospitals quickly, make sure they get back to their normal lives.”

In furtherance of the governor’s stated goal of getting Texans out of hospitals and back to their daily lives, the governor has recently [touted](#) the distribution of a COVID-19 antibody therapy drug called bamlanivimab. This new treatment is being used to treat coronavirus patients with moderate symptoms before they require hospitalization, with the hopes of lowering hospitalization rates.

Earlier today (November 19), the governor held a press conference in Lubbock to discuss the distribution of the new treatment, and expressed optimism that increased volumes of therapy drugs like bamlanivimab, and the future arrival of COVID-19 vaccines, will assist with the recent spike in areas across the state. The governor urged Texans to continue wearing masks and adhering to social distancing practices heading into the holiday season. Additionally, the governor confirmed that there will not be another shutdown, and stated that some local officials haven't adequately enforced the protocols spelled out in the governor's recent executive order.

While local governments have the ability to enforce the governor's orders on masks and occupancy limits, there appears to be little additional discretion for local officials to take actions to address rising infection rates at this time. As [previously reported](#), one state appellate court has held that local governments lack the authority to close certain businesses in a way that is inconsistent with the governor's most recent order on re-opening, [GA-32](#).

12/1/2020

Are there new areas in the state where business reopening capacity is limited?

Yes. Executive order [GA-32](#) was issued by the governor back on October 7, 2020. A key feature of GA-32 is the ability of most facilities (not including bars, which are subject to [additional restrictions](#)) to reopen at 75% capacity, unless they are located in a [Trauma Service Area](#) with high COVID-19 hospitalizations. An "area with high hospitalizations" is defined as "any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity is 15 percent or less." Hospitalization data by Trauma Service Area can be found [here](#).

Since we last reported on this issue on October 27, the Texas Department of State Health Services (DSHS) updated their [GA-32 webpage](#) with three new Trauma Service Areas that are now considered to be high COVID-19 hospitalization areas - Trauma Service Area J (17 counties in the Midland region), Trauma Service Area M (Bosque, Falls, Hill, Limestone, and McLennan counties); and Trauma Service Area T (Jim Hogg, Webb, and Zapata counties). These three regions joined areas A, B and I as the six regions of the state where re-openings are limited to 50 percent under GA-32.

The county judge of a county located within a high-hospitalization Trauma Service Area may follow an attestation process with DSHS to continue to operate at 75% capacity for certain businesses if there have been fewer than 30 confirmed cases of COVID-19 over the previous 14 days within the county. The affected counties that have submitted an attestation and qualified to continue operating at 75% capacity are listed on the [GA-32 webpage](#) linked above.

12/29/2020

Is there recent news for therapeutic treatments for nursing home patients?

Yes. The Governor announced yesterday that his office and the Department of State Health Services is alerting nursing homes about the availability of monoclonal antibody therapies for such patients. In some cases, the therapies can be delivered straight from the federal government.

1/14/2021

What's the latest on counties where businesses can open at only 50 percent capacity versus 75 percent capacity?

Executive order [GA-32](#) was issued by the governor back on October 7, 2020. A key feature of GA-32 is the ability of most facilities (not including bars, which are subject to [additional restrictions](#)) to reopen at 75% capacity, unless they are located in a [Trauma Service Area](#) (TSA) with high COVID-19 hospitalizations. An "area with high hospitalizations" is defined as "any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity exceeds 15 percent, until such time as the Trauma Service Area has seven consecutive days in which the number of COVID-19 hospitalized patients as a percentage of total hospital capacity is 15 percent or less." Hospitalization data by TSA can be found [here](#).

Since we last reported on this issue, and due to recent [record](#) hospitalizations, the Texas Department of State Health Services (DSHS) updated their [GA-32 webpage](#) to add new regions/counties including large metropolitan areas to the list of high COVID-19 hospitalization. In fact, out of 22 TSAs in the state, 18 are listed on the DSHS webpage as having high hospitalizations. Even the four TSAs that are not listed as exceeding the threshold in GA-32 (Wichita Falls, Midland/Odessa, San Angelo, and Corpus Christi) appear, based on the hospitalization data, to have exceeded 15% COVID hospitalizations over the past seven days. It may be a matter of DSHS not yet updating their website to reflect the updated data.

The county judge of a county located within a high-hospitalization TSA may follow an attestation process with DSHS to continue to operate at 75% capacity for certain businesses if there have been fewer than 30 confirmed cases of COVID-19 over the previous 14 days within the county. The affected counties that have submitted an attestation and qualified to continue operating at 75% capacity are listed on the GA-32 webpage linked above.

2/9/2021

What's the latest with expired drivers licenses and vehicle registrations?

In March 2020, the governor granted a waiver for those with expiring drivers' licenses/identification cards and motor vehicle registrations. The Texas Department of Public Safety [announced](#) those waivers will end on April 14, 2021.

Similarly, the Texas Department of Motor Vehicles [announced](#) that the governor’s March 2020 waiver for expired motor vehicle registration will end on April 14, 2020.

Each link above leads to explanations regarding online renewals, appointments for in-person renewals, and other beneficial information.

The end of these waivers will impact, among other things, city police department operations.

What is the state doing to help Texans avoid eviction during the pandemic?

The Texas Department of Housing and Community Affairs is using \$1.3 billion in funds from the most recent federal stimulus bill to assist renters with rent and utility bills. The [Texas Rent Relief Program](#) website has detailed information for landlords and renters.

3/9/2021

Has the attorney general issued another pandemic-related opinion?

Yes. A state legislator asked the attorney general about the application of the Texas Religious Freedom Restoration Act to an individual’s access to clergy due to the COVID-19 pandemic. [The opinion](#) concludes that:

“Both state and federal law provide broad constitutional protections for religious freedom. The First Amendment of the U.S. Constitution provides: ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof’ Article I, section 6 of the Texas Constitution provides: ‘No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion’ Furthermore, under the Texas Religious Freedom Restoration Act, a government agency is prohibited from placing a substantial burden on a person’s free exercise of religion unless the agency shows that the application of the burden is the least restrictive means of furthering a compelling governmental interest.

If an individual desires to see a member of the clergy as part of his or her religious exercise, prohibiting access to that member except when death is imminent places a substantial burden on the individual’s religious exercise.

Stemming the spread of COVID-19 is unquestionably a compelling government interest. However, to the extent that other less restrictive safety protocols further the government’s interest in stemming the spread of COVID-19, a court would likely conclude that prohibiting an individual’s access to clergy only when facing death violates the state and federal constitutions and the Texas Religious Freedom Restoration Act because it is not the least restrictive means of achieving such compelling interest.”