

# **Federal and State Guidelines for Reopening**

**April 17, 2020**

## **Has the President announced new guidelines for “Opening up America Again”?**

Yes. His [Opening Up America Again Guidelines](#) provide metrics for each state’s governor to use when deciding if, when, and how to begin re-opening their economies. Each city official should carefully review the guidelines and should also keep in mind that they are just that: guidelines. Unless and until the governor, a county judge, or a mayor imposes them by order, they are arguably not enforceable.

The key features of the guidelines for states to consider include testing and contact tracing, healthcare system capacity, and appropriate planning. The guidelines include a “phased” approach, which include the following (which is a very brief summary):

### **All Phases:**

- Individuals should practice good hygiene and sick people should stay home.
- Employers should develop and implement appropriate policies, in accordance with federal, state, and local regulations and guidance, and informed by industry best practices, regarding: (1) social distancing and protective equipment; (2) temperature checks; (3) testing, isolating, and contact tracing; (4) sanitation use and disinfection of common and high-traffic areas; and (5) business travel.
- Employers should: (1) monitor workforce for indicative symptoms and not allow symptomatic people to physically return to work until cleared by a medical provider; and (2) develop and implement policies and procedures for workforce contact tracing following employee COVID positive test.

The following phases should be implemented by states only following “gating criteria,” such as a state having: (1) a downward trajectory of cases; (2) hospitals that are not in crisis care mode; and (3) healthcare workers that are subjected to a robust testing program.

### **Phase I: Individuals**

- Avoid **SOCIALIZING** in groups of more than 10 people in circumstances that do not readily allow for appropriate physical distancing (e.g., receptions and trade shows).
- MINIMIZE NON-ESSENTIAL TRAVEL** and adhere to CDC guidelines regarding isolation following travel.

### **Phase I: Employers**

- Continue to **ENCOURAGE TELEWORK**, whenever possible and feasible with business operations.
- If possible, **RETURN TO WORK IN PHASES**.

- Close COMMON AREAS where personnel are likely to congregate and interact or enforce strict social distancing protocols.
- Minimize NON-ESSENTIAL TRAVEL and adhere to CDC guidelines regarding isolation following travel.
- Strongly consider SPECIAL ACCOMMODATIONS for personnel who are members of a VULNERABLE POPULATION.

### **Phase II: Individuals**

- All individuals, WHEN IN PUBLIC (e.g., parks, outdoor recreation areas, shopping areas), should maximize physical distance from others. Social settings of more than 50 people, where appropriate distancing may not be practical, should be avoided unless precautionary measures are observed.
- NON-ESSENTIAL TRAVEL can resume.

### **Phase II: Employers**

- Continue to ENCOURAGE TELEWORK, whenever possible and feasible with business operations.
- Close COMMON AREAS where personnel are likely to congregate and interact, or enforce moderate social distancing protocols.
- EMPLOYERS NON-ESSENTIAL TRAVEL can resume.
- Strongly consider SPECIAL ACCOMMODATIONS for personnel who are members of a VULNERABLE POPULATION.

### **Phase III: Individuals**

Individuals should:

- LOW-RISK POPULATIONS should consider minimizing times spent in crowded environments.

### **Phase III: Employers**

Employers may:

- Resume unrestricted staffing or worksites
- LARGE VENUES (e.g., sit- down dining, movie theaters, sporting venues, places of worship) can operate under limited physical distancing protocols.

Again, the above are merely guidelines. What happens in Texas will depend on the actions of the governor and local officials.

### **Has the governor announced new guidelines related to opening the economy?**

Yes, at a press conference today (April 17), the governor announced that he is issuing a series of executive orders outlining how to begin re-opening the Texas economy with guidance from

healthcare and business leaders. He will also be issuing additional orders to begin a phased opening of businesses.

The governor stated that the stay home/work home provisions of [GA-14](#) are still in effect, and the new orders provide additional exceptions to it. He will consider later whether to eliminate or reduce GA-14. Of note, schools (including colleges) will remain closed for the remainder of the 2019-2020 school year.

The orders are as follows:

**GA-17:** Creates a statewide [Strike Force to Open Texas](#), which “will work towards a medical architecture to test and trace, while gradually and safely returning to work and other activities.” The strike force will rely on an [advisory committee](#) of business and community leaders. The strike force has created a [web page](#) with more information.

**GA-16:** Relates to the safe, strategic reopening of select services and activities in Texas. This order establishes a temporary "Retail-To-Go" model that will allow retail outlets in Texas to reopen beginning Friday, April 24. Under this model, reopened establishments are required to deliver items to customer's cars, homes, or other locations to minimize contact.

Under this Executive Order, schools — including public, private, and higher education institutions — will remain closed for the 2019-2020 school year. Teachers may go into the classroom for video instruction, to perform administrative duties, and clean out their classrooms.

**GA-15:** relates to hospital capacity and personal protective equipment (PPE) needed for the COVID-19 response. The order loosens restrictions on surgeries [put in place by Governor Abbott in March](#). Beginning at 11:59 p.m. on April 21 through 11:59 p.m. on May 8, all licensed health care professionals and all licensed health care facilities must continue to postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death as determined by a patient's physician. Exceptions now include:

- Any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the PPE needed to cope with COVID-19; or
- Any surgery or procedure performed in a licensed health care facility that has certified in writing to Texas HHSC both (1) 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 (2) that it will not request any PPE from any public source — whether federal, state, or local — for the duration of the COVID-19 disaster.

The Governor today also directed state parks to reopen on Monday, April 20, with strict guidelines to reduce transmission of COVID-19 – 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.

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.

### **April 27, 2020**

#### **What did the governor announce today with regard to re-opening the Texas economy?**

At a press conference this afternoon (April 27), the governor announced that he will allow his existing order GA-16 to expire on April 30. He plans to “set a new course,” based on “data and doctors,” that will allow as many businesses to re-open as possible so long as we can contain the spread. To that end, he issued three new executive orders:

**EXECUTIVE ORDER [GA-18](#):** Keeps stay home/work home in place, except to access essential or re-opening services while following appropriate guidelines. It continues the order that retail services may be provided through pickup, delivery by mail, or delivery to the customer’s doorstep.

In addition, starting on Friday, May 1, 2020, it opens up the following:

- a. In-store retail services, for retail establishments that operate at up to 25 percent of the total listed occupancy of the retail establishment.
- 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.
- c. Movie theaters that operate at up to 25 percent of the total listed occupancy of any individual theater for any screening.
- d. Shopping malls that operate at up to 25 percent of the total listed occupancy of the shopping mall; provided, however, that within shopping malls, the food-court dining areas, play areas, and interactive displays and settings must remain closed.
- e. Museums and libraries that operate at up to 25 percent of the total listed occupancy; provided, however, that: (a) local public museums and local public libraries may so operate only if permitted by the local government; and (b) any components of museums or libraries that have interactive functions or exhibits, including child play areas, must remain closed.
- 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.

g. Services provided by an individual working alone in an office.

h. Golf course operations.

i. Local government operations, including county and municipal governmental operations relating to permitting, recordation, and document-filing services, as determined by the local government.

j. Such additional services as may be enumerated by future executive orders or proclamations by the governor.

The conditions and limitations set forth above for reopened services shall not apply to essential services, and the governor can impose more stringent requirements on a county if he chooses.

In addition, the order covers the following:

-Religious services should be conducted in accordance with the joint guidance issued and updated by the attorney general and governor. (Today (April 27), the attorney general issued [updated guidance](#) on houses of worship.)

-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. The use of drive-thru, pickup, or delivery options for food and drinks remains allowed and highly encouraged.

-The executive order does not prohibit people from accessing essential or reopened services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential or reopened services, visiting parks, hunting or fishing, or engaging in physical activity like jogging, bicycling, or other outdoor sports, 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.

-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). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.

-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.

**EXECUTIVE ORDER [GA-19](#):** Applies standards to health care workers and facilities.

**EXECUTIVE ORDER [GA-20](#):** Modifies the previous orders relating to restricted travel into the state.

**Does Executive Order GA-18 supersede local orders?**

Yes, at least partially. The order contains superseding language similar to previous ones:

“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 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.”

When asked at the press conference about masks, the governor stated that his order “supersedes local orders with regard to any type of fine or penalty for those not wearing a mask.” Of course, that issue is being litigated right now in Harris County.

**Did the governor’s office provide additional guidance on the implementation of Executive Order GA-18?**

Yes. His new plan to re-open certain aspects of society is based on a book titled “[Texans Helping Texans](#).” The book provides first and foremost that:

“As we begin to open Texas, we must continue to follow these critical health guidelines:

- Stay home if you can.
- Wash hands often and for 20 seconds, or use hand sanitizer with at least 60% alcohol.
- Cover coughs and sneezes with a tissue, then throw the tissue away.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Disinfect surfaces, buttons, handles, doorknobs, and other places touched often.
- Avoid close contact with people who are sick.

Continue to practice social distancing, avoid crowds, and limit physical contact. The Centers for Disease Control and Prevention (CDC) also recommends using simple cloth face coverings in public to help slow the spread of the virus.”

Other highlights of the book’s recommendations include:

**-Everyone should review minimum health protocols (Page 19):** Individuals, employers, employees, and customers are encouraged to review, print out, and follow the MINIMUM health protocols recommended by DSHS in the checklists on the following pages, in addition to federal and state employment laws and workplace safety standards. The DSHS minimum recommended health protocols are subject to change based on new and evolving information.

**The book contains protocol checklists for:** individuals (Page 20), employers (Page 21), retailers (Page 23), retail customers (Page 26), restaurants (Page 27), restaurant customers (Page 30), movie theatres (Page 31), movie theatre customers (Page 34), museums and libraries (Page 25), museum and library visitors (Page 37), outdoor sports participants (Page 38), churches/places of worship (Page 39), and single-person offices (Page 42).

### **Are rural counties with fewer than five confirmed virus cases treated differently under Executive Order GA-18?**

Yes, as indicated by section (f) of GA-18, listed in the first question above, counties that have had fewer than five confirmed cases can expand the percentage of occupancy in the listed re-opened businesses.

**Rural Counties with few cases (Page 43):** Rural counties may, on an individualized basis, increase capacity for restaurants, retail, shopping malls, museums, libraries, and/or movie theaters if the county judge certifies and affirms to DSHS that certain listed standards have been investigated and confirmed to be met.

(Editor’s note: This allows rural counties to expand from 25 percent to 50 percent occupancy if the conditions are met, but they must revert if other conditions are met (e.g. a spike in infections) or if the governor orders it so.)

### **What are some other highlights of the Texans Helping Texans book?**

Other highlights in the [book](#) include (with verbatim descriptions from the book’s text as explanation):

**-Older Texans mitigation plan (Page 9):** Recent reports highlight the rapid increase of confirmed COVID-19 cases in nursing homes and assisted living communities in Texas. According to the governor, “the most important thing is protecting our most vulnerable, so we ask that those ages 65 and older remain at home if at all possible, and that businesses should make special practices to protect them. We will also re-double efforts to protect seniors in nursing homes.”

**-Testing efforts (Page 12):** Testing is the foundation on which the plan to open Texas is built. Testing can identify critical hotspots, catch outbreaks before they spread, and indicate where support is needed most.

**-Texas actions to increase testing (Page 13):** The Texas Department of State Health Services (DSHS), the Texas Division of Emergency Management (TDEM), the Governor’s Supply Chain

Strike Force, and Texas Military Department are working on several fronts to continuously expand access to COVID-19 testing throughout the state.

**-Statewide contact tracing (Page 16):** As Texas opens and individuals return to work, it is imperative that public health authorities identify not only those who are ill with COVID-19 but also those individuals who have come in contact with a person who is ill. This contact tracing allows public health authorities to identify individuals who are also ill and who may not realize their symptoms are COVID-19 related, and others who are not symptomatic but need to be educated on how to monitor for symptoms and isolate if symptoms occur. Testing identifies individuals who need to isolate. Contact tracing is a core function of public health. Coordination between state and local public health officials is fundamental to contact tracing success. This ongoing pattern will box in the disease and will slow and can even stop further spread.

### **What did the governor say at the press conference regarding enforcement?**

He said, “there are several levels of enforcement...up to \$1,000 fine and 180 days in jail...but primary enforcement would be at local level or regulatory level (such as repealing a state business license).”

### **Did the governor mention anything else of major interest at the press conference that isn't covered by the questions above?**

Yes. He mentioned that:

**-Permission:** The re-opening guidelines are “permission, not a requirement.” Any Texan can stay home.

**-City libraries:** Whether to open is up to the local government.

**-Outdoor sports:** Include golf and tennis.

**-Personal hygiene:** Barbershops, hair salons, and gyms, he hopes that they open by mid-May.

**-Summer camps:** His medical team is still working on safe ways for kids to attend camps.

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.

### **What is the General Land Office’s official beach opening guidance?**

The GLO issued the following to the City of Galveston yesterday (April 30):

“On March 17, 2020, the GLO gave approval for local governments to close beaches due to COVID-19. The basis for the GLO approval was the Governor’s State of Disaster proclamation on March 13, 2020. The proclamation was followed by Executive Order GA-16, which will expire at 11:59 p.m. on April 30, 2020. The Governor’s Office has also issued Executive Order GA-18, which encourages outdoor activities so long as necessary precautions are maintained to minimize the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.

Therefore, 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 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. Local governments should also encourage the public to follow the recommended individual health protocols outlined by the Texas Department of Health and Human Services at the following link: <https://www.dshs.state.tx.us/coronavirus/opentexas.aspx>.”

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 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](#).

### **What has the lieutenant governor been working on?**

The lieutenant governor’s “Texans Back to Work Task Force” issued a [113-page report](#) with hundreds of recommendations about re-opening the state for business. With regard to city authority, the following appears on page 49 of the report:

“The state should enact an off-switch policy to end local disaster declarations on a statewide basis once the emergency is passed. The state needs to provide legislative clarification to

commissioner's courts and city councils related to declaring states of emergency. The recent shutdown showed how the principles of representative government can be thwarted when mayors and county judges have too much power in making unilateral decisions without the agreement of the rest of the executive body."

5/15/2020

### **What happens with regard to the governor's re-opening plan on Monday (May 18)?**

According to existing [Executive Order GA-21](#), starting on Monday, May 18, 2020, the following are added to the existing reopened services list:

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

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](#)."

Executive order GA-21 expires "at 11:59 p.m. on May 19, 2020, unless it is modified, amended, rescinded, or superseded by the governor." Because the current order is expiring on Tuesday, the governor will most likely issue a new one. He will conduct a press conference on Monday at a time to-be-determined to announce his plans.

### **With the above additions, what are the basics of Executive Order GA-21 right now?**

Executive Order GA-21 provides that Texans should stay home/work home ("minimize social gatherings and minimize in-person contact with people who are not in the same household"), 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](#).
- 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](#)."

Interpretations vary significantly, but – based on everything the League's legal staff has reviewed – the order means that anything not listed above should remain closed unless and until the governor issues further orders.

### **What has the Texas District and County Attorneys Association written about enforcement of the governor's executive orders?**

The [Texas District & County Attorneys Association](#) (TDCAA), a non-profit organization dedicated to serving Texas prosecutors and their staff as well as attorneys in government representation, provides regular COVID-19 updates to state prosecutors. City officials may be interested in this [update from May 7](#):

"We have gone on record several times over the past two months – such as [here](#) and [here](#) and [here](#) and...well, you get the idea – to recommend that criminal enforcement of these orders should be a last option, but this latest cause célèbre [the Dallas salon owner debacle] should effectively put an end to any further debate over the wisdom of that option. As it's been pointed out before, if the governor is going to keep changing the tune he plays as he leads the state out of this pandemic, there is little incentive to put your own necks on the line to enforce an order that could be invalidated the next day. If you do that, you may simply be making someone else's problem your problem, and that rarely ends well for the one at the bottom of the marionette's strings. But as always, the ultimate decision is up to you—after all, that's why you ran for this job, right? LOL"

TDCAA also includes "quotes of the week" in its updates. These seemed particularly apropos:

"We've got an entire legal system that was developed to deal with a world that doesn't exist anymore."

-Lawyer quoted in Dallas Morning News regarding [re-opening during a pandemic](#).

"These are Colosseum rules, where the fate of the gladiators is determined not by law but by the roar of the crowd. Sometimes the partisans yell for the lions, sometimes for the hairstylists. You don't know what's going to happen until you're in the ring."

-Ross Ramsey, executive editor of *The Texas Tribune*, in a recent [commentary](#).

5/18/2020

### **What happened today (May 18) with regard to the governor's re-opening plan?**

Today, the governor announced at a press conference that the state is moving to Phase II of his re-opening plan. This means many new businesses will be allowed to re-open using certain

protocols. In a somewhat confusing release, the governor said at his press conference that the protocols listed in the governor's "Texans Helping Texans" [Report to Open Texas](#) still apply. However, the "Open Texas" [website](#) states that they are no longer valid. Instead, it appears that one must look to the link for each new business type for appropriate protocols. Here are the newly-announced re-openings (referred to in the newest executive order ([GA-23](#)) as "[covered services](#)"), with a link to the protocols for each:

New, In Effect May 31, 2020:

[Day Youth Camp Operators and Staff](#)  
[Day Youth Camp Families](#)  
[Resident/Overnight Youth Camp Operators and Staff](#)  
[Resident/Overnight Youth Camp Families](#)  
[Professional Sports Without In-Person Spectators](#)

New, In Effect May 22, 2020:

[Bars](#)  
[Bar Patrons](#)  
[Bowling Alleys, Bingo Halls, Simulcasting, Skating Rinks](#)  
[Bowling, Bingo, Simulcasting, Skating Customers](#)  
[Rodeo / Equestrian Events](#)  
[Zoos, Aquariums, Natural Caverns](#)  
[Zoo, Aquarium, Natural Cavern Visitors](#)

New, Now in Effect as of May 18, 2020:

[Child Care Centers](#)  
[Child Care Families](#)  
[Massage and Personal-Care, Beauty Services](#)  
[Massage and Personal-Care, Beauty Service Customers](#)  
[Youth Clubs](#)  
[Youth Club Participants](#)

All of the above are in addition to already-announced re-openings. All of the re-opened ("covered") services are listed on the Open Texas [website](#).

Notable quotes from the governor at the press conference included the following:

- “We must find ways to co-exist with COVID-19.”
- “Every decision I have made is unanimously supported by our team of medical experts.”
- “Most of the increasing cases involved nursing homes, jails, and meat packing plants.”

The governor concluded the press conference with his request that everyone “be a good neighbor, be a Texan.”



**With the above additions, what are the basics of the newest Executive Order (GA-23) right now?**

[Executive Order GA-23](#) provides that Texans should minimize social gatherings and minimize in-person contact with people who are not in the same household and, if leaving the home, implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation. Beyond this restriction, the order provides that:

**-Covered Services:** The above is true, except where necessary to provide or obtain “covered services.” Covered services is a new term that loosely replaces “essential and re-opened services” and consists of everything 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 3.0](#) or any subsequent version, plus religious services conducted in accordance with the [attorney general’s guidelines](#) in churches, congregations, and houses of worship. These covered services are not subject to the conditions and limitations, including occupancy or operating limits, that apply to “Additional Covered Services,” below.

**-Additional Covered Services:** Covered services also include, subject to conditions and limitations, a long list of additional services, some of which are open now and some of which can open in the coming weeks. The best place to find those, and the applicable conditions and limitations, is to visit the governor’s [Open Texas web page](#). (Due to the volume of services, they won’t be listed here.)

**-Occupancy Limits:** For covered services with limits based on “total listed occupancy,” the total listed occupancy limits 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-CISA manufacturing service providers and non-CISA services provided by office workers. The “total listed occupancy” limits do not apply to outdoor areas, events, facilities, or establishments. Additionally, valet services are prohibited except for vehicles with placards or plates for disabled parking.

**-Minimum Protocols:** In providing or obtaining covered services, all persons (including individuals, businesses and other organizations, and any other legal entity) should use good-faith efforts and available resources to follow the [minimum standard health protocols recommended by DSHS](#). All persons should also follow, to the extent not inconsistent with the DSHS minimum standards, the Guidelines from the [President](#) and the [CDC](#), as well as other CDC recommendations. 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. Nothing in the executive order or the DSHS minimum standards precludes requiring a customer wishing to obtain services to follow additional hygiene measures.

**-Safe Daily Activities:** The order does not prohibit people from accessing covered services or engaging in safe daily activities, such as going to the grocery store or gas station; providing or obtaining other Covered Services; visiting swimming pools, parks, beaches, rivers, or lakes; hunting or fishing; attending youth club meetings or events; or engaging in physical activity like jogging, bicycling, or other outdoor sports, 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.

**Elderly Protections:** 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). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.

**-Counties with Different Conditions:** Due to special conditions, the order treats Deaf Smith, El Paso, Moore, Potter, and Randall counties differently.

The order expires on June 3, 2020. It's safe to say that the most recent order and its edicts have become extremely complicated. Again, the governor's [Open Texas webpage](#) is the easiest way to determine what can and can't be open.

### **What does Executive Order GA-23 provide in regard to enforcement and superseding language?**

The order eliminates confinement in jail as an available penalty for any violation of any executive order. It provides that:

“No jurisdiction can confine a person in jail as a penalty for violating any executive order, or any order issued by local officials, in response to the COVID-19 disaster. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail, that order is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any order issued in response to the COVID-19 disaster.”

It also provides that it supersedes any contrary local or state order.

5/26/2020

### **Did the governor say anything of interest on his call with mayors and county judges last Friday (May 22)?**

The call was reserved for Q&As based on questions submitted by mayors and county judges. On it, the governor discussed swimming pools, and reiterated that the owner (including a city) decides whether to open (in accordance with guidelines of course). “I would not order a local government to open their pool,” he said. “I leave that to the discretion of the local government.”

He concluded his comments by saying that, “**you [local officials] know better than I do what the facts are on the ground in your particular location.**” Hopefully, that philosophy continues into the future, especially into the legislative session.

The governor's office has created an email address for mayors and county judges to express their views on anything related to the virus. Mayors should email the governor's office at [Local.input@gov.texas.gov](mailto:Local.input@gov.texas.gov) with questions or concerns.

**Has the governor issued a new executive order that expands the enumerated list of covered services in [Executive Order GA-23](#)?**

Yes. Today (May 26), the governor issued the following press release:

“Governor Greg Abbott today [issued a proclamation](#) expanding additional services and activities that can open under Phase II of the state's plan to safely and strategically open. With this proclamation, water parks, recreational sport programs for adults, driver education programs, and food-court dining areas within shopping malls can begin operations with limited occupancy or regulations to protect the health and safety of Texans.

Beginning Friday, May 29th, water parks can open but must limit their occupancy to 25% of normal operating limits. Components of these water parks that have video arcades must remain closed. Starting Sunday, May 31st, recreational sports programs for adults can resume, but games and similar competitions may not begin until June 15th. Driver education programs can resume operations immediately.

Food-court dining areas within shopping malls can also immediately resume operations, but malls are encouraged to designate one or more individuals who are responsible for ensuring health and safety practices are followed, including: limiting tables to six individuals; maintaining a six-foot distance between individuals sitting at different tables; cleaning and disinfecting tables between uses; and ensuring no condiments or other items are left on tables between customer uses.

Minimum standard health protocols outlined by the Texas Department of State Health Services are recommended and located on the [Open Texas webpage](#).”

**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](#).

6/3/2020

## **Does the governor's current executive order (GA-23) expire tonight? Is there a replacement?**

Yes, Executive Order GA-23 expires at 11:59 p.m. tonight. It is replaced by [Executive Order GA-26](#), which implements "Phase III" of the state's re-opening. The order is much different than previous orders, and the press release accompanying its release states that:

"Governor Greg Abbott today announced the third phase of the State of Texas' plan to safely open the economy while containing the spread of COVID-19. Under Phase III, effective immediately, all businesses in Texas will be able to operate at up to 50% capacity, with very limited exceptions. Businesses that previously have been able to operate at 100% capacity may continue to do so, and most outdoor areas are not subject to capacity limits. All businesses and customers should continue to follow minimum standard health protocols laid out by the Texas Department of State Health Services (DSHS).

As with previous phases, the Phase III plan is based on the advice and support of the four doctors on the Strike Force to Open Texas medical team. Via Executive Order, Phase III begins immediately. A breakdown of Phase III can be found below.

'The people of Texas continue to prove that we can safely and responsibly open our state for business while containing COVID-19 and keeping our state safe,' said Governor Abbott. 'As anticipated, the new positive cases that we are seeing are largely the result of isolated hot spots in nursing homes, jails, and meat packing plants. Thanks to the effectiveness of our Surge Response Teams, we have the ability to contain those hot spots while opening up Texas for business. As we begin Phase III, I ask all Texans and Texas businesses to continue following the standard health protocols and to heed the guidance of our state and federal officials who continue to closely monitor COVID-19. If we remain vigilant, we will continue to mitigate the spread of this virus, protect public health, and get more Texans back to work and their daily activities.'

Between May 26th and June 2nd, over 45% of new cases came from jails or prisons, meat packing plants, and nursing homes. There are currently 1,487 Texans hospitalized due to COVID-19. There are 20,679 active cases in the state and 45,858 Texans are estimated to have recovered.

Effective June 3:

- All businesses currently operating at 25% capacity can expand their occupancy to 50% with certain exceptions.
- Bars and similar establishments may increase their capacity to 50% as long as patrons are seated.
- Amusement parks and carnivals in counties with less than 1,000 confirmed positive cases may open at 50% capacity.
- Restaurants may expand their maximum table size from 6 to 10 persons.

Effective June 12:

- Restaurants may expand their occupancy levels to 75%.
- Counties with 10 or less active COVID-19 cases may expand their occupancy limits to 75%. Counties that fit this category but have not previously filed an attestation with DSHS will need to do so.

Effective June 19:

- Amusement parks and carnivals in counties with more than 1,000 confirmed positive cases of COVID-19 may open at 50% capacity.

Additional Openings:

- Special provisions have been made for outdoor gatherings, such as Fourth of July celebrations, but it is imperative that local officials and public health officials collaborate on safe standards. These provisions are included in the Governor's Executive Order and are also available on the [Open Texas web page](#).

Further Protocols:

- All businesses should continue to follow the minimum standard health protocols from DSHS. For details and a full list of guidelines, openings, and relevant dates, visit <http://open.texas.gov>.

Reminders for those going out:

- Individuals are encouraged to wear appropriate face coverings.
- People should not be in groups greater than ten when possible.
- People over the age of 65 are encouraged to stay at home as much as possible.
- People are still asked to avoid nursing homes, state supported living centers, assisted living facilities, or long-term care facilities.”

### **What are the specifics of new Executive Order GA-26?**

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 that the following new activities are now allowed according to the guidance document linked for each:

- [Amusement Park Operators](#)
- [Amusement Park Visitors](#)
- [Fine Arts Performance Halls](#)
- [Fine Arts Performance Hall Patrons](#)
- [Media Production](#)
- [Outdoor Events](#)
- [Valet Parking](#)
- [Video Game Facilities](#)

In addition, as mentioned in the governor's press release above, the guidance for many previously re-opened "covered services" has been updated to allow up to 50 percent capacity.

Executive Order GA-26 is much different than previous orders. It provides that:

"Except as provided in this executive order or in the minimum standard health protocols recommended by DSHS, found at [www.dshs.texas.gov/coronavirus](http://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.**"

With regard to obtaining services, which are no longer referred to as "covered services," it provides that:

-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.**

### **What other provisions are included in the new order?**

The order has other provisions that are similar to previous orders (they are paraphrased here):

-It supersedes local orders.

-Confinement in jail for a violation is not an option.

-Schools can operate for the remainder of the summer using Texas Education Agency protocols.

-People shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities, with certain exceptions.

-It eliminates occupancy limits of any kind for, among other things: (1) religious services conducted in churches, congregations, and houses of worship; (2) **local government operations, including county and municipal governmental operations relating to licensing (including marriage licenses), permitting, recordation, and document-filing services, as determined by the local government [Editor's note: This provision would appear to allow a city to continue or enact local occupancy limits for these services, if desired, that apparently trump state limits within the order]**; (3) child-care services; (4) youth camps, and including all summer camps and other daytime and overnight camps for youths; and (5) recreational sports programs for youths and adults.

### **What about Fourth of July celebrations?**

Of particular interest to many is the "[outdoor events](#)" category on the Open Texas web page, which allows for Fourth of July celebrations in a city. **Gatherings of 500 or more require a mayor's approval:**

“Outdoor events, such as July 4 celebrations and other large outdoor gatherings with estimated attendance of 500 or more, are permissible to hold in Texas. The county judge or the mayor, as appropriate, in coordination with the local public health authority, may decide if a particular outdoor event should be modified or the occupancy further limited based on the facts and circumstances of the event and COVID-19 in the particular jurisdiction, based on the factors set forth below.”

The [guidance](#) further provides for the following “local approval factors:”

-Local approval for large outdoor gatherings (those with an estimated attendance exceeding 500 individuals) is appropriate in this instance because a statewide standard is unable to take into account the various factors needed to ensure such a gathering in varied locations is safe and will minimize the spread of COVID-19. Further, business parity is not an issue at large outdoor events.

-In evaluating large gatherings (those with an estimated attendance exceeding 500 individuals), the county judge or the mayor, as applicable, in consultation with the local public health authority, should consider the following factors:

1. The overall number of projected attendees;
2. The likelihood of individuals over the age of 65 attending;
3. The density of the forum and the ability to ensure social distancing of 6 feet between individuals; and
4. The level of transmission in the county.

**-Gatherings of less than 500 individuals may proceed consistent with all the health protocols above without approval of the county judge, local health authority, or mayor, as applicable.**

6/16/2020

### **What did the governor say at his press conference this afternoon (June 16)?**

The governor spoke to several COVID-19-related subjects. He said the higher hospitalization rate “does raise concern, but it is no reason to be alarmed.” The following is a summary of his main points:

- We are in the middle of a short period of time where all of us have to co-exist with COVID-19.
- He wanted to let Texans know about the abundant hospital capacity that exists, and that the state and counties are “laser-focused” on maintaining that.
- He explained why we see spikes in certain areas. For example, Jefferson County averages 12-15 new cases per day. On June 10, the county showed 520 positive cases. But those all came from a batch of prison inmates that were reported all at once. A similar situation occurred in Collin County, where tests came back from an assisted living facility.
- The Texas Alcoholic Beverage Commission warned bars and restaurants that they must follow the state’s protocols to help ensure health and safety as Texas reopens or they will face license

suspensions. These requirements include indoor customer capacity limits of 50 percent for bars and 75 percent for restaurants, along with social distancing of at least six feet between groups of customers. The first infraction will result in up to a 30-day license suspension, and the second infraction will result in up to a 60-day suspension.

“Everyone now knows what to do to prevent spread. First and most obvious is to stay at home...if you must go out, wear masks and sanitize,” the governor said. “We are now co-existing where we do not have to choose between returning to jobs and protecting health care if everyone follows the safe strategies to prevent the spread of COVID-19.”

Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, also stressed that “continued success is up to the people of Texas. The things we have recommended all along is for people to be personally responsible for their own health: masking, hand hygiene, and disinfecting commonly-touched surfaces.”

6/17/2020

### **What is all of the hullabaloo about big city mayors, face masks, the governor’s press conference yesterday, the statement the governor made today (June 17), and county judge authority?**

Well, what’s happened in the last two days is difficult to reconcile as a legal proposition, and it’s fair to say that statements made by the governor about his “plan” may not be supported by the text of his executive order. Let’s walk through this.

*The Texas Tribune* reported yesterday (June 16) in an article titled “[Texas' big-city mayors ask Gov. Greg Abbott for power to impose face mask rules](#)” that “the mayors of nine of Texas’ biggest cities urged Gov. Greg Abbott in a letter Tuesday to grant them the ‘authority to set rules and regulations’ mandating face masks during the coronavirus pandemic.”

The [mayors’ letter](#) includes the following:

“We are writing to you for the authority to set rules and regulations on the use of face coverings in each of our cities. A one-size-fits-all approach is not the best option. We should trust local officials to make informed choices about health policy. And if mayors are given the opportunity to require face coverings, we believe our cities will be ready to help reduce the spread of this disease.”

According to the *The Texas Tribune* article linked above, which was posted yesterday (June 16), the governor said that “local officials wanting to slow the spread of the virus have other tools at their disposal. For example, while they can't impose fines related to masks, they can fine businesses or individuals for violating rules on gatherings.”

But today, the governor told a television news station verbatim that:



“There has been a plan in place all along. **All that was needed was for local officials to actually read the plan that was issued by the State of Texas. It turned out earlier today that the county judge in Bexar County finally figured that out. They finally read what we had written** and they finally realize they are capable of doing what we want to make sure that individual liberty is not infringed on by government, and hence government cannot require individuals to wear masks. **However, pursuant to my plan, local governments can require stores and businesses to require masks.** That’s what was authorized in my plan. That’s what the Bexar County judge has now realized, and so what Bexar County is doing and what every county is authorized to do, and that is to impose requirements on business operations. Businesses...they’ve always had the opportunity and ability, just like they can require people to wear shoes and shirts, these businesses can require people to wear facemasks if they come into their businesses. **Now local officials are just now realizing that that was authorized.** So here’s the bottom line: I had two standards: One, no Texan can be put in jail for failing to follow these standards. Two, no government can mandate that individuals wear face masks. That said, when people go out and about, as they are walking around town, they don’t need to wear a face mask, but when they do go in a store or other business, those businesses can require, and that’s exactly what it looks like local governments will begin to do.”

It’s always been clear that a private business can require a mask. Beyond that, according to the governor, city and county officials (and League staff) just haven’t read his orders and accompanying guidance. But one county’s officials “finally read what we had written,” and now local governments can require a business to require a patron to wear a mask. Following the above interview, the governor’s staff provided League staff with the following statement:

“Judge Wolff’s order is not inconsistent with the Governor’s executive order. Our office urges officials and the public to adopt and follow the health protocols for businesses established by doctors that are available at [open.texas.gov](http://open.texas.gov).”

The text of the governor’s current order ([Executive Order GA-26](#)) provides that:

“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.**”

The order further provides that:

“All existing state executive orders relating to COVID- 19 are amended to eliminate confinement in jail as an available penalty for violating the executive orders. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail as an available penalty for violating a COVID-19-related order, that order allowing confinement in jail is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any executive order or local order issued in response to the COVID-19 disaster.”

Moreover, the Texas attorney general, in a [May 12 letter](#) to San Antonio and Bexar County regarding his opinion of the their orders, stated that – with regard to masks – “individuals are free to choose whether to wear one or not.”

The [Bexar County order](#) that the governor references states that:

“[A]ll commercial entities in Bexar County providing goods or services directly the public must develop and implement a health and safety policy... **The Health and Safety Policy must require, at a minimum, that all employees or visitors to the commercial entity's business premises or other facilities wear face coverings when in an area or performing an activity which will necessarily involve close contact or proximity to co-workers or the public where six feet of separation is not feasible**... Failure to develop and implement the Health and Safety Policy required by this Executive Order within five (5) calendar days following the Effective Date may result in a fine not to exceed \$1,000 for each violation.

Face Coverings - General Public. That all people 10 years or older shall wear a face covering over their nose and mouth when in a public place where it is difficult to keep six feet away from other people or working in areas that involve close proximity with other coworkers.

Consistent with Executive Order GA-26 issued by Governor Greg Abbott, no civil or criminal penalty will be imposed on individuals for failure to wear a face covering.”

So where does that leave us? The governor’s order still prohibits any type of penalty for the failure to wear a mask, but do the governor’s words trump the governor’s order? Each city will need to draw its own conclusions based on the information above, and any future clarifications provided by the governor. (Note: The Texas Tribune posted a [second article](#) regarding the above information moments before this email was distributed.)

6/18/2020

### **What are the latest developments regarding the governor’s comments on mask requirements?**

In a television interview yesterday (6/17), the governor indicated his belief that local governments can require businesses to require customers to wear masks, and that doing so is consistent with [Executive Order GA-26](#). Although the governor’s order prohibits a local jurisdiction from imposing a civil or criminal penalty for failure to wear a face covering, according to the governor this prohibition only applies to regulating the behavior of individuals, not businesses. In other words, cities may issue local orders imposing fines on businesses for failure to require employees and customers to wear masks, but may not issue local orders imposing fines on individuals for not wearing masks.

Governor Abbott’s comments were made in reference to [an order](#) issued by Bexar County Judge Nelson Wolff. Since those comments, a handful of other mayors and county judges have issued similar orders.

In spite of the governor's comments yesterday voicing support for these orders, any city interested in imposing similar public health measures is strongly encouraged to consult its city attorney before doing so.

### **Will Texas public school students attend classes on campus in the fall?**

Apparently so. Media reports indicate that, on a call with state lawmakers today (6/18), Governor Abbott stated that Texas public schools will open for in-person classes in the fall. Further, according to the Texas Education Agency (TEA), school districts will not be required to mandate that students wear masks on campus. Independent school districts will also have the flexibility to provide for instructional alternatives for students.

The TEA is expected to release further guidance for school districts regarding in-person class attendance next Tuesday (6/23).

6/22/2020

### **What did the governor say today (June 22) at his COVID-19 press conference?**

The governor discussed recent increases in COVID-19 cases in Texas, and his recommendations for what Texans can do to respond to the increases. These are the key takeaways about what he said:

- COVID-19 remains a fast-spreading virus until treatments are available.
- “We must find ways to return to our daily routines and coexist with COVID-19.”
- The early goal was to prevent hospitals from being overrun. “We succeeded, and hospitals have abundant capacity.”
- As we opened up, we established safety protocols to minimize spread. If they are followed, they will reduce the spread. They include: (1) at-risk persons should stay home; (2) hands should be frequently sanitized; (3) persons should maintain safe distances from others if they must go out; and (4) if people do go out, they should wear a mask.

The governor further said that “I’ve said all along that if positivity or hospitalization rates increase too much, we have strategies to reduce the spread...closing down Texas again will always be the last option.” He mentioned that those metrics are increasing, and that “COVID-19 is spreading at an unacceptable rate in Texas.”

He closed by saying that “I know that wearing a mask is inconvenient and some people believe it is an infringement of freedom, but I also know that wearing a mask will help us keep Texas open.” In response to a media question, he also said that the City of Austin is different than Austin County, and that flexibility is key in a state the size of Texas.

As always, city officials can visit [open.texas.gov](https://open.texas.gov) to learn more about prevention methods.

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](http://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.

6/26/2020

### **What has been the response to the governor's decision last week to close down bars?**

A lawsuit, it looks like. The [Texas Bar and Nightclub Alliance](#) plans to sue the State of Texas over the governor's decision last week to close bars. TBNA's Facebook page said this:

"In light of Greg Abbott's irresponsible and shameful actions this morning that shutter the businesses that provide a livelihood for your families and employees, we support our members in the constitutional right to protest by keeping your businesses open."

In a related issue, the Texas Alcoholic Beverage Commission is [allowing mixed-drinks to go](#) in certain circumstances.

7/8/2020

### **What is the latest on how the pandemic will affect public schools in the fall?**

Yesterday (7/7), the Texas Education Agency [released health guidelines](#) for the 2020-2021 school year. Although the guidance is subject to change depending on the trajectory of the pandemic's impact in Texas, the document represents the clearest statement yet to local school

districts on how to handle instruction in the fall. Among other things, the guidance requires school districts to offer daily on-campus instruction, but also allows parents to opt-in to virtual instruction from a school district that offers it. Additionally, schools must comply with Governor Abbott's recent executive order on masks, should it still be in effect during the school year.

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.

7/14/2020

**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](http://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.

9/1/2020

**What's the latest from the governor on the possibility of re-openings or further lockdowns?**

After remaining quiet about the issue for some time, *The Texas Tribune* [reported](#) the governor saying the following to a local television station on August 26:

“The state will take ‘a look at further openings’ if it can continue its downtrend with the number of coronavirus cases past Labor Day. ‘We have three things to get past,’ he told KTRK-TV. ‘One is the hurricane, two is the opening of schools and three is Labor Day. If we can continue the downtrends through those three different challenges ... then we will be taking a look at further openings.’”

Yesterday (August 31), the governor [tweeted](#) the following:

“I said last month that Texas wouldn't have any more lockdowns—despite demands from mayors & county judges insisting on lockdowns. Since my last orders in July, COVID numbers have declined—most importantly hospitalizations. I hope to provide updates next week about next steps.”



We recall the governor saying re-opening metrics would include the “[positivity rate](#),” which just dropped to 10 percent yesterday, the lowest level in over two months. With hospitalizations down and the positivity rate at his previously-announced re-opening threshold of 10 percent, it’s possible new announcements of re-openings by the governor could be imminent. .

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](http://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.”

9/30/2020

**Is my city in “an area with high hospitalizations” so that restaurants, gyms, libraries, and other establishments can’t open up to 75 percent of the listed occupancy?**

Pursuant to [GA-30](#), the governor authorized the following establishments to re-open to 75 percent occupancy, up from 50 percent, so long as the establishment is not located in “an area with high hospitalizations”:

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.”
3. non-CISA office buildings;
4. non-CISA manufacturers;
5. museums and libraries; and
6. gyms and exercise facilities and classes.

The governor's office characterizes “an area with high hospitalizations” as a [Trauma Service Area](#) in which the percentage of hospitalizations due to COVID-19 exceeds 15 percent for seven consecutive days. Once that happens, a Trauma Service area cannot lose its high-hospitalization designation until it experiences seven consecutive days in which the COVID-19 hospitalization rate is 15 percent or less.

At the moment, four Trauma Service Areas (out of 22 total Trauma Service Areas) are designated as having high hospitalizations, [according to the Texas Department of State Health Services](#). Those four regions are:

1. Trauma Service Area M (Waco area);

2. Trauma Service Area S (Victoria area);
3. Trauma Service Region T (Laredo area); and
4. Trauma Service Region V (Lower Rio Grande Valley area).

The establishments listed above may only open to 50 percent occupancy in these four regions, while the same establishments in every other region of the state may open to 75 percent occupancy. Additionally, pursuant to [GA-31](#), elective surgeries are postponed in hospitals within these four regions.

Interested city officials can access up-to-date data on the hospitalization rate within their Trauma Service Area [here](#) (first click on “Combined Hospital Data over Time by Trauma Service Area (TSA)” and then, within the Excel Spreadsheet, select “COVID Hospitalizations (%)”).

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!)]

10/27/2020

### **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](#).

Yesterday (October 26), the Texas Department of State Health Services (DSHS) updated their [GA-32 webpage](#) with two new Trauma Service Areas that are now considered to be high COVID-19 hospitalization areas – Trauma Service Area A (25 counties in Amarillo region) and Trauma Service Area B (22 counties in Lubbock region). These two regions joined the three El Paso-region counties making up Trauma Service Area I as the three regions of the state where re-openings are limited to 50 percent under GA-32.

The county judge of a county located within a larger 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

### **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](#) 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, and due to recent [record](#) hospitalizations, the Texas Department of State Health Services (DSHS) updated their [GA-32 webpage](#) to add many new regions/counties including large metropolitan areas to the list of high COVID-19 hospitalization areas - Trauma Service Area D (Abilene area); Trauma Service Area E (Dallas/Fort Worth area); Trauma Service Area G (Longview area); Trauma Service Area H (Lufkin area); Trauma Service Area N (Bryan/College Station area); Trauma Service Area P (San Antonio area); and Trauma Service Area R (Galveston area).

These seven regions joined areas A, B, I, M and T as the twelve regions of the state where re-openings are limited to 50 percent under GA-32. (Trauma Service Area J (Midland/Odessa area) has dropped off the list since our last report, but rising numbers the last couple of days suggest it could soon be back on the list).

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.

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.

3/2/2021

### **Has the governor made any comments about his current orders, and specifically his mask order?**

Yes. He issued a new executive order ([GA-34](#)) that fully opens all business and ends the statewide mask mandate. Today (March 2), the governor held a press conference in Lubbock. Speaking to the Lubbock Chamber of Commerce, he spoke first about the success of the Texas economy, even in the face of the pandemic.

“It is now time to open Texas 100 percent,” said the governor. Now is the right time, he said, because we are in a completely different position than last year at this time. We have:

- an abundance of personal protective equipment.
- the capability to do well over 100,000 tests per day.
- antibody therapeutic drugs to keep people out of hospitals.
- mastered daily habits to avoid getting COVID-19.
- most importantly, vaccines. More than 5.7 million have been given to Texans. Today, a one day record will be set, giving more than 216,000 vaccines. That’s over one million per week now.



These efforts, he said, should ensure that we keep hospitalizations low in Texas. “Make no mistake, however, COVID-19 has not suddenly disappeared...but state mandates are no longer needed.”

His new order will, effective next Wednesday (March 10), rescind most previous orders, including the statewide mask mandate. But, “repealing these don’t change the fact that Texans need to exercise personal vigilance.”

He concluded by saying that “some local officials are concerned this could lead to a worsening of COVID-19 in their communities,” but that they needn’t worry. His order will provide that, if hospitalizations rise above 15 percent in a state trauma region, the county judge can impose mitigation measures. But the judge won’t be able to impose any penalties for a violation of those measures. The order makes no mention of mayoral authority.

3/4/2021

### **Does the governor’s new executive order contain anything related to mayoral approval of outdoor gatherings?**

No. The newest order ([GA-34](#)) “supersedes” (i.e., takes the place of) previous orders, such as [GA-32](#), requiring mayoral approval of certain outdoor gatherings. The newest order makes no mention of such a requirement. League staff has confirmed that the governor intended GA-34 to do away with the requirement that a mayor approve of outdoor gatherings, as provided in previous orders.

3/9/2021

### **We’ve heard some saying a city can’t require pandemic mitigation measures on city property, in city facilities, or by city employees. Is that true?**

No. Executive order GA-34 expressly authorizes a city to require masks, social distancing, and other appropriate pandemic mitigation measures. A spokesperson for the governor confirmed city authority in [The Texas Tribune](#) article: “In an email, Abbott spokesperson Renae Eze confirmed that cities are allowed to take this measure ‘just like private companies can with their property.’”

As we explained last week, Executive Order GA-34 supersedes certain city regulatory authority (e.g., the authority to require city residents or businesses to adhere to pandemic mitigation measures, such as business closures, occupancy limits, or mask mandates). However, as with previous orders, GA-34 provides that “Nothing in this executive order precludes businesses or other establishments from requiring employees or customers to follow additional hygiene measures, including the wearing of a face covering.”

[Merriam-Webster defines](#) “establishment” as “a public or private institution.” A city is clearly a public institution, meaning it retains control over and may require pandemic mitigation measures on its property, in its facilities, and by its employees. Of course, GA-34 prohibits confinement in

jail as a penalty, so the appropriate remedy for a citizen who violates such a requirement may be to escort them off the premises. For employees, the remedy may be disciplinary action.

In addition to the city authority discussed above, the *Tribune* reported that “a [federal government order](#) still in place allows fines of \$250 for the first offense and up to \$1,500 for repeat offenders who don’t mask up in airports, passenger rail and bus systems that fall under federal regulation.”

4/6/2021

### **Did the governor issue a new executive order?**

Yes, he issued an [executive order](#) banning state agencies, political subdivisions, or organizations receiving public funds from creating “vaccine passports” or otherwise requiring proof of a COVID-19 vaccine in order to receive services. The governor said in a video accompanying the order’s release that:

“Government should not require any Texan to show proof of vaccination and reveal health information just to go about their daily lives. That is why I have issued an Executive Order that prohibits government-mandated vaccine passports in Texas. We will continue to vaccinate more Texans and protect public health — and we will do so without treading on Texans’ personal freedoms.”

State Rep. James White [requested an attorney general opinion](#) on the issue as well.