April 23, 2020 Executive Order Providing Guidance for Reviving a Healthy Georgia in Response to COVID-19 and its Impact on Local Governments

On April 23, 2020, Governor Kemp issued an extensive Executive Order (04.23.20.02) that includes new requirements in the response to the COVID-19 public health emergency and that provides operational mandates and recommendations to various categories of businesses going forward. While the Executive Order generally becomes effective May 1, 2020 at 12:00 a.m. and ends on May 13, 2020 at 11:59 p.m., some provisions of the Order are effective on earlier dates. The summary below prepared by the ACCG Legal Department explains the provisions of the April 23, 2020 Executive Order that directly impact local governments.

Local Government Eligibility for State Funds and Reporting Requirements.

Effective immediately, the Executive Order suspends various state statutes that impose reporting or filing requirements on local governments and that impact local governments’ eligibility for state funds:

- **Service Delivery Strategies/Comprehensive Plans.** The penalties for failing to file Service Delivery Strategies and/or Comprehensive Plans by their respective deadlines are suspended specifically to allow local governments to be eligible for state funding for expenditures that are made during the Public Health State of Emergency and are related to the prevention, treatment, or mitigation of COVID-19.

- **Annual Audits.** The deadline for filing annual local government audits is extended by ninety (90) days for any local government whose existing audit deadline fell/falls either during the declared Public Health State of Emergency or within 90 days after that State of Emergency is terminated. As of now, the Public Health State of Emergency is set to expire on May 13th, subject to further action by the Governor.

- **Reports of Local Government Finances and Local Authority Debt Issuance Reports.** The deadline for filing the annual Report of Local Government Finances as well as the deadline for local authorities to file annual indebtedness reports is extended by ninety (90) days for any local government or authority whose existing deadline fell/falls either during the declared Public Health State of Emergency or within 90 days after that State of Emergency is terminated.

- **Grant Certifications.** The deadline for filing certifications relating to expenditure of state grant funds is extended by ninety (90) days for any local government or authority whose existing deadline fell/falls either during the declared Public Health State of Emergency or within 90 days after that State of Emergency is terminated.

**Swimming Pools and Amphitheaters.**

Counties with “live public swimming pools” and performance venues may not engage in in-person operations. These are closed to the public until 11:59 p.m. on May 13, 2020.
Gyms and Fitness Centers.

Through May 13, 2020, county owned or county operated gyms and fitness centers may re-open or continue operation of gyms and/or fitness centers provided that the following measures are implemented:

1. Placing signage at any entrance to instruct patrons that they cannot enter if they have been diagnosed with COVID-19, had symptoms of COVID-19, or had contact with a person that has or is suspected to have COVID-19;

2. Placing signage at any entrance and throughout the facility to instruct patrons of the enhanced sanitation procedures, Social Distancing requirements, and other instructions and limitations, as applicable, set forth below;

3. Screening patrons at the entrance. Patrons exhibiting a temperature greater than 100.4 degrees Fahrenheit, cough, shortness of breath, or other respiratory symptoms shall not be permitted to enter;

4. Limiting occupancy to enforce Social Distancing requirements and to prohibit Gatherings (see definitions in the next section of this Guidance);

5. Utilizing contactless forms of patron check-in;

6. Providing hand sanitizer stations for patrons and encouraging use;

7. Providing sanitation wipes at or near each piece of equipment and requiring users to wipe down the equipment before and after use;

8. Requiring workers to patrol patron areas to enforce the equipment wipe-down policy and conduct additional cleanings during times when equipment is not being used;

9. Limiting use of cardio machines to every other machine to maintain acceptable Social Distancing between users;

10. Enforcing Social Distancing and prohibiting congregating between non-cohabiting patrons. Patrons should be encouraged to conduct their workout and exit the facility without unnecessary delay;

11. Halting the provision of group classes;

12. Halting the provision of in-facility childcare services;

13. Closing the following facilities and equipment within a gym or fitness center: pools, basketball courts and other group sport areas, hot-tubs, saunas, steam rooms, and tanning beds;

14. Limiting locker room use, and avoiding such use if possible;

15. Requiring patrons to spray showers with a provided cleaning spray after use; and

16. Requiring workers to clean and sanitize bathrooms and locker rooms regularly throughout the opening hours in addition to the regular cleaning schedule.

Social Distancing in or on Local Government Property.

The Executive Order largely extends, through May 13, 2020 at 11:59 p.m., current social distancing requirements that have been in place since April 3, 2020. Local governments may not allow more than ten (10) persons to physically gather at a single location if doing so would require persons to sit or stand within six (6) feet of each other (defined as a “Gathering”). While the Executive Order is not clear on this
point, it appears the above prohibition, as applied to county and city governments, applies to Gatherings on county and city property (as opposed to imposing a regulatory requirement on counties and cities to ensure that no such gatherings happen on private property).

This prohibition on gatherings does not apply to:

- Groupings of more than 10 persons that are “transitory” or “incidental” (terms not defined in the Executive Order);
- Gatherings of cohabiting persons, family units, or roommates, whether gathering inside or outside of their homes or place of residence; or
- Entities involved in Critical Infrastructure.

Local Ordinances and Orders.

The April 23, 2020 Executive Order appears to continue the broad preemption of local authority to regulate on matters related to the current Public Health State of Emergency. While the Order authorizes local governments to “make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency purposes and to supplement the carrying out of this Order,” it then provides that: (1) such local orders, rules, or regulations “shall not be inconsistent with this Order” or any other order of the Governor or state agency acting under their emergency powers; and (2) any local orders, rules, or regulations that are “more or less restrictive than the terms of this Order shall be considered inconsistent with this Order.” Thus, it is unclear whether the Executive Order allows any local action regarding the current Public Health State of Emergency, outside of perhaps local regulations designed to assist in enforcement of the terms of the Executive Order. Counties and cities are encouraged to consult with their county or city attorneys prior to taking any specific actions on subjects covered by the Executive Order.

Enforcement.

Violation of the Executive Order is a misdemeanor. Any local law enforcement officials (sheriff’s offices and city/county police departments) are authorized to enforce the terms of the April 23, 2020 Executive Order. Such law enforcement officials should take reasonable steps to provide notice prior to issuing a citation or making an arrest.

In addition, any law enforcement officer is authorized, after providing reasonable notice and issuing at least two citations, to mandate closure of any business or organization that is not in compliance with this Executive Order. While this Order is not clear on this point, it appears that this broader enforcement authority will become effective May 1, 2020 at 12:00 a.m. and extend through May 13, 2020 at 11:59 p.m. (the general effective date of this Executive Order).

Keep in mind that, under prior Executive Orders, all local law enforcement were authorized to enforce the terms of those orders, except that only state officials and sheriff’s offices were authorized to require closure of businesses that were prohibited from operating under those Orders. That limitation on authority to require closure of businesses that are completely prohibited from operating appears to remain in effect through April 30th, and thus county and city police officers likely lack that power through that date.

Sheriffs and police chiefs with specific questions on enforcement should contact the Georgia Sheriffs Association and/or the Georgia Police Chiefs Association for further guidance.

Critical Infrastructure.
The April 23, 2020 Executive Order continues, through 11:59 p.m. on May 13, 2020, the prohibition against local governments impeding the operation of any Critical Infrastructure by ordinance.

Certain services of local government are defined by the U. S. Department of Homeland Security as “essential critical infrastructure workforce” and, accordingly, are exempt from the social distancing requirements as noted above. Examples of local government departments or employees falling into this Critical Infrastructure category are listed below. A complete list may be found in the U.S. Department of Homeland Security Cybersecurity and Infrastructure Security Agency guidance most recently revised April 17, 2020.

Local government departments or employees falling into this category include:

1. Employees who manage health plans, billing and health information, who cannot work remotely.
2. Employees and volunteers in emergency management, law enforcement, fire and rescue services, emergency medical service, jails, correctional institutions, search and rescue.
3. Employees at 9-1-1 call centers and public safety answering points who cannot perform their duties remotely.
4. Employees that maintain equipment and services supporting law enforcement emergency service and response operations.
5. Employees responding to abuse and neglect of children, elders, and dependent adults.
6. Employees who support weather disaster and natural hazard mitigation and prevention activities.
7. Security staff maintaining building access control and physical security measures.
8. Employees in cafeterias used to feed employees, particularly employee populations sheltered against COVID-19.
9. Employees essential for food assistance programs and government payments.
10. Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure.
11. Employees supporting or enabling transportation functions, including bus drivers, dispatchers, maintenance and repair technicians, intermodal transportation personnel, and workers that maintain and inspect infrastructure.
12. Mass transit employees, employees providing critical transit services, and/or critical or routine maintenance to mass transit infrastructure or equipment.
13. Employees supporting car sharing services.
15. Employees supporting the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenances, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues.
16. Employees who support the availability and access to needed facilities, transportation, energy and communications, such as road clearing.
17. Network operations staff including information technology managers and staff, security personnel, HVAC and electrical engineers, software and hardware engineers, and database administrators that manage the network or operate facilities.

18. Engineers, technicians, and other employees responsible for infrastructure construction and restoration.

19. Central office personnel to maintain and operate central office, data centers, and other network facilities and critical support personnel assisting front line employees.

20. Customer service and support staff.


22. Employees who support command centers.

23. Data center operators.

24. Employees who support communication systems and information technology and work from home solutions used by law enforcement, public safety, and public works.

25. Employees who ensure the continuity of building functions.


27. Employees supporting the operations of the judicial system.

28. Employees who support mission essential functions and communications networks.


30. Employees who maintain digital infrastructure supporting other critical government operations.

31. Employees who support necessary credentialing, vetting, and licensing operations for critical infrastructure workers.

32. Employees who perform title search, notary and recording services in support of mortgage and real estate services and transactions.

33. Employees of the animal shelter.

34. Employees who support food, shelter, and social services for needy groups and individuals, including in need populations and COVID-19 responders.

35. Employees providing support to the elderly and disable populations.

36. Employees supporting the construction of housing.


Local governments must implement measures which mitigate exposure and spread of COVID-19 among its workforce. These measures may include, but are not limited to, the following 16 requirements for critical departments and employees:

1. Screening and evaluating workers exhibiting signs of illness such as cough, shortness of breath and fever over 100.4 degrees.

2. Requiring workers exhibiting signs of illness to not report to work or to seek medical attention.
3. Enhancing sanitation of the workplace.
4. Requiring hand washing or sanitation by employees at appropriate places at the work location.
5. Providing personal protective equipment (PPE) as available and as appropriate to the function and location of the employee.
6. Prohibiting employees to gather in groups during work hours.
7. Permitting employees to take breaks and meals outside, in their office or personal workspace, or in other areas where at least six feet of space may be maintained.
8. Implementing teleworking for all employees when possible.
9. Implementing staggered shifts for all employees when possible.
10. Holding all meetings and conferences virtually, when possible.
11. Delivering intangible services remotely when possible.
12. Discouraging employees from using another employee’s phone, desk, office, work tools or equipment.
13. Providing disinfectant and sanitation products for employees to clean their workspace, equipment and tools.
14. Prohibiting handshaking and other unnecessary person to person contact in the workplace
15. Placing notices that encourage hand hygiene at the entrance of the workplace and in other workplace areas where they are likely to be seen.
16. Suspending the use of personal identification number (PIN) pads, PIN entry devices, electronic signature capture and any other credit card receipt signature requirements to the extent that it is permitted by agreements with credit card companies and credit agencies.

Non-Critical Infrastructure.

Through May 13, 2020 (unless extended by the Governor), local governments are required to comply with the following 20 requirements for employees who do not fall into the definition of Critical Infrastructure Workforce (see above):

1. Screening and evaluating workers exhibiting signs of illness such as cough, shortness of breath and fever over 100.4 degrees.
2. Requiring workers exhibiting signs of illness to not report to work or to seek medical attention.
3. Enhancing sanitation of the workplace.
4. Requiring hand washing or sanitation by employees at appropriate places at the work location.
5. Providing personal protective equipment (PPE) as available and as appropriate to the function and location of the employee.
6. Prohibiting employees to gather in groups during work hours.
7. Permitting employees to take breaks and meals outside, in their office or personal workspace or in other areas where at least six feet of space may be maintained.
8. Implementing teleworking for all employees when possible.
Implementing staggered shifts for all employees when possible.

10. Holding all meetings and conferences virtually, when possible.

11. Delivering intangible services remotely when possible.

12. Discouraging employees from using another employee’s phone, desk, office, work tools or equipment.

13. Prohibiting handshaking and other unnecessary person to person contact in the workplace.

14. Placing notices that encourage hand hygiene at the entrance of the workplace and in other workplace areas where they are likely to be seen.

15. Suspending the use of personal identification number (PIN) pads, PIN entry devices, electronic signature capture and any other credit card receipt signature requirements to the extent that it is permitted by agreements with credit card companies and credit agencies.

16. Enforcing social distancing of non-cohabitating persons while present on the local government’s leased or owned property.

17. Providing alternative points of contact to provide services, such as outside of the building.

18. Increasing physical distance between employees and “customers.”

19. Increasing the physical space between workers’ worksites to at least six feet.

20. Providing disinfectant and sanitation products for employees to clean their workspace, equipment and tools.

**Impact of Other Aspects of the Order.**

As local governing authorities have no discretion or authority over the shelter in place, minimum basic operations for businesses not deemed Critical Infrastructure, or requirements for businesses to open to the public, ACCG is not providing interpretation of these portions of the order. ACCG recommends that questions from the business community be directed to the trade association or regulatory board for the particular business. Additionally, the Georgia Department of Economic Development has created [Guidelines for Businesses](https://www.gadb.gov/covid-19-player-a-guide-for-businesses). Citizens and businesses with questions may also call the COVID-19 Hotline at 844.442.2681.

**Questions.**

Questions about the applicability or enforcement of the Executive Order to a particular county or city should be directed to the county or city attorney.