



March 31, 2021 Executive Orders Impact on County Governments

Throughout the pandemic, the Governor's Executive Orders (EOs) have been a combination of "Renewal of Public Health State of Emergency," which enacts the state of emergency extraordinary powers of state and local government, and "Empowering a Healthy Georgia," which contains the restrictions and requirements on individuals, businesses, and governments during the pandemic.

Renewal of Public Health State of Emergency. On March 31, 2021, Governor Kemp issued an EO (03.31.21.01) that **extended the Public Health State of Emergency until April 30, 2021 at 11:59 P.M.** The EO also adopted by reference prior EOs 03.14.20.01, 04.08.20.02, 04.30.20.01, 05.28.20.01, 06.29.20.01, 07.31.20.01, 08.31.20.01, 09.30.20.01, 10.30.20.01, 11.30.20.01, 12.30.20.01, 01.29.21.01, and 02.26.21.01. It extended EO 04.08.20.05 until April 30, 2021 at 11:59 P.M.

"Empowering a Healthy Georgia." On March 31, 2021, a second EO (03.31.21.02) was issued that extended the current "Empowering a Healthy Georgia" EO 03.12.21.01 (which was set to expire on March 31, 2021) until April 7, 2021 at 11:59 P.M.

On March 31, 2021, a third EO (03.31.21.03), the new "Empowering a Healthy Georgia," was issued that extends, with major modifications, some of the requirements set forth in a multitude of prior EOs which provided operational mandates and recommendations to state and local government and to various categories of businesses. **The third EO becomes effective April 8, 2021 at 12:00 A.M. and remains in effect through April 30, 2021 at 11:59 P.M.**

The summary below prepared by the ACCG Legal Department explains the provisions of the third March 31, 2021 Executive Order that directly impact county governments. Unless indicated otherwise, all references to 'Executive Order' or 'EO' refer to EO 03.31.21.03.

NOTE- As used throughout this Guidance, the term:

"Post-Exposure Quarantine Protocol" means that pursuant to CDC and DPH guidelines, any person who has had close contact (6 feet or closer for a cumulative total of 15 minutes or more) with a person that has or is suspected to have COVID-19 within the past 14 days is required to either: A) quarantine at their home or residence for 14 days from the date of most recent exposure; B) quarantine at their home or residence for at least 10 days from the date of most recent exposure, then practice extreme diligence in monitoring for COVID-19 symptoms, wearing a face covering and social distancing until 14 days have passed since the date of most recent exposure; C) quarantine at their home or residence for at least 7

days from the date of most recent exposure if a COVID-19 test was taken no earlier than day 5 of quarantine and a negative result is received, then practice extreme diligence in monitoring for COVID-19 symptoms, wearing a face covering and social distancing until 14 days have passed since the date of most recent exposure; or D) if the exposed person has been fully vaccinated against COVID-19 (2 or more weeks have passed since getting one does (sic)¹ of a single-dose vaccine or the second dose in a two-dose vaccine series) OR recovered from illness due to laboratory confirmed COVID-19, has already met criteria to end isolation and is within 90 days following the onset of symptoms of the initial infection or within 90 days of the first positive COVID-19 test result if asymptomatic during the initial infection. If at any time during the Post-Exposure Quarantine Protocol time period a person experiences any COVID-19 symptoms, the person must seek a COVID-19 test, isolate until test results are received, and proceed in accordance with the test results and CDC and DPH guidelines.²

“Organization” means any business, establishment, corporation, non-profit corporation, organization, convention, event, or other entity.³ Note that no reference is made to government operations in this definition.

“Worker” includes employees, independent contractors, agents, volunteers, or other representatives of an organization.⁴

Shelter in Place.

The EO eliminates all shelter in place requirements beginning on April 8, 2021.

Organizations: In-Person Operations.

Beginning April 8, 2021, the EO eliminates the prior categories of Critical Infrastructure and Non-Critical Infrastructure. Instead, the EO creates a single category of requirements that pertain to the in-person operation of an ‘organization’. As noted above, the term ‘organization’ applies to many things, however, no specific mention is made regarding whether the term applies to governments.

Although it is likely that ‘organization’ is intended to include government, this may not be the case. Note for example, that when the EO makes requirements pertaining to schools, it specifically states that schools must abide by the requirements pertaining to organizations. No such language in this regard appears in the requirements pertaining to governments.

Organizations that continue in-person operations are required to implement measures which mitigate the exposure and spread of COVID-19 among its work force. These measures may include the following⁵:

1. Any measures that have been proven effective to control the spread of COVID-19:
2. Screening and evaluating workers exhibiting any of the following symptoms: cough, shortness of breath, difficulty breathing, fever or chills, fatigue, muscle or body aches, headache, sore throat, new loss of taste or smell, congestion or runny nose, nausea or vomiting, or diarrhea.

¹ The EO uses the term ‘does’ in the definition of ‘fully vaccinated’ (EO, p. 8) although it appears that the term ‘dose’ was actually intended.

² EO, pp. 9-10, Section II(9).

³ EO, p. 9, Section II(7).

⁴ EO, p. 10, Section II(14).

⁵ EO, pp. 12-13.

3. Requiring workers exhibiting any of the above symptoms to not report to work or to seek medical attention.
4. Posting signage at the entrances to the facility stating that individuals who have been diagnosed with COVID-19, have symptoms of COVID-19, or had contact with a person that has or is suspected to have COVID-19 within the past 14 days and have not completed the Post-Exposure Quarantine Protocol shall not enter the facility.
5. Enhancing sanitation of the workplace as appropriate.
6. Disinfecting frequently touched surfaces regularly, including, but not limited to PIN entry devices; signature pads; other point of sale equipment; door handles; and any light switches.
7. Increasing space between workers' worksites to maintain social distancing.
8. Permitting workers to take breaks and lunch outside, in their office or personal workspace, or in other areas where at least six feet of space may be maintained.
9. If the organization engages volunteers or has members of the public participate in activities, prohibiting volunteering or participation in activities for persons diagnosed with COVID-19, or having symptoms of COVID-19, or having had contact with a person that has or is suspected to have COVID-19 within the past 14 days and have not completed the Post-Exposure Quarantine Protocol
10. Ensuring ventilation systems operate properly and increasing circulation and purification of air within facilities as practicable.
11. If the organization provides childcare facilities, it must comply with Section VI of the EO, "Children and Education. (This item could possibly apply to summer day camps at local parks and recreation departments but see Camps section on p. 7 of this Guidance.)
12. Any food service areas within an organization's facility must comply with Section III of the EO, "Restaurants and Bars".

Social Distancing in or on County Government Property.

Social Distancing requirements that have been in place since April 3, 2020. The EO continues only a bare minimum of the former requirements.

The EO contains no provisions on Gatherings on county or other property after April 7, 2021. The EO does impose some social distancing requirements outside of a person's home or residence. These include staying 6 feet apart and avoiding assembling in groups, avoiding crowded places, or avoiding large crowds. Social distancing does not apply to cohabiting persons, family units, or roommates, residing together in private homes, whether inside or outside of their homes or place of residence.

County Ordinances and Orders.

The EO continues the broad preemption of local authority to regulate matters related to the current Public Health State of Emergency. While the EO authorizes county 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 county 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 county orders, rules, or regulations that are "more or less restrictive than

the terms of this Order shall be considered inconsistent with this Order.”⁶ Thus, it is unclear whether the EO allows any county action regarding the current Public Health State of Emergency, outside of perhaps county regulations designed to assist in enforcement of the terms of the EO and mask requirements as described later in this document. ACCG strongly encourages counties to consult with their county attorneys prior to taking any specific actions on subjects covered by this EO.

Enforcement.

Violation of the EO is a misdemeanor⁷. Local law enforcement officials (including sheriff’s offices and county police departments) are authorized to enforce the terms of this EO. Such law enforcement officials should take reasonable steps to provide notice prior to issuing a citation or making an arrest. Law enforcement officers are prohibited from mandating closure of any organization for failure to comply with the EO.

Enforcement of any county (or city) ordinance that is either more or less restrictive than the EO and that is not expressly permitted by the terms of the EO is suspended.

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.

County Boards of Equalization.

The EO continues to provide “that for purposes of Code Section 48-5-311(e)(6A)⁸, ‘in-person’ appearances before county boards of equalization may occur via remote communications, including, but not limited to, video teleconference.”

The EO does not address other instances in law which provide for public hearings or appearances, perhaps because those other laws do not specifically refer to ‘in-person’ participation.

County Government Eligibility for State Funds and Reporting Requirements.

While not referenced in the 03.31.21.03 EO, deadlines for various reporting or filing requirements on local governments that impact local governments’ eligibility for state funds were extended under EO 05.12.20.02. These suspended/extended requirements (under the terms of that May 12 EO) were tied to the Public Health State of Emergency, which is now set to expire on April 30, 2021 at 11:59 P.M. (under the 03.31.21.01 EO), subject to further action by the Governor, and thus the suspensions/extensions described below remain in effect:

- 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.
- 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

⁶ EO, pp. 23-24.

⁷ EO, p. 32.

⁸ The correct citation is O.C.G.A. § 48-5-311(e)(6)(A) and not (6A). EO, p. 22.

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.

County Government Eligibility for State Funds and Other Reporting Requirements.

In addition to the extended filing deadlines described in the County Government Eligibility for State Funds and Reporting Requirements section of this Guidance, the EO continues the suspension of requirements under O.C.G.A. Sections 36-70-27 and 50-8-8 that impose reporting or filing requirements on local governments and that impact local governments' eligibility for state funds. These suspended requirements are tied to the Public Health State of Emergency (currently set to expire on April 30, 2021 at 11:59 P.M.):

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.

County Procurement.

The EO continues the suspension of original signature and raised corporate seal requirements if related to: (1) construction surety bonds under O.C.G.A. Sections 13-10-40 through 65, 32-2-70, 36-91-1, 36-91-2, 36-91-50, and 36-91-70 through 93; and (2) commercial surety bonds required or permitted "under numerous other statutes", for the limited purpose of providing that public procurement officers are required to accept electronic signatures and electronic corporate seals under O.C.G.A. Sections 10-12-2 et seq. and 33-24-14. Any construction surety bond or commercial surety bond may be executed electronically: (1) if notarized pursuant to Executive Order 04.09.20.01; and (2) if requested by the procurement officer, the original is provided within 7 business days.

County Government Programs Generally.

If a county uses volunteers or has members of the public participate in activities, it may have to prohibit persons diagnosed with COVID-19, having exhibited symptoms of COVID-19, or having had contact with a person that has or is suspected to have COVID-19 within the past fourteen days from volunteering or participating in activities until a post-exposure quarantine protocol has been completed. See Organizations: In Person Operations above.

Swimming Pools and Water Parks.

The EO includes a specific requirement for public swimming pools or water parks, see Gyms and Fitness Centers section below. These operations are subject to the Social Distancing requirements described above. In addition, counties should follow the [Georgia Department of Health's guidance on the operation of swimming pools](#). The [U.S. Centers for Disease Control and Prevention has also published measures](#) that should be considered in pool or water park operations.

Live Performance Venues.

Under earlier EOs, counties with live performance venues were permitted to engage in in-person operation of those venues as of July 1, 2020. An exception to the restrictions described below exists for performances at which patrons remain in a motor vehicle or a restricted area surrounding that vehicle, provided that the facility follows the guidelines for in-person operations (described above).

Live performance venues must adhere to in-person operations requirements if the operation (recording sessions, live streaming, practices, fanless competitions, and rehearsals) does NOT allow members of the public to be present.

Free events and public non-ticketed activities are subject to various requirements depending on the fire code capacity (tier) of the venue. Tier 1 - 999 or fewer; Tier 2 – 1,000 to 4,999; and Tier 3 – 500 or more.⁹

Recreational Sports Programs.

The EO does not reference or impose any specific restriction on recreational sports leagues and activities, such as are commonly hosted or run through county parks departments. However, it does require that amateur sports teams and amateur sports organizations¹⁰ that continue with in-person operation must adhere to the in-person requirements (described above). Further, the EO provides that any previous EO or departmental rule which would prevent such teams or organizations from operating while adhering to the in-person requirements is suspended. It is unclear whether recreational sports leagues and activities are meant to be governed by these requirements for amateur sports teams and organizations.

High School and College Sports.

The EO provides that collegiate and high school sports teams and organizations (as well as the venues hosting games, practices, etc.) that engage in practices, games, or other in-person activities must operate solely pursuant to the rules or guidelines of their applicable conference or association¹¹.

Gyms and Fitness Centers.

In addition to complying with the in-person operations requirements, the requirements for Gyms and Fitness Centers under the 03.31.21.03 EO are¹²:

⁹ If a county has a live performance venue, it should consult pages 28-30 of the EO for the applicable requirements.

¹⁰ The terms "amateur sports teams" or "amateur sports organizations" continue to not be defined under the EO.

¹¹ EO, p. 34.

¹² EO, pp. 13-14.

1. Utilizing contactless forms of patron check-in where practicable.
2. Providing antibacterial wipes as available at or near equipment and requiring users to wipe down the equipment after use.
3. Enforcing social distancing and prohibiting congregating between non-cohabitating patrons, especially in pools, group fitness classes, and areas where group sports regularly occur.
4. Requiring no less than 6 feet of distance between patrons participating in group fitness classes and encouraging the use of face coverings by class participants
5. Requiring rooms and equipment used for group fitness classes to be cleaned and disinfected regularly.

Camps.

The EO does not contain any specific requirements for camps, day camps, or overnight camps after April 7, 2021. Presumably these are subject to the in-person operations requirements described above.

Public Auctions and Statutory Levy Processes.

The EO provides that it does not relieve counties from the obligations set forth under state law (including, but not limited to O.C.G.A. §§ 9-13-11, 9-13-160 et seq., 48-4-3, and 15-16-10) to conduct public auctions through statutory levy processes and to otherwise enforce writs of fieri facias¹³. These obligations include judicial sales and the sale of property by the sheriff to satisfy judgments, liens, or tax executions.

Face Mask Requirements.

The EO provides for two separate types of authority regarding face mask requirements. One applies to all counties and the other is limited to counties that meet certain threshold requirements.¹⁴

Masks and Other Requirements on County Property. Except for polling places, county governments (and cities and government authorities, boards, bureaus, and commissions) may control terms of entry to county owned or leased property. This includes requiring a face mask or face covering. However, no one may be denied entrance or exit to or from a polling place (the room provided in each precinct for voting) for failure to wear a mask. While the EO specifically mentions face masks, in terms of describing what measures may be taken to control entry, it does not mention any other specific types of measures. A county has the authority to control terms of entry to county property “regardless of whether the Threshold Requirement is met” (as described below).

Mask Requirements in Public and Private Spaces in Certain Counties. Counties that meet the Threshold Requirement (the county must have confirmed cases greater than or equal to 100 cases per 100,000

¹³ EO, p. 27.

¹⁴ EO, pp. 24-25.

people according to DPH over the most recent 14-day period¹⁵) may decide to impose a Local Option Face Covering Requirement under certain circumstances where a minimum of six feet cannot be maintained between individuals not living in the same residence. The requirements apply on county property and certain private property (as described below). The county must make a good faith, reasonable effort to distribute free masks to individuals who cannot afford a mask.

In general, any individual not complying with the county's Local Option Face Covering Requirement may be subject to a fine, fee, or penalty up to \$50. Before issuing any citation for a violation, the county must warn the individual about the health risks posed by not wearing a mask. Anyone found in violation who cannot afford a mask must be provided one at the expense of the county. Violations may not be punished by imprisonment.

However, there are certain instances where the mask requirement may not be enforced:

1. On residential property;
2. On private property where the owner or occupant does not consent to enforcement. It is important to note that organizations may be required to post a sign putting the public on notice of the mask requirement and state whether the organization consents or does not consent to enforcement of the mask requirement.
3. In polling places (the room provided in each precinct for voting). Additionally, no person may be denied ingress to or egress from a Polling Place for failure to wear a mask.
4. Against any organization. Similarly, no owner, director, officer, or agent of any organization may be held liable for failure of their customers to comply with the mask requirement.

Additionally, a Local Option Face Covering Requirement must exempt individuals who:

1. Are eating or drinking are not required to wear a mask or covering;
2. Have difficulty putting on or removing a mask or covering without assistance; and
3. With a bona fide medical reason not to wear a mask or covering.

Driver's License or Identification Card.

Any state law or regulation, including, but not limited to O.C.G.A. Section 40-5-21.1, that limits the time period for which a noncitizen who holds a Georgia driver's license or identification card may be issued a temporary driving permit or identification card, whose driver's license or identification card expired on or after March 14, 2020, who have already been issued the 120 day temporary driving permit or identification card under O.C.G.A. Section 40-5-21.1, and have filed, or on whose behalf has been filed, a request for an extension with the U.S Department of Homeland Security, or similar such federal issuing agency, for time to remain lawfully within the U.S., and said request is still pending, to apply to the Georgia Department of Driver Services for one or more additional 120 day temporary driving permits or identification cards. Nothing in the EO suspends any existing identity or lawful status verification

¹⁵ Counties may obtain official information on cases per 100,000 by accessing the Georgia Department of Public Health website at: <https://dph.georgia.gov/covid-19-daily-status-report> . A report is posted each Monday. Scroll down to the bottom of the webpage and click on County Indicator Reports. Then click on the most recent week. At the top of the navigation bar, click on Cases. Counties are listed alphabetically, and the last column shows the 14-day confirmed case rate per 100,000.

requirements of DDS to comply with federal REAL I.D. requirements.¹⁶

Impact of Other Aspects of the Executive Order.

As county governing authorities have no discretion or authority over the shelter in place, in-person operations for organizations, or requirements for organizations 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 business. Additionally, the Georgia Department of Economic Development has created [Guidelines 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 EO to a particular county should be directed to the county attorney.

¹⁶ EO, p. 26.