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MARCH 23, 2020

**PRACTICAL AND IMPORTANT GUIDELINES FOR MISSOURI CITIES
WHEN DEALING WITH STAY AT HOME ORDERS AND SOCIAL DISTANCING
REQUIREMENTS RELATED TO COVID-19**

CIRCULAR #3

Over the past weekend, several updates to prior orders issued with respect to Missouri's response to the COVID-19 pandemic were issued. These orders raise many questions, and our elected officials are being asked to answer difficult questions that in some circumstances require a delicate balance between protecting public health and protecting businesses. There are no easy answers, however, this guidance is intended to provide you with a factual basis from which each governing body can make what they believe is in the best interest of their jurisdiction. As a final point, we all understand that this information is rapidly changing and evolving. This information is accurate as of the time it was drafted on the date indicated above. Please be sure to look for updates from us or other sources as this issue continues to evolve. As with any issue, please be sure to consult your city attorney before taking action in this uncertain environment.

What do the current orders require?

Kansas City Metro Stay-At-Home Order, Effective Tuesday, March 24, 2020

On March 21, Jackson County, Missouri; Johnson County, Kansas; the City of Kansas City, Missouri; and the Unified Government of Wyandotte County-Kansas City, Kansas, joined together in issuing a stay-at-home order. This order goes into effect at 12:01 am on Tuesday, March 24 (i.e., overnight Monday night) and is in effect through April 24, 2020. For this writing we reviewed the text of Kansas City, Missouri's Second Amended Order 20-01 (the "Stay-At-Home Order,"). Our understanding is that the other mentioned counties, and now Clay and Cass counties in Missouri, and Leavenworth County in Kansas, have adopted or will be adopting an order with nearly identical text. We have reviewed the Jackson and Cass County orders, and they appear to be substantively the same as Kansas City's. The Stay-At-Home Order is drastically more restrictive than Governor Parson's order. Here is a summary of some of the most relevant terms of the Stay-At-Home Order:

- Individuals may leave their residences or place of rest **only** to undertake Essential Activities or to provide any services or perform any work necessary for the operation and maintenance of:
 - Essential Business
 - Essential Infrastructure
 - Healthcare Operations

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- Minimum Basic Operations
- Or other exempted categories
- All individuals shall exercise social distancing requirements at all times.
- Individuals at high risk of severe illness from COVID-19 and those who are sick are urged to stay in their residence except as necessary to seek medical care.
- All businesses and other operations are required to **cease all in-person operations**, except defined in this order, or exempted.
- Non-essential business and other operations may continue operations consisting exclusively of employees, contractors, or other agents of businesses performing activities at **their own** residences or places of rest.

What exemptions exist?

- First responders
- Emergency management personnel
- Emergency dispatchers
- Court personnel
- Law enforcement personnel
- School personnel operating at the direction of administrator designation
- Others working for or to support Essential Businesses

What about governmental functions?

- Nothing in this Order shall prohibit any individual from performing or accessing Essential Government Functions.
- All Essential Government Functions shall be performed in compliance with Social Distancing Requirements to the extent possible.
 - Essential Government Functions means all services needed to ensure the continuing operation of any government agencies and provide for the health, safety, and welfare of the public.

What are Essential Activities?

- Engaging in activities or performing tasks essential to an individual's health and safety, or to the health and safety of their family or household members (including pets), or close personal acquaintances.
 - Examples: obtaining medical supplies or information, visiting a health care professional, or obtaining supplies to work from home

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- Obtaining necessary services or supplies for themselves or their family or household members, or close personal acquaintances, or to deliver those services or supplies to others
 - Examples: canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences;
- Engaging in outdoor activity, provided the individuals comply with Social Distancing Requirements.
 - Examples: biking, walking, hiking, or running.
- Performing work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in the Stay-At-Home Order, including Minimum Basic Operations at Non-Essential Businesses.
- Caring for a family member, close personal acquaintance, or pet in another household.
- Essential Activities **do not include** weddings, funerals, wakes, memorial services, or similar gatherings.

What are Essential Businesses?

Any for-profit, non-profit, or educational entities, regardless of its corporate or entity structure and includes:

- Healthcare Operations and Essential Infrastructure;
- Grocery stores, farmers' markets, farm and produce stands, markets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintain the safety, sanitation, and essential operation of residences and persons;
- Food cultivation, including farming, livestock, and fishing;
- Human and animal food processing facility workers;
- Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- Newspapers, television, radio, and other media services;
- Gas stations and auto-supply, auto-repair, and related facilities;
- Banks and related financial institutions;
- Hardware stores;
- Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
- Businesses providing mailing and shipping services, including post office boxes;

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- Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions related to distance learning and provision of other services related student welfare, including but not limited to food provision and delivery, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
 - Note that although the order lists schools as essential business, the Department of Health and Senior Services has ordered all public schools closed. A portion of the Stay At Home Order addresses schools specifically, but was not included in this summary.
- Laundromats, dry cleaners, and laundry service providers;
- Railroads and rail systems;
- Restaurants and other facilities that prepare and serve food and drink, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food or drink to be consumed at the site where it is provided, or at any other gathering site;
- Businesses that supply products needed for people to work from home;
- Businesses that supply other essential businesses with the support or supplies necessary to operate;
- Businesses that ship or deliver groceries, food, goods or services directly to residences;
- Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order, as well as transportation maintenance services such as mechanics necessary to keep transportation services operational;
- Home-based care for seniors, adults, or children;
- Residential facilities and shelters for seniors, adults, and children;
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities should operate under the following conditions:
 - Childcare should be carried out in stable groups, preferably with 10 or fewer (“stable” means that the same 10 or fewer children are in the same group each day);
 - Children should not change from one group to another;
 - If more than one group of children is cared for at one facility, each group should be in a separate room. Groups should not mix with each other;
 - Childcare providers should remain solely with one group of children.

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What is Essential Infrastructure?

- public works construction
- construction of housing
- airport operations
- water
- sewer
- gas
- electrical
- oil refining
- railroad and rail systems
- roads and highways
- public transportation
- solid waste collection and removal
- internet, and telecommunications systems (including the provision of essential infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements to the extent possible.

What are Healthcare Operations?

- Hospitals
- Clinics
- Dentists
- Pharmacies
- Pharmaceutical and biotechnology companies
- Other healthcare facilities
- Healthcare suppliers
- Home healthcare services providers
- Mental health providers
- Any related and/or ancillary healthcare services
- Veterinary care and all healthcare services provided to animals
- This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined
- **Does not include** fitness and exercise gyms and similar facilities

What are Minimum Basic Operations?

- The minimum necessary activities to maintain the value of the business's inventory and facilities, ensure security, process payroll and employee benefits, or for related functions; and
- The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences, place of rest, or elsewhere.
- Provided that employees comply with Social Distancing Requirements to the extent possible, while carrying out such operations



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What are Social Distancing Requirements?

- Social Distancing Requirements includes:
 - maintaining at least six-foot social distancing from other individuals
 - washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer
 - regularly cleaning high-touch surface areas
 - not shaking hands

Governor Parson's March 21 Order (no executive order number assigned at the time of this writing)

On March 21, Governor Mike Parson expanded upon prior restrictions related to social distancing due to the COVID-19 crisis. Previously, local government authorities (presumably counties and home-rule charter cities) had been authorized to establish and enforce social distancing requirements. Governor Parson made the following requirements applicable statewide beginning at 12:01 am on Monday, March 23 (i.e., overnight Sunday) and is currently in effect through April 6, 2020:

- Every person in the State of Missouri shall avoid social gatherings of more than ten (10) people.
 - For purposes of this Order, “social gatherings” shall mean any planned or spontaneous event or convening that would bring together more than ten (10) people in a single space at the same time.
- Every person in the State of Missouri shall avoid eating or drinking at restaurants, bars, or food courts; provided, however, that the use of drive-thru, pickup, or delivery options is allowed.
- People shall not visit nursing homes, long-term care facilities, retirement homes, or assisted living homes unless to provide critical assistance.
- Schools shall remain closed.

This guidance applies in all jurisdictions in Missouri, unless the specific local jurisdiction has taken additional, more restrictive action.



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Who is responsible for enforcing these orders?

Initially, we suggest that the entity responsible for imposing the order is also the entity responsible for enforcing it.

With respect to the Governor's order, the language used by Governor Parson has been largely construed as to encourage certain behaviors rather than to mandate them. However, the Department of Health and Senior Services (DHSS) issued an order on March 21st, at the direction of the Governor, which did prohibit certain activities. The list includes social gatherings over 10 persons, dine-in eating in restaurants, and visiting nursing homes. Schools were ordered to remain closed. The order does not speak to the issue of workplaces. DHSS directed local public health organizations to enforce these orders by "civil action." This means that a county health agency might seek an injunction against someone violating these restrictions, but it would not be a criminal matter. That means that the local police are not required to enforce these orders.

Concerning the Stay-At-Home Order issued in Kansas City and adopted by several counties in the Kansas City Metropolitan Area, we point out that cities are not subordinate to counties. Rather cities and counties have overlapping jurisdiction. Thus, if a county has imposed rules more strict than those established by DHSS, they are free to do so, but a city is not required to enforce those rules. Rather, it would be the county health department enforcing it, unless the county chooses to have the sheriff's office enforce the rules criminally. Most likely though the county would have to seek an injunction in civil court to enforce its actions.

As we stated in our earlier guidance, Missouri statutory cities (3rd Class and 4th Class) are generally responsible for the "benefit of trade and commerce, and the health of the inhabitants thereof" (Sections 79.110 and 77.260, RSMo.) and the "welfare of the city and its trade and commerce" (Section 77.590, RSMo). More specifically, statutory cities possess authority to impose a quarantine within their jurisdictions.

- For fourth class cities, Section 79.380, RSMo., provides: "The board of aldermen may make regulations and pass ordinances for the prevention of the introduction of contagious diseases in the city, and for the abatement of the same, and may make quarantine laws and enforce the same within five miles of the city."
- For third class cities, 77.530, RSMo., provides "the council may make regulations and pass ordinances for the prevention of the introduction of contagious diseases into the city, and for the abatement of the same, and may make quarantine laws and enforce the same within five miles of the city."



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- For villages, Section 80.090 (10) and (40), RSMo., provide the necessary authority.

A city's authority to impose its own quarantine is subject to the limitations that cities have and the scope of any local emergency declaration. How the local rules are to be enforced is also a local decision. The mayor and council may choose to have violations enforced by the police in the same manner as other ordinance violations. Thus, elected officials can and should use their legislative discretion to determine what is in the best interest of the jurisdiction to balance the interests of health and welfare with trade and commerce within their jurisdictions.

DISCLAIMER

The information provided herein is of a general nature and is not intended to provide specific legal advice or to create an attorney-client relationship; you should always consult with your municipal attorney.