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CORONAVIRUS PRACTICAL GUIDANCE FOR CITIES CIRCULAR No. 7

PRACTICAL AND IMPORTANT GUIDELINES FOR MISSOURI CITIES WHEN DEALING WITH GOVERNOR PARSON'S SHOW ME STRONG RECOVERY PROGRAM AND OTHER STAY AT HOME ORDERS RELATED TO COVID-19

MAY 1, 2020

On Friday, April 24, Governor Parson extended to June 15, 2020, the state of emergency in effect for Missouri related to the COVID-19 outbreak. This extension is for the emergency declaration only and does not extend the previous stay-at-home order. On Monday, April 27, the Governor began to roll out his plan for reopening Missouri. We issued our Circular No. 6 addressing this information over the lunch hour that same day. As has been the case with the COVID-19 response, circumstances change rapidly. In the few days since those announcements, we have received additional guidance from the Governor's office, and Mayor Quentin Lucas has provided additional information related to the stay at home order affecting Kansas City. As has been the case with previous orders, the Governor's Show Me Strong recovery plan raises many questions, and our elected officials continue to receive difficult questions. In particular questions as to jurisdictional overlap abound as fatigue related to the stay at home orders sets in and political pressure to open businesses mounts. We all must 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. All emphasis indicated in this summary was provided by us.

Governor Parson's Show Me Strong Recovery Phase 1

Governor Parsons has now issued his guidelines for Phase One of re-opening Missouri. This rule replaces the previous rule. Under the new rules, all businesses may be open. While some of the original language from the previous order remains, there is no longer a distinction in the State rule between essential and non-essential businesses. When out and about all individuals should practice social distancing of six feet. Businesses that are open will need to maintain social

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distancing guidelines. Businesses having job duties that require contact with people closer than six feet should take enhanced precautionary measures to mitigate risks of contracting or spreading COVID-19. All persons in a business or waiting line must be six feet apart at all times. Additionally, businesses engaged in retail sales must limit the number of people who can be in the business:

- Businesses with under 10,000 square feet are limited to 25% of the fire or building code occupancy
- Businesses with over 10,000 square feet are limited to 10% of the fire or building code occupancy

Although not provided in the text of the April 27 order, once again “enhancements” of questionable legal authority are provided in the FAQs on the Governor’s website. These include:

- If the city does not have a fire code, then the occupancy is as follows:
 - Under 10,000 ft² occupancy = (Square feet of building ÷ 30) × 0.25
 - Over 10,000 ft² occupancy = (Square feet of building ÷ 30) × 0.25
- If the formula for places without a fire code generates a higher number than the number allowed where there is a fire code, then the business may apply the higher of the two numbers. This exception also applies if the fire code in a neighboring jurisdiction would allow a greater number of people.

Schools will remain closed for the rest of the academic year.

Restaurants may allow indoor dining, but with additional rules. Tables must be six feet (6’) apart. Communal seating areas to parties not connected must be eliminated (think counter seating at a diner). No more than ten (10) people to a table.

The Governor’s proclamation remains confusing as to whether cities can have more restrictive rules. The actual text says “nothing herein shall limit the right of local authorities to make such further ordinances, rules, regulations, and orders not inconsistent with this Order which may be necessary for the particular locality.” This seems to mean that cities cannot have rules which are more restrictive than the Governor’s order (i.e., would prohibit what the Governor’s order allows). However, the Frequently Asked Questions document, also put out by the Governor’s office says that cities can have more restrictive rules.

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The Governor's new rules replace the existing state rules and will go into effect at 12:01 am on May 4th (overnight Sunday night) expiring on Sunday, May 31. County and local rules may still be in effect at that time unless repealed.

Kansas City's 10/10/10 Order

On Wednesday, April 29th, Kansas City Mayor Quentin Lucas reaffirmed his city's Stay at Home Order would expire on May 15; however, he pulled it back somewhat by what he describes as a "soft reopening" order. It is being called the 10/10/10 order referring to the three key points of the plan.

Unlike the State rule, the Kansas City rule retains the differentiation between essential and non-essential businesses. The definitions of essential businesses remain the same as they have been.

In a bit of a surprise move, Mayor Lucas indicated that non-essential business which are not open to the public (e.g., advertising agencies), may reopen for business on Wednesday, May 6, provided that social distancing guidelines are followed; thus, the "soft opening." Businesses in this category may not force workers back to work before May 15.

Beginning May 15 all businesses in Kansas City will be able to open to the public; provided that they follow 10/10/10 restrictions:

- Occupancy is limited to **10 percent** of the normal building occupancy or **10 people**, whichever is greater. It should be noted that this will often be a lower number than the state rule would allow.
- If people will be staying in the business for more than **10 minutes** a record must be kept of who entered the business, the times they were there, and their contact information. The purpose of this record is for future tracking of outbreaks. The people entering the building cannot be the ones to record this information.

Jackson County, Missouri

Unlike earlier iterations of Kansas City's stay at home orders, Jackson County has not immediately followed Kansas City's lead. Jackson County's March 24th order, extended on April 16th, was set to be in effect until May 15th. This order keeps all non-essential businesses completely closed. A report by a Kansas City news station indicates that Jackson County was unaware that Kansas City would rescind a portion of their stay at home order.¹ However, on May 1, Jackson County

¹ "County staff are currently reviewing the information released by the mayor's office and plan to speak with public health officials with the City of Kansas City to try and understand what led to the mayor's decision to relax his stay-at-home order prior to May 15," the Jackson County statement read, adding that the county



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Executive Frank White Jr., in a joint announcement with Johnson and Wyandotte Counties (Kansas), announced that Jackson County would enter Phase One of its reopening efforts beginning at 12:01 on Monday, May 11, 2020. The announcement purposefully came without any additional details so that the County could gather additional data, including from a public survey, regarding how to roll out the first phase.

Other Counties

Many counties outside the Kansas City metro areas are allowing their stay-at-home orders to expire. Bates and Cole Counties, for example, have already done so. Within the Kansas City metro area, Cass, Clay, and Platte Counties have amended their orders to expire on May 3rd. In these counties, the current statewide rules will continue to apply, as well as any city emergency rules that have been enacted and have not yet expired.

Which rule applies?

The lack of a consistent policy causes confusion for governmental entities and citizens. Within some cities, there could be a state rule, a county rule, and a local rule, all with differing provisions. Generally, the more restrictive rules will prevail over looser rules; recall that there is some indication from the Governor's office that local governments may enact stricter regulations. So, if a city had a very restrictive rule, this would remain in effect even though it conflicts with the State rule and even if the County had no rule. Our Circular No. 5 covered in detail how cities may choose to deal with differing levels of restrictions from multiple jurisdictions—that analysis applies for reopening efforts too. While a city is not required to enforce the State or county regulations, it is important to understand that due to overlapping jurisdiction, a city cannot keep the State or a county from enforcing their orders within city limits. Each city must consider what is in the best interests of its constituents and act accordingly. If a city does want to enforce state or county rules, as a best practice, it should enact its own, parallel, order.

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.

will have no further comment at this time. <https://www.kshb.com/news/coronavirus/jackson-county-says-may-15-reopening-date-still-in-effect>

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