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## ASSOCIATION COUNTY COMMISSIONERS OF GEORGIA & GEORGIA MUNICIPAL ASSOCIATION

### **Executive Orders Issuing a Statewide Shelter in Place and Other Measures to Stop the Spread of COVID-19 and their Impact on Local Governments (UPDATED)**

An Executive Order Issuing a Statewide Shelter in Place to Stop the Spread of COVID-19 (Executive Order No. 04.02.20.01) was signed by Governor Kemp on April 2, 2020. The following day, the Governor issued two additional Executive Orders (04.03.20.01 and 04.03.20.02) that amended and expanded upon the April 2, 2020 Executive Order. *On April 8, 2020, two additional Executive Orders were issued (04.08.2020.02 and 04.08.2020.04) which also amended and expanded upon the April 2, 2020, Executive Order.* Below is a summary prepared by the ACCG and GMA Legal Departments explaining the Executive Orders and their impact on local governments.

Under the initial April 2, 2020 Executive Order, from 6:00 p.m. on Friday, April 3, 2020 until 11:59 p.m. on April 13, 2020 (or later, if the Public Health State of Emergency is extended), all local government powers contained in Titles 36 and 38 are suspended as they relate to the enforcement of any local government ordinance or order adopted or issued since March 1, 2020 with the stated purpose or effect of: (1) responding to the public health emergency; (2) ordering residents to shelter in place; (3) ordering a quarantine; or (4) combatting the spread of COVID-19, if that ordinance or order is different in any way from the Governor's Order. *The first of the above April 8, 2020 Executive Orders, 04.08.2020.02, has extended the duration of the Public Health State of Emergency until 11:59 p.m. on May 13, 2020 (or later, if the Public Health State of Emergency is extended). Additionally, this Executive Order extends the duration of the April 2, 2020 Executive Order, as well as the two April 3, 2020 Executive Orders (04.03.2020.01 and 04.03.2020.02), until 11:59 p.m. on April 30, 2020.*

**Local Ordinances and Orders.** For the duration of the April 2, 2020 Executive Order and any amendments and extensions thereof (now through April 30, 2020), all declarations, ordinances, orders, and other actions taken by local governments since March 1, 2020, related to COVID-19 are suspended (i.e., they are no longer in effect and cannot be enforced) unless they are exactly the same as the April 2, 2020 Executive Order, as amended by subsequent Executive Orders. This includes any ordinances or orders related to shelter in place, closing of borders or beaches, bans on hotel usage, essential services, curfews, prohibited utility disconnections, etc. Because this suspension is tied to COVID-19 measures, local governments retain the power to take emergency actions for other purposes (e.g., in response to a natural disaster or non-COVID-19-related health matters). Of relevance to coastal counties and cities, the Georgia Department of Natural Resources issued an administrative order on April 3, 2020 prohibiting umbrellas, chairs, and tents seaward of the ordinary high-tide mark.

Any determination of an "essential business" by a local government is suspended. The businesses, establishments, corporations, and organizations defined by the U. S. Department of Homeland Security as "essential critical infrastructure workforce" may not be impeded by a local government or a local

government ordinance. Any businesses, corporation, organization, or industry trade group with questions regarding its status as critical infrastructure should be directed to the Georgia Department of Economic Development.

Similarly, except as explained below, local governments may not adopt any new ordinances or orders related to COVID-19 (even if the ordinance or order is exactly the same as the Executive Orders). However, local governments may adopt ordinances or orders “as are designed to enforce compliance with this Order.” It is not clear what type of ordinance or order would fit within this authority. As discussed below, only the state and county sheriffs are authorized by the Executive Orders to require the closure of a business. So, the local government should **not** adopt an ordinance to require the closure of a business that is not in compliance with the Executive Orders.

**Enforcement.** Violation of the Executive Orders is a misdemeanor. The language of the April 2, 2020, Executive Order, the Governor’s Handout that accompanied that Order, and O.C.G.A. § 38-3-4 regarding enforcement created some confusion. However, the two Executive Orders issued on April 3, 2020, clarify some of those enforcement issues.

O.C.G.A. § 38-3-4 requires local government law enforcement agencies to enforce Executive Orders such as this. This fact was expressly stated in the second April 3, 2020, Executive Order (04.03.20.02), acknowledging that “all law enforcement is authorized to enforce” emergency orders. So, county or city police departments (for those counties having a police department) are authorized to assist in the enforcement of the Executive Orders generally but may not require the closure of a business that is not in compliance. The April 2, 2020 Executive Order specifically gives authority to enforce business closure to the Georgia Department of Public Health, Department of Public Safety, and any state department or state officer deputized by the Governor or GEMA. Executive Order 04.03.20.01 expands that particular enforcement authority over business closure to include county sheriffs and their deputies, but not city and county police departments. That same Executive Order also directs sheriffs to first provide notice and a reasonable time to comply before mandating that a business close.

It appears that the Governor’s intent expressed in his handout that accompanied the April 2, 2020 Executive Order was that local law enforcement has not been deputized to enforce the Executive Order at all. The handout states that only state law enforcement with Peace Officer Standards and Training (POST) Council certification will be charged with enforcement. As described in the previous paragraph, however, the two April 3, 2020 Executive Orders appear to have clarified the respective authority of the state, county sheriffs, and city/county police departments. To the extent that local police departments begin enforcing the Executive Orders, those agencies should carefully review all of the Executive Orders (for example, Executive Order 04.03.20.02 expands the definition of “Essential Services” in which individuals may participate without being in violation of the general “shelter in place” requirement of the April 2, 2020 Executive Order).

### **Requirements on Local Governments.**

Social Distancing in or on Local Government Locations. Local governments must require six feet between each person in or on a local government property. This applies to officials, employees, and citizens. It does not apply to individuals who live together when they are outside of their homes. If the minimum distance of six feet cannot be maintained, then the local government location may only have a maximum of 10 people present at a time. So, in theory, a local government could enact an ordinance requiring the minimum physical distance or 10-person maximum in its buildings, facilities, or parks.

Providing Services Related to Construction and Applications. The requirements of the March 20, 2020 Executive Order (03.20.20.02, Reducing Regulations to Assist the State’s Response to the Spread of COVID-

19), as amended on March 30, 2020 by Executive Order No. 03.30.20.02, remain in effect. Local governments, superior court clerks, tax commissioners, and other officials are urged by those Orders to ensure that the recording offices remain open and available to receive applications and filings to the extent possible while adhering to Centers for Disease Control (CDC) guidelines. Developers and builders are allowed to use private professional providers in accordance with O.C.G.A. 8-2-26(g)(4)-(5) for plan review and inspection of projects identified by O.C.G.A. 8-2-26(g)(17).

Treatment of Employees Deemed Essential Critical Infrastructure Workforce. Certain services of local government are defined by the U. S. Department of Homeland Security as “essential critical infrastructure workforce.” Under the Executive Orders, persons traveling in conjunction with providing such “critical infrastructure” are exempt from the “shelter in place” requirement of the April 2, 2020 Executive Order. 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.
14. Vehicle maintenance employees
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.
21. External affairs personnel
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
26. Elections personnel
27. Employees supporting the operations of the judicial system
28. Employees who support mission essential functions and communications networks
29. Employees supporting Census 2020
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.
37. Any other employee or department identified by the Department of Homeland Security as “essential critical infrastructure workforce” in its guidance dated March 19, 2020 and revised on March 28, 2020.

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.

Treatment of Employees Not Deemed Essential Critical Infrastructure Workforce. All other departments and employees **not** deemed essential critical infrastructure workforce by the Department of Homeland in its guidance dated March 19, 2020 and revised on March 28, 2020 are subject to 20 requirements:

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. 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.

### **Short-Term Rentals**

An April 8, 2020 Executive Order, 04.08.2020.04, prohibits vacation (short-term) rentals from 12 a.m. on April 9, 2020 until 11:59 p.m. on April 30, 2020.

The order defines a vacation rental to include any transaction:

- 1) For the lease or license to use residential property for residential or vacation purposes for a period of 30 days or less;
- 2) That is facilitated by a third party or a broker where the lessor/licensor is a corporation, LLC, partnership, person, or other entity; and
- 3) Where the lessee/licensee is a private person.

The prohibition does not apply to:

- 1) Hotels, extended stay hotels, campgrounds, or commercial transactions;
- 2) Vacation rentals with fully paid reservations agreements executed or agreed to prior to 12 a.m. on April 9, 2020;
- 3) Leases for property that are or will be used as a person's primary place of residence;
- 4) Owners personally occupying their own homes.

All state, county, and local law enforcement officers are authorized to enforce the Order and a violation thereof constitutes a misdemeanor. However, no law enforcement officer and no other state or local official is allowed to dispossess or evict the occupants of a vacation rental to enforce the Order.