



Urgent Updates

What happened today (May 18) with regard to the governor’s re-opening plan?

Today, the governor announced at a press conference that the state is moving to Phase II of his re-opening plan. This means many new businesses will be allowed to re-open using certain protocols. In a somewhat confusing release, the governor said at his press conference that the protocols listed in the governor’s “Texans Helping Texans” [Report to Open Texas](#) still apply. However, the “Open Texas” [website](#) states that they are no longer valid. Instead, it appears that one must look to the link for each new business type for appropriate protocols. Here are the newly-announced re-openings (referred to in the newest executive order ([GA-23](#)) as “[covered services](#)”), with a link to the protocols for each:

New, In Effect May 31, 2020:

- [Day Youth Camp Operators and Staff](#)
- [Day Youth Camp Families](#)
- [Resident/Overnight Youth Camp Operators and Staff](#)
- [Resident/Overnight Youth Camp Families](#)
- [Professional Sports Without In-Person Spectators](#)

New, In Effect May 22, 2020:

- [Bars](#)
- [Bar Patrons](#)
- [Bowling Alleys, Bingo Halls, Simulcasting, Skating Rinks](#)
- [Bowling, Bingo, Simulcasting, Skating Customers](#)
- [Rodeo / Equestrian Events](#)
- [Zoos, Aquariums, Natural Caverns](#)
- [Zoo, Aquarium, Natural Cavern Visitors](#)

New, Now in Effect as of May 18, 2020:

- [Child Care Centers](#)
- [Child Care Families](#)
- [Massage and Personal-Care, Beauty Services](#)
- [Massage and Personal-Care, Beauty Service Customers](#)
- [Youth Clubs](#)
- [Youth Club Participants](#)

All of the above are in addition to already-announced re-openings. All of the re-opened (“covered”) services are listed on the Open Texas [website](#).

Notable quotes from the governor at the press conference included the following:

-“We must find ways to co-exist with COVID-19.”

-“Every decision I have made is unanimously supported by our team of medical experts.”

-“Most of the increasing cases involved nursing homes, jails, and meat packing plants.”

The governor concluded the press conference with his request that everyone “be a good neighbor, be a Texan.”

With the above additions, what are the basics of the newest Executive Order (GA-23) right now?

[Executive Order GA-23](#) provides that Texans should minimize social gatherings and minimize in-person contact with people who are not in the same household and, if leaving the home, implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation. Beyond this restriction, the order provides that:

-Covered Services: The above is true, except where necessary to provide or obtain “covered services.” Covered services is a new term that loosely replaces “essential and re-opened services” and consists of everything listed by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) in its [Guidance on the Essential Critical Infrastructure Workforce, Version 3.0](#) or any subsequent version, plus religious services conducted in accordance with the [attorney general’s guidelines](#) in churches, congregations, and houses of worship. These covered services are not subject to the conditions and limitations, including occupancy or operating limits, that apply to “Additional Covered Services,” below.

-Additional Covered Services: Covered services also include, subject to conditions and limitations, a long list of additional services, some of which are open now and some of which can open in the coming weeks. The best place to find those, and the applicable conditions and limitations, is to visit the governor’s [Open Texas web page](#). (Due to the volume of services, they won’t be listed here.)

-Occupancy Limits: For covered services with limits based on “total listed occupancy,” the total listed occupancy limits refer to the maximum occupant load set by local or state law, but for purposes of this executive order, staff members are not included in determining operating levels except for non-CISA manufacturing service providers and non-CISA services provided by office workers. The “total listed occupancy” limits do not apply to outdoor areas, events, facilities, or establishments. Additionally, valet services are prohibited except for vehicles with placards or plates for disabled parking.

-Minimum Protocols: In providing or obtaining covered services, all persons (including individuals, businesses and other organizations, and any other legal entity) should use good-faith efforts and available resources to follow the [minimum standard health protocols recommended by DSHS](#). All persons should also follow, to the extent not inconsistent with the DSHS minimum standards, the Guidelines from the [President](#) and the [CDC](#), as well as other CDC recommendations. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering. Nothing in the executive order or the DSHS minimum standards precludes requiring a customer wishing to obtain services to follow additional hygiene measures.

-Safe Daily Activities: The order does not prohibit people from accessing covered services or engaging in safe daily activities, such as going to the grocery store or gas station; providing or obtaining other Covered Services; visiting swimming pools, parks, beaches, rivers, or lakes; hunting or fishing; attending youth club meetings or events; or engaging in physical activity like jogging, bicycling, or other outdoor sports, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.

Elderly Protections: People shall not visit nursing homes, state supported living centers, assisted living facilities, or long term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.

-Counties with Different Conditions: Due to special conditions, the order treats Deaf Smith, El Paso, Moore, Potter, and Randall counties differently.

The order expires on June 3, 2020. It's safe to say that the most recent order and its edicts have become extremely complicated. Again, the governor's [Open Texas webpage](#) is the easiest way to determine what can and can't be open.

What does Executive Order GA-23 provide in regard to enforcement and superseding language?

The order eliminates confinement in jail as an available penalty for any violation of any executive order. It provides that:

“No jurisdiction can confine a person in jail as a penalty for violating any executive order, or any order issued by local officials, in response to the COVID-19 disaster. To the extent any order issued by local officials in response to the COVID-19 disaster would allow confinement in jail, that order is superseded, and I hereby suspend all relevant laws to the extent necessary to ensure that local officials do not confine people in jail for violating any order issued in response to the COVID-19 disaster.”

It also provides that it supersedes any contrary local or state order.

What's the latest in the mail-in ballot controversy?

Last Friday (May 15), the Texas Supreme Court ordered a temporary hold on the expansion of voting by mail-in ballot during the virus emergency. The [court's order](#) adds to a confusing melee of legal challenges in both state and federal court. How does the latest order fit into the state court scheme?

- A district court judge [ordered a temporary injunction](#) preventing the Travis County clerk from rejecting any mail ballot applications received from registered voters who use the disability category of eligibility as a result of the COVID-19 pandemic as the justification for submitting the application.
- The attorney general immediately appealed the judge's order, in addition to issuing a [memo](#) to county election officials emphasizing that the order has no effect during the appeal.
- The case was subsequently transferred from the Austin court of appeals to the 14th Court of Appeals in Houston, and the attorney general filed a [brief](#) with the court of appeals arguing that the judge's order represented an unlawful expansion of mail-in voting.
- The 14th Court of Appeals upheld the trial court's temporary injunction.
- The attorney general appealed the 14th court's opinion to the Texas Supreme Court, which [temporarily overturned the opinion](#) and stayed any restriction on prosecution of voters who improperly request mail in ballots.

The stay is based on the case that was appealed up through the system. The attorney general also filed a separate petition directly with the Texas Supreme Court, but the court hasn't acted on that yet.

What has the governor asked paid fire departments to do with regard to nursing home virus testing?

The governor issues the following press release last Friday (May 15):

“Governor Abbott, TDEM Announce Partnership With Local Fire Departments To Expand Testing In Nursing Homes:

Governor Greg Abbott and the Texas Division of Emergency Management (TDEM) today announced that local fire departments in Texas are partnering with local public health authorities to provide testing in nursing homes throughout the state. This partnership has been developed and is being implemented through an ongoing collaboration between TDEM, the Texas Commission on Fire Protection, the Texas Health and Human Services Commission, and the Texas Department of State Health Services. Costs associated with providing these tests are eligible for federal reimbursement.

‘This partnership builds upon our efforts to expand COVID-19 testing in the Lone Star State, especially among our most vulnerable Texans,’ said Governor Abbott. ‘I thank our local fire departments for continuing to serve their fellow Texans throughout the COVID-19 response. By serving their communities in this new capacity, we will continue to contain the spread of this virus and protect the health and safety of all Texans.’”

Following the press release and a conference call with some fire departments and others, the executive commissioner of the Texas Department of Health and Human Services issued a letter to paid fire departments:

“To All Fire Departments:

On May 11, 2020, Governor Greg Abbott directed that 100 percent of staff and residents in Texas nursing facilities be tested for SARS-CoV-2, the virus that causes COVID-19, in accordance with White House guidance.

Texas nursing facilities are licensed under the authority of the Texas Health and Human Services Commission (HHSC). The testing teams may consist of state and/or local government personnel, including first responders from local fire departments.

As the Executive Commissioner of HHSC, I authorize fire department personnel to enter licensed nursing facilities for the purpose of collecting specimens for testing for SARS-CoV-2, the virus that causes COVID-19.

Testing teams must self-screen before entering the nursing facility and are expected to bring their own personal protective equipment. The teams are implementing the governor’s direction and are authorized to enter the nursing facility.

If a nursing facility has questions about this authorization they should contact the HHSC Long Term Care Regulatory region for assistance.”

In addition HHS provided a [FAQ document](#) related to the program.

A regional TDEM representative emailed the following to emergency management coordinators regarding nursing home testing options for fire departments:

- Texas Commission on Fire Protection (TCFP) certified fire departments have been asked to assist with the testing process, if willing and able.
- This is not a mandate.
- It applies only for those fire departments that are willing and able.
- HHSC will be coordinating the process and TDEM will provide support and supplies necessary for the testing.
- Fire department testing processes will need to be closely coordinated to ensure timely delivery of compatible testing kits, lab processing, etc.

According to the TCFP, the San Antonio Fire Department prepared a [video](#) showing testing protocols for fire fighters, and the City of Austin prepared a [resolution](#) to implement testing by its Fire Department.

The League will continue to provide information on this developing partnership as it becomes available.

Further Updates

What is the latest news on the disaster exemption in Senate Bill 2 that authorizes a city council to calculate their voter-approval tax rate at 8 percent instead of 3.5 percent under certain circumstances?

On Friday (May 15), Governor Abbott was asked in a television interview about TML's [interpretation](#) that the 8 percent voter-approval rate calculation is an option for city councils pursuant to the statewide COVID-19 disaster declaration. He responded as follows:

“First, I don’t construe the law the same way that the municipal league does. I disagree, and I think the Texas attorney general disagrees with that legal interpretation.

Know this, your property taxes are not determined by the valuation of your home. They are determined by the taxing authority.

We are urging taxing authorities to not raise rates, but to cut property tax rates to lessen the burden on property owners in Texas.”

Other than the governor’s verbal assertion, neither he nor the attorney general have provided any guidance as to why they think the disaster rate calculation provision in S.B. 2 does not apply. As budget season begins in earnest, city officials are understandably confused by the governor’s comments.

That being said, we see no reason to modify our interpretation at this time. The League will continue to monitor the issue and report as soon as any further guidance is made available.

What is going on with regard to federal stimulus legislation?

CapitalEdge, a Washington, D.C.-based advocacy firm that represents cities, has prepared a summary of the HEROES Act (H.R. 6800), which passed the U.S. House of Representatives last Friday (May 15). The [summary includes Divisions A-G](#) of the 200 page legislation. A summary of later divisions is forthcoming.

In addition, Senators Menendez (D – New Jersey) and Cassidy (R – Louisiana) today (May 18) introduced the SMART Act. According to the National League of Cities, the legislation would allocate \$500 billion overall, with each state receiving at least \$2 billion, and with \$20 billion reserved for Tribal governments. The funds would be allocated as follows:

-\$160 billion sent to the states by population.

-\$160 billion is sent to the states based on the state's infection rate of COVID-19 on June 1, 2020, divided by the total of all COVID-19 cases in all states on that date.

-\$160 billion to states to be used for lost revenue.

The funds may not be used to shore up pension systems, but they can be used for expenditures in calendar year 2020, 2021, or 2022, that a state, tribal government, or unit of local government would otherwise be unable to make because of decreased or delayed revenues.

More details will follow if the bill gains momentum.