



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 12, 2020

via E-mail (dcjudge@dallascounty.org)

Honorable Clay Jenkins
Office of County Judge
Dallas County
411 Elm Street
Dallas, Texas 75202

Dear Judge Jenkins:

It has come to our attention that Dallas County has issued a local public health order that exceeds the county's lawful authority and that it is likely to confuse residents. This letter identifies some of the concerns with your recent order. We trust the county will act quickly to correct mistakes like these to avoid further confusion and litigation challenging the county's unconstitutional and unlawful restrictions.

Houses of Worship

Executive Order GA-21 recognizes that "religious services conducted in churches, congregations, and houses of worship" are essential services.¹ The governor's order further recommends that religious services "be conducted in accordance with the joint guidance issued and updated by the attorney general and governor."² Enclosed is a copy of the joint guidance for houses of worship.³ Importantly, nothing in the governor's order or the joint guidance mandates how religious services should be conducted.

Your order conflicts with the governor's order by mandating that houses of worship comply with the protocols referenced in your order, including potential limitations on the number of people who can attend religious services.⁴ Executive Order GA-21 provides that it supersedes "any conflicting

¹ Exec. Order GA-21 at 3 (May 5, 2020).

² *Id.* at 5.

³ *Guidance for Houses of Worship During the COVID-19 Crisis*, <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Third%20Revised%20AG%20Guidance%20for%20Houses%20of%20Worship%20During%20the%20COVID-19%20Crisis%20-%20Final.pdf>.

This joint guidance identifies that the recommendations provided to houses of worship for religious services are just that—recommendations—and are the least restrictive means of serving a compelling government interest to protect public health. *Id.* at 5.

⁴ Dallas Cnty. Supp'l Order at 3 (May 8, 2020), <https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/050820-SupplementalDallasCountyOrderonReopenedServices.pdf>.

order issued by local officials” to the extent the local order “restricts essential services[.]”⁵ A local order that limits how a house of worship conducts services, or otherwise restricts essential services, conflicts with the governor’s order and is, therefore, unenforceable. To be clear, Executive Order GA-21 prohibits a local order from limiting the number of people who can attend religious services.

In addition, unlike the governor’s order, which respects the robust constitutional and statutory rights protecting Texans’ free exercise of religion, a local order that unlawfully tramples religious freedom exposes the county to legal liability. The federal and state Constitutions and the Texas Religious Freedom Restoration Act ensure that Texans can worship and freely exercise their religion according to the dictates of their own consciences, and not limited by overbearing government action.

Essential Businesses and Reopened Businesses

Insofar as your local order conflicts with the governor’s order by restricting essential or reopened services, it is invalid and unenforceable. Executive Order GA-21 recognizes essential services and reopened businesses.⁶ Essential services include the services outlined in the CISA guidance.⁷ In particular, the CISA guidance identifies as essential “workers supporting the operations of the judicial system, including judges, lawyers, and others providing legal assistance.”⁸ Yet you recently announced that law offices are not considered essential under Dallas County’s order.⁹ To the extent your order restricts essential and reopened services, it is superseded by Executive Order GA-21 and is, therefore, invalid.¹⁰

The governor’s order further recommends, but does not mandate, that all essential and reopened businesses follow the Guidelines from the President, Centers for Disease Control and Prevention and minimum health protocol standards recommended by the Department of State Health Services. In contrast, some of the requirements in your order far exceed what is permitted under Executive Order GA-21.¹¹ For instance, your order provides that businesses that do not comply with your order may be removed from the list of essential or reopened services. As we have explained, the governor’s order prohibits a local order from restricting essential or reopened services. If you try to close an essential or a reopened business—regardless whether a violation of your order occurs—your action would conflict with Executive Order GA-21 by restricting essential or reopened services and would, therefore, be invalid.

⁵ Exec. Order GA-21 at 6.

⁶ *Id.* at 3.

⁷ See Cybersecurity and Infrastructure Security Agency, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, Version 3.0 (Apr. 17, 2020) *available at*: <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>.

⁸ *Id.*

⁹ Letter from Dallas Cnty. Judge Clay Jenkins to Law Offices, (May 4, 2020), <https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/050820-LettertoLawOffices.pdf>.

¹⁰ See Tex. Att’y Gen. Op. KP-0306 (2020).

¹¹ Dallas Cnty. Supp’l Order at 3.

Masks

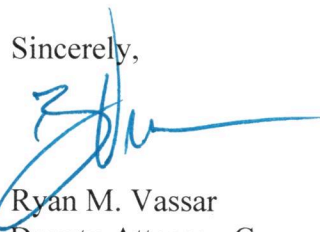
Executive Order GA-21 encourages individuals to wear appropriate masks and prohibits any jurisdiction from imposing a civil or criminal penalty for not doing so.¹² State law allows the governor to “issue executive orders, proclamations, and regulations and amend or rescind them.”¹³ These orders, proclamations, and regulations “have the force and effect of law.”¹⁴ Because local governments cannot enact laws that are inconsistent with State law, any local order that purports to impose a civil or criminal penalty for not wearing a face covering is void and unenforceable.¹⁵

Your order provides that “all persons over the age of two shall wear some form of” mask when using services.¹⁶ Executive Order GA-21 encourages individuals to wear appropriate masks, but it does not require them. Instead, the governor’s order recognizes that Texans will act responsibly and make smart decisions to protect themselves and their families. In contrast, your order purports to strip Texans of their agency. Although your order “requires” individuals to wear masks when they leave their home, they are free to choose whether to wear one or not.

Shelter-in-Place

Finally, the plain language of Executive Order GA-21 only requires Texans to minimize social gatherings and in-person contact with people who do not live in the same household.¹⁷ The governor’s order does not include a mandatory “shelter-in-place” order,¹⁸ but yours does. Your order requires all residents to shelter-in-place, closes all businesses that are non-essential or not reopened services, and prohibits all gatherings except those permitted by the order.¹⁹ As we have explained, Executive Order GA-21 supersedes conflicting local orders that restrict essential or reopened services. Insofar as your order conflicts with the governor’s order, it is unenforceable.

Our office appreciates your prompt attention to these matters.

Sincerely,


Ryan M. Vassar
Deputy Attorney General for Legal Counsel

¹² Exec. Order GA-21 at 5.

¹³ TEX. GOV'T CODE § 418.012.

¹⁴ *Id.*

¹⁵ See TEX. CONST. art. XI, § 5; *City of Laredo, Tex. v. Laredo Merchants Assoc.*, 550 S.W.3d 586, 592 (Tex. 2018).

¹⁶ Dallas Cnty. Supp'l Order at 3.

¹⁷ Exec. Order GA-21 at 3.

¹⁸ *Id.*

¹⁹ Dallas Cnty. Amended Order at 2 (Apr. 23, 2020), <https://www.dallascounty.org/Assets/uploads/docs/covid-19/orders-media/042320-DallasCountyOrder.pdf>. While your amended May 8, 2020 order includes reopened businesses and removes the imprisonment penalty, the April 23, 2020 “stay-at-home” order is in effect until May 15, 2020.