

GOVERNOR'S ORDERS & LOCAL COVID-19 RESTRICTIONS

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ALPINETX



GOVERNOR'S EXECUTIVE ORDERS

- **April 27 - E.O. GA-18**

- explicitly forbid local entities from enacting more stringent restrictions than Governor, including requirements to wear mask

- **June 3 - E.O. GA-26 – most recent order**

- maintains that counties/municipalities still may not supersede the Governor & pushes forward business openings



HOWEVER—GOVERNOR'S LATEST STATEMENTS CONTRADICT E.O.

- Abbott: “I had two standards [re masks]: One, no Texan can be put in jail for failing to follow these standards. Two, no government can mandate that individuals wear face masks. That said, when people go out and about, as they are walking around town, they don't need to wear a face mask, **but when they do go in a store or other business, those businesses can require, and that's exactly what it looks like local governments will begin to do.**”



WHAT DO GOVERNOR'S STATEMENTS VS. E.O.'S MEAN FOR MASK REQUIREMENTS?

- Governor's statement was made in response to question posed by several mayors and a Bexar County E.O. ordering businesses requiring employees/patrons to wear masks when social distancing not possible
- Bexar E.O. imposes \$1,000 penalty on businesses violating; no penalty against individuals for not wearing masks
- Governor allowed Bexar E.O. & others – but still adamant that penalties for *individuals* are forbidden, along with any COVID penalty that could result in jail time



AFTER GOVERNOR'S NEW STATEMENT, WHAT ARE LOCAL ENTITIES DOING NOW?

- Bexar County E.O. mirrored by San Antonio mayor
- At least 8 TX counties have similar mask orders including: Travis, Hidalgo, Dallas, El Paso, Harris
 - Smaller counties like Hays & Cameron too (although Hays does not incl. penalty); Nueces to enact as well
- Many municipalities in above counties have also enacted mask orders
- Cities in other counties considering own mask requirements, unclear #s available currently



CHALLENGES TO ENACTING LOCAL MASK ORDERS

- Mask requirements have political implications in current environment – pushback likely from large segment of population
- National Federation of Independent Business has spoken out against local TX orders that put “owners in the difficult position of policing their customers while trying to reopen and rebuild their businesses”
- While Governor may not challenge City mask order, local businesses could attempt litigation; however, would not be backed by State of TX



CHALLENGES TO ENACTING LOCAL MASK ORDERS: ENFORCEMENT MESSAGING

- BCSO Facebook post from April 24:



Brewster County Sheriff's Office



April 24 · 🌐

It has been brought to Sheriff Dodson's attention, that false information is being spread concerning the wearing/not wearing of masks during the COVID-19 crisis. This information includes business owners being threatened with the possibility of arrest. Sheriff Dodson is a proponent of individual rights, and the Constitution, and would like to assure everyone, that no person will be held in the Brewster County Jail for any offense related to the wearing/not wearing of a mask. Furthermore, Brewster County Deputies will not enforce any ordinance related to wearing masks.



CHALLENGES TO ENACTING LOCAL MASK ORDERS: INDIVIDUALS NOT LIABLE

- As Governor forbids any punishment of individuals for failure to wear mask, businesses tasked with enforcing rules against own customers
- What happens if single patron refuses to wear mask?
 - Business fined?
 - Business forcibly removes violating individual?
- Situation puts owners in precarious position, with multiple levels of liability concern: i.e., danger to staff enforcing rule vs. fear of fine



CHALLENGES TO ENACTING LOCAL MASK ORDERS: APPLICATION

- All orders thus-far issued have included language stating masks only required in businesses when/where 6-foot social distancing not possible
- Could see businesses asserting defense that social distancing possible in their particular establishment – difficult to measure
- If City purposefully does not include this language about social distancing/proximity to avoid this situation, could then face Governor's scrutiny



MASKS HAVE PROVEN SUCCESSFUL COMBATING SPREAD OF COVID-19

- Regardless of Council's decision on mask order, body of evidence grows supporting masks as key to halting spread
- City increasing awareness of mask effectiveness is also option:
 - Ordinance could require businesses to post information that masks work in order to encourage mask use
 - Go Hays County route and not include penalty provision for businesses that violate
- Most orders also specify that N-95 masks best reserved for medical profession/first responders

