



Most Tennessee Counties Reopen as State Continues to Record New Highs for COVID-19 Cases

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[Joshua T. Lewis](#)

Restaurants across Tennessee welcomed their first dine-in visitors in weeks Monday, April 27, 2020, as 89 of the state's 95 counties began to comply with Governor Bill Lee's "[Tennessee Pledge](#)," an economic recovery plan which gave permission for businesses around the state to begin the process of returning to a semblance of normalcy.

Retail stores welcomed their first visitors soon after, as the "Pledge" greenlit retail reopening starting Wednesday, April 29. Governor Lee canceled his existing "Stay at Home" order April 28 with a new [Executive Order 30](#), which provides for relaxations on previous COVID-19 restrictions in addition to those outlined in the "Pledge." These moves come as Tennessee recorded [five of its six highest single-day increases in COVID-19 cases](#) in the week leading up to April 27 and the state's death toll from the virus neared 200. Governor Lee's office cited "[a \\$5 billion loss in the state's gross domestic product](#) during 2020" as a primary factor in his decision to attempt to restart the local economy. "Like the rest of the country, Tennessee has taken an unprecedented economic hit with families and small businesses feeling the most pain," Governor Lee said. "We must stay vigilant as a state, continue to practice social distancing, and engage in best practices at our businesses so that we can stay open."

Under Governor Lee's Pledge and Executive Order 30, Tennessee's largest six counties, including those covering the cities of Memphis, Nashville and Knoxville, will be permitted to issue their own guidance for reopening local businesses. The governor has [declined to say](#) whether he will take action to supersede local policies regarding the virus in the future, however, apparently reserving the right to intervene at a later date.

Lee's plan includes "social distancing," other measures to resist a new wave of cases, but state will not enforce them

Restaurants and retail businesses that reopen under Governor Lee's Pledge will be encouraged to take steps to restrict the spread of the virus. The measures include requiring reopened businesses to remain at half-capacity, limit their guest parties to six individuals per group, implement employee and customer virus screening, require employees to wear masks and gloves at all times, and keep individuals at least 6 feet apart. As retail stores reopen, the Pledge calls for them to encourage customers to wear masks, increase curbside services where possible, and implement one-way aisles. The plan does not lift all COVID-19 closures, however, as bars are not permitted to reopen, live music will be prohibited, and buffet-style dining remains off the table.

Executive Order 30, issued to supplement the Pledge, takes effect April 29 to address close-contact businesses and provide additional guidance to those businesses that are already open or are about to reopen. It also bans social gatherings of more than 10 people and affirms that personal care businesses, such as hair salons and spas, must remain closed until the Order expires May 29. Significantly, the order supersedes any contrary orders or measures, meaning that individual counties – other than the six largest counties – cannot issue independent orders restricting reopening in their localities.

Despite framing the new guidelines as an order, the Governor's office has already indicated that it will not take any steps to enforce the guidelines, arguing instead that "we think that the community itself will enforce them."

State's largest counties to chart their own economic trajectory

The Tennessee Pledge's nominal restrictions and regulations on economic activity will not apply to businesses in Shelby, Madison, Davidson, Hamilton, Knox and Sullivan counties, which will be

permitted to determine their own response to the virus.

In Nashville, Mayor John Cooper announced a four-phase plan to begin reopening local business that emphasizes reliance on new case data and other scientific metrics to ensure that businesses avoid a new wave of cases that would force the economy to halt again. There are no set dates for plan implementation; instead, each phase progression is tied to health recovery metrics.

- Phase One: Commercial and retail businesses will be permitted to reopen under guidelines nearly identical to those in the statewide Pledge.
- Phase Two: If, after a minimum of 14 days in Phase One, the trend of new cases continues to decline or remains flat, Nashville may proceed to Phase Two of reopening. During Phase Two, businesses will be permitted to increase capacity to $\frac{3}{4}$, gatherings of 50 people or fewer will be permitted with social distancing measures, and personal care businesses will open by appointment only. Some outdoor sports activities may resume, but gyms and schools will remain closed.
- Phase Three: If there is a significant increase in active cases during Phase Two, Nashville will be required to revert to Phase One. If, after a minimum of 14 days in Phase Two, the trend of new cases continues to decline or remains flat, Nashville may proceed to Phase Three of reopening. Under Phase Three, business may open at full capacity while maintaining social distancing, bars may open at half capacity, gyms may open and some schools may open.
- Phase Four: If there is a significant increase in active cases during Phase Three, Nashville will be required to revert to Phase Two. If, after a minimum of 14 days in Phase Three, the trend of new cases continues to decline or remains flat, Nashville may proceed to Phase Four of reopening. During Phase Four, many of the restrictions imposed during the previous phases will be optional, gatherings of more than 100 people will be permitted, and bars and entertainment venues will be able to open at full capacity.

Shelby County and several surrounding municipalities, in turn, announced their Back-To-Business Framework, which provides for easing COVID-19 restrictions in three phases akin to those employed in Nashville/Davidson County. The Shelby County plan relies on testing capabilities, the number of hospitalizations, and health care capacity in determining whether the area is prepared to advance to a new phase.

- Phase One: All business must comply with the COVID-19 Compliant Protocol, which requires businesses to post signage regarding COVID-19 mitigation policies, provide virus-combating items such as wipes near high-contact items such as shopping carts, and limit the number of people in proximity to each other, among other measures. Indoor and outdoor facilities may reopen for general recreation while following social distancing practices.
- Phase Two: Nonessential businesses that require close personal contact such as salons may reopen with limited occupancy and in accordance with industry-specific guidelines set forth in the Back-To-Business Framework.
- Phase Three: Some gatherings of 50 or more may be permissible with social distancing practices in place and larger venues may reopen under the same measures.

The City of Knoxville and the larger Knox County's Joint Task Force on COVID-19 have also announced a [three-phased reintroduction of business activity](#), although Knoxville's plan provides for a much earlier reopening of personal services businesses, gyms, and other organizations than either Nashville or Memphis. Under Phase One of the Knoxville plan, the following business are permitted to reopen May 1 under "strict" social distancing guidelines and other preventative measures:

- Daycares
- Restaurants
- Salons
- Spas
- Retail stores

- Gyms
- Places of worship

Guidelines for specific types of other businesses that may reopen under the remaining phases have not yet been released; the current iteration of the plan states that these guidelines “will be added by amendment following a collaborative community process.”

For more information, please contact [Joshua Lewis](#) or any attorney in Frost Brown Todd’s [Government Services](#) practice group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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