Texas Ends Mask Mandate and Most COVID-Related Restrictions

Mar 04, 2021

Categories:

Coronavirus Response Team
Publications

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On March 2, 2021, Texas Governor Greg Abbott issued Executive Order GA-34, which lifts most of his previously ordered statewide restrictions in response to the COVID-19 pandemic. GA-34 ends both the statewide mandate for wearing face coverings in public, as well as all statewide restrictions on the operations of businesses and other facilities. The Order contains certain exceptions for "areas with high hospitalizations."

1. New Executive Order Ends Most Statewide COVID-Related Restrictions.

In July 2020, Governor Abbott ordered the statewide mask mandate and a series of restrictions on businesses and facilities, as discussed in previous articles. During the pandemic, Governor Abbott's restrictions have fluctuated, but as noted in GA-34, since October 14, 2020, "most establishments have been able to operate up to at least 75 percent of total occupancy, except in some areas with high hospitalizations as defined in that order, where most establishments have been able to operate to at least 50 percent of total occupancy."

The stated basis for GA-34's lifting of these restrictions is: "COVID-19 hospitalizations and the rate of new COVID-19 cases have steadily declined due to the millions of Texans who have voluntarily been vaccinated, many more who are otherwise immune, improved medical treatments for COVID-19 patients, abundant supplies of testing and personal protective equipment, and Texans' adherence to safe practices like social distancing, hand sanitizing, and use of face coverings."

Accordingly, effective at 12:01 a.m. on March 10, 2021, in almost all Texas counties (with exceptions for "areas with high hospitalizations," as explained below):

- "there are no COVID-19-related operating limits for any business or other establishment"; and

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- while individuals are “strongly encouraged” to wear face coverings around people not in their household wherever social distancing is not feasible, no “jurisdiction” in Texas may require individuals to wear a mask.

The order further encourages nursing homes, state-supported living centers, assisted living facilities, and long-term care facilities to follow Texas Health and Human Services Commission guidance regarding visitations and infection control policies and practices.

Public schools are to operate in accordance with guidance issued by the Texas Education Agency, and private schools and institutions of higher education are encouraged to establish similar standards.

County and municipal jails should follow guidance from the Texas Commission on Jail Standards regarding visitations.

The order rescinds Executive Orders GA-17 (establishing the Governor’s Strike Force to Reopen Texas), GA-25 (regarding in-person visitation in county and municipal jails), GA-29 (requiring the use of face coverings in public spaces and commercial establishments), and GA-31 (requiring hospitals to reserve at least 10 percent of their capacity for treatment of COVID-19 patients). The order does not supersede GA-10 (requiring daily reporting of COVID-19 test results) and GA-13 (regarding detention in county and municipal jails).

2. Businesses May Require Masks, But Local Jurisdictions May Not.

Businesses and other facilities may still require masks. GA-34 states that “[n]othing in this executive order precludes businesses or other establishments from requiring employees or customers to follow additional hygiene measures, including the wearing of a face covering.”

Notwithstanding the lifting of the mask mandate and most restrictions on businesses and other establishments, the order “strongly encourage[s]” every Texan to use good faith efforts to follow the health recommendations found at www.dshs.texas.gov/coronavirus (including, among other things, the wearing of face coverings in public).

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As with earlier executive orders, GA-34 expressly preempts and "supersede[s] any conflicting order issued by local officials in response to the COVID-19 disaster." As noted, under GA-34, "no person may be required by any jurisdiction" to wear a mask. The Order also "suspend[s]" certain state laws "to ensure that local officials do not impose restrictions … that are inconsistent with this executive order" and do not "confine people in jail" for violating any COVID-related executive or local orders.

3. Limited Exceptions for Areas with "High Hospitalizations."

GA-34 provides limited exceptions for counties located in an "area with high hospitalizations." These areas are defined as any Trauma Service Area that has had seven consecutive days in which the number of COVID-19 hospitalized parties as a percentage of total hospital capacity exceeds 15 percent. A list of these areas is maintained at www.dshs.texas.gov/ga3031; currently, the list includes Culberson, El Paso, and Hudspeth Counties.

In those areas, the state will still not impose (a) any COVID-19-related operating limits for any business or other establishment, or (b) a mask mandate. But the county judge may (but is not required to) use COVID-19-related mitigation strategies, provided that:

- Businesses and other establishments may not be required to operate at less than 50 percent of total occupancy, with no operating limits allowed to be imposed for religious services, public and private schools and institutions of higher education, and child-care services;
- No jurisdiction may impose confinement in jail as a penalty for violating any COVID-19-related order; and
- No jurisdiction may impose a penalty of any kind for failure to wear a face covering or failure to mandate that customers or employees wear face coverings, except that a legally authorized official may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner.

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For more information, please contact Thomas Allen, Mark Platt, Fred Gaona, or any attorney in the Government Services practice group.

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