

MEMORANDUM

TO: Dan Sale, St. Louis Realtors®
FROM: Apollo Carey, Lewis Rice LLC
DATE: May 11, 2020
RE: COVID-19 State & Local Re-opening Guidance

I. Background

On April 27, 2020, The Missouri Department of Health and Senior Services issued the Show Me Strong Recovery Order (“State Order”) initiating the first phase of re-opening Missouri’s economy and relaxing many of the stay-home type restrictions. The State Order became effective May 4, 2020 and shall remain in effect until 11:59PM on Sunday, May 31, 2020.

On May 8, 2020, the St. Louis County Department of Public Health also issued the 2019 Novel Coronavirus Business and Individual Guidelines for Social Distancing and Re-Opening Order (“County Order”) incorporating by reference the State Order and adding additional guidelines and restrictions. The County Order is effective indefinitely beginning on May 18, 2020.

On May 8, 2020, St. Louis City also issued a press release stating that on May 18, 2020 the City will begin Phase I of its re-opening plan, allowing some businesses that were previously closed due to the pandemic to re-open in accordance with the Phase I Reopening Standards and Guidance Established by Health Commissioner's Order No. 8 (“City Order”). The City Order provided no timeline for when Phase I would move to Phase II and the press release noted that more information will be forthcoming regarding the re-opening plan.

II. Essential vs. Non Essential: No Longer a Viable Distinction

Importantly, in the State Order, County Order, and City Order the “Essential” vs. “Non Essential” business distinction has been dropped, a distinction which had been helpful to businesses in earlier stages of the pandemic as they determined their permissible level of operations and requisite restrictions.

As the “Guidance and Frequently Asked Questions” accompanying the State Order makes clear, “This order applies to ALL Missouri businesses. Businesses that are categorized as ‘**essential**’ by the federal government **should continue current operations, and incorporate our General Guidelines for Business outlined above.** Businesses that were considered ‘**non-essential**’ by the federal government **may resume operations in Missouri in accordance with the Order and these guidelines.**” (Guidance and FAQs, pg. 3).

Even the State’s past reliance on the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) Guidance on Essential Critical Infrastructure Workers is no longer relevant to

Missouri's Show Me Strong Recovery Plan moving forward: "While CISA has issued guidance on what the federal government considers 'essential businesses,' **Governor Parson believes that ALL of Missouri's businesses and employers are vital to our state's economy and individual well-being.**" (Guidance and FAQs, pg. 2). Moving forward, businesses should not expect to see any further defined lists as it pertains to the previous Essential vs. Non Essential designation.

Instead, the State Order provides that "**every person and business in the State of Missouri shall abide by social distancing requirements**, including maintaining six (6') feet of space between individuals" and that this provision "shall apply in all situations, including but not limited to, when customers are standing in line or **individuals are using shared indoor or outdoor spaces.**" (State Order, Section 2).

Furthermore, the State Order explicitly allows local authorities to make additional rules, regulations and orders which may be necessary for the particular locality.

III. Focus on Local Restriction

a. *St. Louis County*

As mentioned above, the County Order fully incorporates by reference the State Order in Section III(1), but also imposes significantly more restrictions on businesses to minimize the continued health risk associated with COVID-19 in St. Louis County.

For example, the County Order specifically prohibits **intentional gatherings of more than 10 people in a single space or room, regardless of size, and organized by a person or business.** Any other gatherings, less than this size are allowed so long as the participants comply with mandated social distancing requirements and face covering recommendations. (County Order, Section 2(a)-(b)).

Businesses not subject to these specific gathering size restrictions are those businesses that "engage in direct interactions with members of the public, and primarily provide goods for sale, food or drink for consumption, personal services requiring sustained in-person contact, or religious or spiritual services." (County Order, Section III(5)). Instead, these businesses have occupancy and operational restrictions of their own, outlined in the above-mentioned section.

Additionally, the County Order identifies some **businesses and/or business activities that are explicitly prohibited from operating, including conference and sporting venues, and banquet rooms.** (County Order, Section III(7)). This restriction is different and more restrictive than the State Order's position on such activities, which currently allows operation of movie theaters, museums, concert venues, etc., so long as seating is spaced according to social distancing requirements (Guidance & FAQs, pg. 7)

b. *St. Louis City*

With respect to St. Louis City, the City Order is also more restrictive than the State Order, imposing a number of health protocol obligations on businesses and **directing that ballrooms, banquet rooms, meeting rooms, and sports stadiums are all to remain closed during Phase I.** (City Order, pg. 5, 7).

IV. Conclusion

While the Essential vs. Non Essential distinction was paramount in understanding a businesses' duties and responsibilities under prior government orders related to the ongoing pandemic, such a distinction is now generally meaningless in Missouri as state officials have kicked off Phase I of the Show Me Strong

Recovery Plan and are deferring to local authorities to implement restrictions more tailored to their jurisdictions.

St. Louis County and St. Louis City have both accepted this invitation through issuance of their own local orders which contains more stringent restrictions on businesses and gatherings. Based on these restrictions, any use of a conference center within St. Louis County or St. Louis City should be discouraged, especially if more than 10 people will be present inside the conference center.