



March 17, 2020

Dear Tennessee Municipal Attorneys,

We have been asked by several city attorneys whether cities have any authority to prohibit mass gatherings and close businesses. This seems to be the question with which all cities are struggling because no statutory or charter authority is directly on point for a pandemic. The options that are being explored by cities are using the charter police powers and/or declarations of emergencies. Cities could potentially use a combination of both authorities.

After the Governor's Declaration of a State of Emergency, the city may be able to close city-owned parks and recreational spaces controlled by the city. Under the CDC Guidelines for Large Events and Mass Gatherings, events or gatherings of more than 50 people should be canceled. If the city-owned recreational areas bring mass gatherings of people, whether planned or unplanned, the city may consider closing those areas. If mass gatherings or events are planned for public spaces, the city could use the Declaration with the CDC Guidance to retract permits for these gatherings.

In order to regulate businesses, the city may need to declare an emergency. Declarations of an emergency are under Tennessee Code Annotated § 58-8-104(a)-(d):

(a) The mayor of a municipality or the mayor or county executive of a county or metropolitan government may declare a local state of emergency affecting such official's jurisdiction by executive order consistent with and governed by § 58-2-110(3)(A)(v).

(b) The mayor or executive of any municipality or county, or such official's designee, may declare a state of emergency for such official's municipality or county regardless of whether the event in question affects only that jurisdiction or multiple jurisdictions.

(c) The declaration of a state of emergency by a jurisdiction entitles the responding party or parties to cost reimbursement as provided in § 58-8-111. The requesting party is required to make this reimbursement to the responding party or parties.

(d) The municipal mayor or county mayor or executive may declare the state of emergency at any time during the imminent pendency or happening of the occurrence.

In addition, the following actions for evacuation may be taken by local governments under Tennessee Code Annotated § 58-8-104(e)-(g):

(e) If a county mayor or the executive of a county declares a local state of emergency in accordance with subsection (a), the county mayor or the executive of the county may, in the interest of public health, safety, and welfare, issue orders to direct and compel the evacuation of the entire unincorporated area of the county or any portion thereof.

(f) If a mayor or the executive of a municipality or metropolitan government declares a local state of emergency in accordance with subsection (a), the mayor or the executive of the municipality or metropolitan government may, in the interest of public health, safety, and welfare, issue orders to direct and compel the evacuation of the entire incorporated area of the municipality or metropolitan government, or any portion thereof.

(g) A person who willfully violates an order issued under subsection (e) or (f) commits a Class C misdemeanor.

“Emergency” has been defined by Tennessee Code Annotated § 58-2-101(7) and includes disease outbreaks and epidemics: “an occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, that results or may result in substantial injury or harm to the population, or substantial damage to or loss of property; provided, that natural threats may include disease outbreaks and epidemics.”

While it is unprecedented, much like the situation we are currently facing at least in the modern world, a city mayor may consider declaring an emergency under Tennessee Code Annotated § 58-8-104(a) and then ordering an evacuation under Tennessee Code Annotated § 58-8-104(f) of certain zones or areas of the city except for essential personnel. Under Tennessee Code Annotated § 58-2-110(3)(A)(v), the duration of each emergency declared is limited to seven days, but the city may extend it as necessary in seven-day increments. We recommend that city attorneys review this option thoroughly and discuss it with city leaders prior to taking any action. Undoubtedly and understandably, this action will not come without resistance. Before any actions are taken that would close businesses, we recommend that city officials discuss these issues extensively with their city attorneys and contact the city’s insurance carriers.

Other cities are taking a more conservative approach toward businesses and gatherings after declaring an emergency under Tennessee Code Annotated § 58-8-104(a). Several cities have made “strong recommendations” or “requests” of businesses including encouraging restaurants to have take-out and delivery only options, to limit seating to fifty percent of capacity, and separate occupied tables by at least six feet. Some cities have been successful in working with businesses on voluntary compliance in order to implement more conservative measures, which may keep those cities from needing to issue evacuation orders.

In addition, some cities are reviewing their beer license provisions in order to see if the municipality has authority to suspend beer permits temporarily. We recommend

that the city provide notice of an optional hearing if requested by the permit holder. In addition, legislation has been sought that will allow such public meetings to be done through a virtual method, and we will notify you if this legislation passes.

Unfortunately, there is no direct, clear cut authority for these circumstances, and we will need to do the best we can unless more emergency legislation or executive orders are passed.

With warmest regards,



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