At A Glance: State and City Action on Covid-19
April 16, 2020, 4:00 PM ET

In the absence of a federal shelter in place order, states and cities are issuing their own stay at home, shelter in place or “safer at home” rules:

42 states have issued statewide shelter in place mandates.

Eight governors have yet to issue statewide shelter in place orders:

- Five states have no mandatory shelter in place directives at the city or state level: Arkansas, Iowa, Nebraska, North Dakota and South Dakota.

- Three states have partial lockdown orders; individual cities or counties have declared shelter-in-place mandates but the state as a whole has not: Oklahoma, Utah, Wyoming. Oklahoma has a “Safer at Home” order has been extended through May 6 for adults over the age of 65 and vulnerable individuals with serious underlying medical conditions.

All of the governors who have not issued mandatory stay at home orders are Republicans. And despite steep increases in the number of COVID-19 cases in their states, the eight governors are still refusing to issue statewide stay at home orders.

- Over the last five days, confirmed cases have increased more than 30 percent in North Dakota, 22 percent in Arkansas, 26 percent in Oklahoma, and 260 percent in South Dakota. That compares to roughly 26 percent over the same period in New York, the epicenter of the pandemic.

Governors in several states where no statewide order has been issued are being pressured by cities and counties to put one in place:

- **Iowa.** Iowa on Tuesday, April 14, reported its single largest daily jump in confirmed cases — roughly half stemming from an outbreak at the Tyson Foods plant in Columbus Junction. Tyson Foods closed one of the country’s largest pork-processing plants in Iowa after two employees died and dozens more workers contracted the virus, but Gov. Kim Reynolds (R) – who has resisted imposing a stay-at-home order – said the facility could reopen as early as next week as its 1,400 workers are tested. According to Reynolds, people “have to be responsible for themselves.” Localities are preempted from issuing their own shelter in place orders.

- **Nebraska.** Nebraska’s case count has jumped nearly 30 percent in the last three days, according to the state health department. But even as cases grow in places like Grand Island and Douglas County, home to Omaha, and mayors are asking for a statewide stay-at-home order, Governor Pete Ricketts continues to refuse. “This is a program that depends on people exercising personal responsibility and their civic
duty. This is about making that decision, not the heavy hand of government taking away your freedoms.”

- **South Dakota.** A pork processing plant in Sioux Falls, South Dakota’s most populous city, was forced to close after about 240 employees contracted the virus. Republican Mayor Paul TenHaken asked Gov. Kristi Noem this week to issue a stay-at-home order in Minnehaha and Lincoln counties, where more than 800 of the state’s 988 positive cases have been confirmed. Noem refused, prompting the Sioux Falls city council to introduce a three-week lockdown ordinance on its own that members lament will take a week just to pass.

Citing scientific modeling, the governor acknowledged this month that up to 70 percent of residents in her state may ultimately fall ill with COVID-19. But Noam says it wasn’t up to government to tell them how to behave. “The people themselves are primarily responsible for their safety. They are the ones that are entrusted with expansive freedoms.” It was up to individuals — not government — to decide whether “to exercise their right to work, to worship and to play. Or to even stay at home.”

### Push Back against Stay at Home Orders

Clashes over mandatory shelter in place orders are taking three basic forms: citizen protests, legislative action, and court challenges.

#### Citizen protests

Conservative and libertarian groups opposed to statewide stay at home orders organized protests at state capitol's yesterday (Wednesday, April 15) and more are planned in the coming days and over the weekend.

- **Kentucky** - About 100 protesters demanded Democratic Gov. Andy Beshear reopen Kentucky and disrupted his televised Wednesday afternoon pandemic update by chanting, blowing horns and shouting into a megaphone outside the window of the briefing room, nearly drowning out his comments to Kentuckians. The demonstrators, some standing less than six feet apart, chanted "we want to work" and "facts over fear." ([Courier Journal](https://www.courier-journal.com/article209557493.html))


- **Minnesota** - Under an event page titled "Liberate Minnesota," conservatives are organizing a rally outside the governor’s mansion to "demand Governor Walz and our state legislators end this lockdown!" The protest is scheduled for noon on Friday.

- **North Carolina** - Police in North Carolina on Tuesday arrested a protester after more than 100 people gathered in downtown Raleigh to protest Democratic Gov. Roy Cooper’s stay-at-home order.

- **Ohio** - Around 100 protesters gathered outside the Statehouse during GOP Gov. Mike Dewine’s appearance on Monday, at least one wearing a Donald Trump hat while many carried signs expressing displeasure at the stay-at-home order or waved American flags.

- **Texas** - A host of Infowars, a website that frequently shares conspiracy theories, announced a rally on Saturday at the State Capitol called the “You Can’t Close America Rally.”
Utah - Hundreds of Utah residents gathered Wednesday to protest the state's closures of businesses and facilities due to the coronavirus. St. George resident Larry Meyers organized the event in an effort to "assert our God-given, Constitutionally-protected rights, including freedom of speech, freedom of assembly, religious freedom, the right to contract, and the right to use our property as we see fit so long as we do not harm others" according to a Facebook post.

Virginia -- Groups calling themselves ReOpen Virginia, End The Lockdown VA and Virginians Against Excessive Quarantine, planned a protest today at the state capitol in Richmond.(Thursday April 16). “Government mandating sick people to stay home is called quarantine. However, the government mandating healthy citizens to stay home, forcing businesses and churches to close is called tyranny,” said ReOpen Virginia in a press release.

Washington - a protest rally is scheduled at the State Capitol in Olympia for this weekend.

Legislative Action

Kansas – Last week, Republican lawmakers on the state’s legislative council revoked Gov. Laura Kelly’s ban on gatherings on Wednesday — effectively allowing churches to hold regular services on Easter — saying that the order infringed on religious liberty. Kelly then took the matter to court, calling the Republican action 'shockingly irresponsible.' On Saturday, the Kansas Supreme Court on Saturday struck down the legislature’s action. According to the Topeka Capital-Journal: “The unanimous decision means Kelly’s order limiting religious gatherings to no more than 10 individuals will be in effect for Easter Sunday services. The court didn’t consider whether Kelly’s order infringes on religious freedom.”

On Tuesday, a group of 43 Republicans in Kansas’ House of Representatives sent a letter to Gov. Laura Kelly, asking for a plan to get "the economy going." "What objective, scientific metrics have you determined must be met in order for us to begin the process to re-open?" read Kansas lawmakers' letter.

Ohio - In Ohio, at least three Republican lawmakers have called on Gov. Mike DeWine -- one of the first Republican governors to take aggressive action to counter the spread of coronavirus in March -- to start making plans to reopen up the state, which is under a stay-at-home order until May 1. Both the state Senate and House have Republican majorities.

State Sen. Todd Smith, who represents Preble County and a portion of Dayton, in a letter to DeWine said the state had overreached based on "flawed data models," "speculation" and "media overreaction." "We have to start the discussion now to say, 'We need to start seriously considering what businesses can come back right on May 1," Smith told CNN. "I think the quarantine needs to end. I think there are things that can be phased in over time. Hairstylists, lawn care or one-on-one work should be started right back."

In a separate letter, Ohio’s Senate Majority Leader Matt Huffman, who represents rural areas of Ohio, has proposed that businesses be allowed to open in "less densely populated areas," according to Cleveland.com. A third lawmaker, Andrew Brenner, in a Facebook post titled "We Must Reopen Ohio" reiterated the call to open up the state's economy.

Pennsylvania - Republicans in the Pennsylvania legislature are trying to claw back Wolf’s emergency powers by pushing through a bill that would allow some businesses to reopen. Under the measure, which the House of Representatives approved Tuesday night, Pennsylvania businesses could reopen once they have a plan to abide by social distancing guidelines from the Centers for Disease Control and
Prevention and Department of Homeland Security. The measure now heads to the state senate for approval and will eventually need to be signed by Gov. Tom Wolf to be effective.

- **Utah** - In Utah, state lawmakers will head into a special session on Thursday to consider legislation that would begin to open certain businesses by the end of April, even though the state's Republican Gov. Gary Herbert said Tuesday he would keep schools closed for the rest of the academic year.

  Senate president Stuart Adams told CNN that the legislature, which is controlled by Republicans in both chambers, is looking to allow the state to enter a "stabilization phase" that would keep social distancing guidelines in place while businesses are gradually reopened beginning April 30.

**Court Challenges**

- **California** - Three Southern California churches that want to keep their doors open during the coronavirus outbreak sued Gov. Gavin Newsom and other officials on Monday, arguing that social distancing orders violate the First Amendment right to freedom of religion and assembly. The suit, filed in the federal court for the Central District of California, also names state Attorney General Xavier Becerra and officials of San Bernardino and Riverside counties.

In some states with stay at home orders, localities have had to deal with orders preempting local action – now including voting in local elections.

**Texas** - A state judge ruled that all voters in Texas afraid of contracting COVID-19 through in-person voting should be allowed to vote by mail during the pandemic, the Dallas Morning News reports. However, Texas Attorney General Ken Paxton (R) said he was “disappointed” that the court had “ignored the plain text of the Texas election code to allow perfectly healthy voters to take advantage of special protections made available to Texans with actual illness or disabilities.” Paxton said he would appeal the decision.

Some cities are hoping to proceed with May 2 elections – if they can be done by mail. According to Paxton, “Mail ballots based on disability are specifically reserved for those who are physically ill and cannot vote in-person as a result. “Fear of contracting COVID-19 does not amount to a sickness or physical condition as required by the Legislature. The integrity of our democratic election process must be maintained, and law established by our Legislature must be followed consistently.”

Also in Texas, there is concern that Austin’s face mask requirement may be preempted by Texas’ Executive Order.

**Iowa** – Even though Iowa Governor Kim Reynolds has not issued a statewide stay at home order, local officials such as Cedar Rapids Mayor Bret Hart have considered issuing a local order under emergency mayoral powers but backed off after deeming it unenforceable. Hart said: “This week I spoke directly with the Governor who confirmed her opinion, which is supported by the Iowa Attorney General, that cities and counties in Iowa do not have the authority to close businesses or order people to stay in their homes.”

**South Carolina** – The statewide stay at home order, which went into effect Tuesday night, April 7, commands “Residents to limit their movements outside of their home, place of residence, or current place of abode (collectively, “residence”), except as allowed by this order, for purposes of engaging in essential business, essential activities, or critical infrastructure operations.” Essential activities include “Attending religious services conducted in churches, synagogues, or other houses of worship.”
South Carolina’s shelter in place order blocks local action: “If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.” Earlier, South Carolina’s Attorney General issued an opinion that local governments do not have the authority to issue these kinds of executive orders and that citizens have a right to sue in protest. According to the Attorney General’s opinion, “If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation or other restriction that conflicts with this Order, the Order shall supersede or preempt any such local ordinance, rule, regulation or other restriction.” Three days later, the Attorney General issued a revised order making it clear that his opinion did not have the force of law and saying that his office would not sue any local town or county that put legal restrictions on people’s movements because of the coronavirus.

Arkansas - On March 26, Governor Asa Hutchinson issued an executive order declaring the state of Arkansas to be a disaster area. The order also included social distancing recommendations and some restrictions on public gatherings. On Monday April 6, he issued an order amending the original order; the amendment gives city and county officials more leeway to take local action to prevent the spread of the novel coronavirus, with the provision that they may not interfere with commerce. The new proclamation states “reasonable city or county curfews and closures of city or county owned parks and facilities … shall not be interpreted as a quarantine regulation of commerce or travel.”

It adds that curfews may not prevent people from traveling to or from work, acquiring food or other necessary goods or services, walking their pets or exercising outdoors. Several cities and counties have issued curfews, including Little Rock, Saline County and Benton County.

Hutchinson asked that any officials planning to take local action first coordinate with his office. He emphasized that he has not issued a statewide stay-at-home order and his order issued Monday preempts local lockdowns, arguing that localities having their own stay-at-home orders could jeopardize essential operations and commerce.

Georgia – Governor Brian Kemp was late to issue a mandatory stay at home order, despite pressure from local and public health officials. On Thursday Kemp caught local officials off-guard when he preempted local officials and re-opened the state’s beaches, a move that has been decried the move as “stupid and crazy.” Tybee Island Mayor Shirley Sessions wrote on Saturday, “As the Pentagon ordered 100,000 body bags to store the corpses of Americans killed by the Coronavirus, Governor Brian Kemp dictated that Georgia beaches must reopen, and declared any decision makers who refused to follow these orders would face prison and/or fines.”

Florida – After weeks of resistance, Governor Ron DeSantis, issued a mandatory stay at home order on Wednesday April 1. Under that order, Floridians can’t leave their home unless it’s to obtain or provide essential services. Essential services includes health care workers, law enforcement and grocery stores, among many, many others. DeSantis’ orders also classified gun and ammo shops, laundromats, hardware stores and pet supply stores as “essential services.” Against the advice of public health experts, DeSantis’ order listed attending church services as an “essential activity.”

Five hours later, DeSantis issued a second executive order, (Order 20-92) to “provide clarity” to DeSantis’ initial mandate, which stated: “This Order shall supersede any conflicting official action or order issued by local officials in response to COVID-19." But the second order has created confusion for local officials.
According to Mike Ryan, the mayor of Sunrise and a board member of the Florida League of Mayors, “That is a very clear indication that the governor is ordering that all of our local orders that we entered are preempted and invalidated. As a result, a number of issues are implicated.”

Mississippi – Governor Reeves statewide mandatory stay at home order went into effect Friday, April 3 at 5:00 PM. His March 24 Executive Order preempts localities from enforcing stricter restrictions than the state: “any order, rule, regulation or action by any governing body, agency or political subdivision of the state that imposes any additional freedom of movement or social distancing limitations on Essential Business or Operation, restricts scope of services or hours of operation of any Essential Business or Operation, or which will or might in any way conflict with or impede the purpose of this Executive Order is suspended and unenforceable during this COVID-19 State of Emergency.” This order has forced the cities of Tupelo and Oxford to rescind local measures already in place.

According to Tupelo Mayor Jason Shelton, “That means that where there is a difference, the Governor's Order prevails. Therefore, the city's mandate of all adhering to President Trump's 15-day plan, mandating compliance with CDC and MSDH COVID-19 recommendations in all workplaces, and Tupelo's safety protections pertaining to restaurants will be superseded by the Governor’s Executive Order. The city has no discretion in this - the Governor's Executive Order supersedes as a matter of law.”

Arizona - Gov. Doug Ducey capitulated to a mounting grassroots effort by Arizona local elected officials and citizens demanding that he issue a “stay-at-home” or “shelter-in-place” order to prevent the spread of COVID-19. On March 23, Ducey issued an executive order prohibiting any county, city or town from issuing any order or regulation “restricting persons from leaving their home due to the COVID-19 public health emergency,” or closing the long list of businesses Ducey deemed “essential,” including golf courses, nail salons, pawnshops and payday lenders.

But on Monday, March 30 Ducey announced a statewide order after receiving a letter from nine Mayors “fervently” calling on him to issue a “stay at home” order. The mayors of Phoenix, Flagstaff, Tolleson, El Mirage, Tucson, Winslow, Superior, Fountain Hills and Guadalupe wrote that state health officials had already recommended Ducey enact a “stay at home” order and cited “recent empirical findings that support social distancing as an effective mechanism by which to slow the spread of COVID-10.”

While several Arizona mayors believe the Governor’s list of essential services is too broad, they also believe Ducey’s order preempts them from closing businesses included on the state’s list of essential services.

Where cities and counties have taken the lead in issuing stay at home orders:

- Oklahoma – Edmond, Norman, Oklahoma City, Stillwater, Tulsa
- South Carolina – Charleston and Columbia
- Utah – Salt Lake, Davis, Weber, Tooele, Summit, Wasatch and Morgan counties
- Wyoming - Jackson

Utah - Public health orders have created a contiguous seven-county containment zone across most of the Wasatch Front. Nearly 1.9 million Utahns living inside it are subject to legally binding restrictions on how they can gather and what businesses can stay open.

The orders are in place in heavily populated Salt Lake, Davis, Weber and Tooele counties and smaller Summit, Wasatch and Morgan. The only densely populated county on the Wasatch Front currently without such an order
is Utah County. According to the Salt Lake Tribune, there are commonalities among the seven county orders, but also crucial differences.