

Partially Open for Business: Revisiting Amenity Closures During COVID-19

On April 20, 2020 Governor Kemp signed an executive order allowing for a partial reopening of businesses in the state, which took effect on Friday, April 24, 2020. The Order permits gyms, fitness centers, bowling alleys, body art studios, estheticians, hair designers, and massage therapists to begin conducting in-person operations, subject to a “Minimum Basic Operation” restrictions. Governor Kemp also signed an executive order on April 23rd, 2020 extending the shelter-in-place order for high-risk individuals through May 13, 2020 and further outlining specific mitigation measures for certain business operations. A copy of each order can be found [here](#).

With some businesses slowly reopening their doors, many questions remain on what this new update means for community associations and their amenities. Below are some commonly asked questions and answers that will address the April 20th Executive Order and what it means for community associations in Georgia.

Should we reopen our community’s gym and/or fitness facility? And if we do not open our gym, will we be in violation of the Governor’s April 20th Executive Order?

While we understand that circumstances differ in each community, we generally recommend keeping community gyms and fitness facilities closed at this time for reasons we discuss below – though some communities may be able to do a limited opening of certain amenities. Governor Kemp’s April 20th and April 23 Orders certainly apply to businesses, but some portions apply to non-profit corporation and therefore may apply to associations and areas such as gyms. Few community associations have the resources or staff to meet the requirements of the Order.

Regardless, it is also important to understand that the Governor’s April 20th Order does not *require* these businesses to reopen; instead, the Order allows those businesses to reopen at their discretion with certain mitigation measures in place. In fact, many Georgia businesses have announced that they will not reopen to the public at this time despite their ability to do so.

Should our community open its other amenities like the clubhouse and pool?

As with gyms/fitness facilities, while each community must be looked at independently and you may be able to do some limited openings, we generally recommend keeping amenities closed at this time due to the lack of clarity and clear agreed upon direction/standards from Federal and State government. In addition to concerns about the possibility of spreading the virus in your community, it may be difficult for communities to follow the Governor’s mitigation measures and to enforce social distancing requirements. The Centers for Disease Control and Prevention (CDC) classified Georgia as a widespread infectious state, and Johns Hopkins Coronavirus Resource Center has identified Georgia as one of the most highly populated infectious states with over 24,000 confirmed COVID-19 cases. We understand that some community members may be requesting amenities to reopen with warmer weather approaching, but we believe associations should wait to reopen until further guidance is issued by health care and infectious disease professionals.

In connection with the CDC, President Trump unveiled a three-phased approach for reopening based on public health expert advice called [Guidelines for Opening Up America Again](#).

In fact, both the CDC and the National Institute of Health (NIH) have stated: (1) the safe approach is to not even consider the start of phased opening of businesses until at least 14 days after the relevant COVID-19 peak for an area (experts believe that Georgia has not yet peaked with its cases and death count increasing); and (2) performing super enhanced safety protocols, including increased sanitization measures, is a necessary safety protocol for any phased reopening. In addition, restrictions limiting gatherings of no more than ten people in a single location (unless they can maintain a distance of six feet apart), social distancing restrictions, and all cleaning and other protective measures remain in place. This means that, if community associations do open their amenities like pools or clubhouses before the shelter-in-place rules are suspended (which is currently scheduled for April 30th, but may be extended), and before the local limitations and social distancing requirements are lifted, communities would need to closely regulate or limit amenity usage to ensure those guidelines are met.

In his April 23rd, 2020 Executive Order, Governor Kemp also ordered all live public swimming pools to remain closed, but the Order did not define which pools fall into the category of public pools. As community association swimming pools often are considered public for purposes of county swimming pool ordinances, it may be that the Governor intended them to be considered public under this Order. In light of that, communities should consider remaining closed until further guidance is received from local and state healthcare and infectious disease professionals. If your community decides to keep its amenities closed at this time, your community may consider sending an announcement to its residents that, even though the Governor has declared a partial reopening of some businesses, the community believes that it is safer to keep the amenities closed until further guidance is received from local and state health care and infectious disease professionals.

If we do open our amenities, should we implement the mitigation procedures in Governor Kemp's April 20th Executive Order?

We recognize that some communities may choose to open their amenities at this time, and our firm can work with you to create a customized reopening strategy to fit the reality and needs of your community. The following is a generalized overview of some of the mitigation practices and actions your community may consider when evaluating reopening. If you have any specific questions about reopening your community's amenities, we are here to assist you.

Prior to deciding when or whether to reopen amenities, communities should check with their insurance carriers to evaluate coverage. If your community decides to open its amenities, your community should implement the Governor's mitigation procedures to minimize the spread of COVID-19, in addition to following the social distancing restrictions and gathering restrictions in the Governor's executive orders, and recommendations by the CDC.

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If your community employs any personnel at its amenities, measures should be taken to monitor and prevent workers from spreading the virus, such as:

- ***screening personnel for symptoms of the illness;***
- ***requiring workers to wash their hands;***
- ***providing personal protective equipment to personnel as appropriate;***
- ***staggering shifts; and***
- ***taking other proactive measures specific to your community and amenities.***

protective equipment to personnel as appropriate, such as masks and/or gloves, staggering shifts, and taking other proactive measures specific to your community and amenities.

The following are some additional actions your community may consider taking prior to reopening at this time:

- **Enhanced Sanitation and Cleaning:** Associations should ensure machines, equipment, furniture, doorknobs, bathrooms, entry doors and gates, and other frequently touched surfaces are sanitized after each use. When possible, disinfectants and sanitation products should be made easily available for members to use, and members should be encouraged to sanitize after their usage of the amenities. The CDC provided a [guide to the best cleaning methods](#) for porous and non-porous surfaces and a [list of products](#) confirmed to help kill the virus. Associations may also consider reviewing vendor contracts with any amenity-servicing companies to add in requirements that those vendors agree to comply with all CDC-recommended cleaning guidelines, and to further follow the mitigation measures and guidelines set forth in the Governor's executive orders.
- **Limit or Restrict Amenity Usage:** The Governor's executive orders still requires social distancing measures to be upheld. Communities may consider doing a soft-open of certain amenities to restrict the number of residents able to use an amenity at any given time to uphold these restrictions and reminding residents to be mindful of social distancing requirements. Communities may also consider implementing a reservation system for amenities to limit use times.
- **Warning signs, disclaimers, and liability releases.** Even if all of the above measures are taken in your community, communities may also consider posting warning notices that are clearly displayed on open amenities that state the dangers in using the amenity and provide a disclaimer that the virus could still be present, that those diagnosed with COVID-19, had symptoms of COVID-19, or had contact with a person diagnosed with or showing symptoms of COVID-19 may not enter. That said, putting up signs disclaiming responsibility may not work to provide legal protection if communities are not complying with the necessary safety protocols for safely reopening. Communities may also consider requiring residents wishing to use the amenities to sign a waiver releasing the community of liability from use and agreeing to comply with all policies, including indemnification language if residents use the amenities and do not comply with social distancing guidelines.

Putting up signs disclaiming responsibility may not fully work to provide legal protection if communities are not complying with the necessary safety protocols for safely reopening.

Finally, communities should keep in mind that the Governor's stay-at-home mandate expires on April 30, 2020, and Georgia's state of emergency expires on May 13, 2020. Although certain businesses may be open, we believe that that communities should comply with the time periods discussed above *and* plan a protocol of significant sanitization and social distance enforcement at the areas when reopening does occur.

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