

# Birmingham Issues Citywide “Shelter in Place” Order

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By [M. Tae Phillips](#)



On March 24, 2020, upon the request and recommendation of Mayor Randall Woodfin, the Birmingham, Alabama City Council unanimously adopted a “shelter in place” order, “An Ordinance to Establish a ‘Shelter in Place’ Order for the City of Birmingham During the COVID-19 Public Health Emergency.”



On March 24, 2020, upon the request and recommendation of Mayor Randall Woodfin, the Birmingham, Alabama City Council unanimously adopted a “shelter in place” order, [“An Ordinance to Establish a ‘Shelter in Place’ Order for the City of Birmingham During the COVID-19 Public Health Emergency.”](#) The ordinance governs Birmingham residents and businesses located within the Birmingham city limits.

After its passage, the ordinance, became effective as of 12:00 p.m. CST on March 24, 2020, and remains in effect until 12:00 a.m. CST on April 3, 2020. The Birmingham City Council may extend the duration of the ordinance if it deems it necessary.

The ordinance applies to “all persons within the City of Birmingham” but not to other cities in the Birmingham metropolitan area such as Hoover, Homewood, Vestavia Hills, Pelham, and Gardendale. The ordinance states that during the effective period, “all persons shall remain in their places of residence and shall not be or remain in public places, except as further provided in this ordinance.”

The ordinance does not apply to the following individuals, activities, and industries:

- Public safety or emergency activities (e.g., law enforcement);
- First responders, public health workers, emergency management personnel, etc.;
- Employees or contractors of utilities, cable, or telecommunication companies, who are engaged in activities necessary to maintain such services;

- “Persons providing fire, police, sanitation, security, emergency, hospital, food delivery, or other merchandise or mail delivery services;”
- Persons seeking essential services or commodities—presumably meaning such things as medical care, medications, food, etc., except that persons who are “vulnerable to the most serious effects of the COVID-19 disease must remain at home unless seeking medical treatment;”
- “Persons supplying or restocking businesses in order to provide essential services or products”, such as groceries, fuel, pharmacies, or retailers offering emergency supplies, and movement of equipment necessary for protection of critical infrastructure or public safety;
- Persons employed by the federal, state, county, or city government or governmental agencies, subject to any directives from their respective employers; and
- Homeless individuals.

With respect to businesses, the ordinance expressly adopts the March 22, 2020, [Jefferson County, Alabama Department of Health order](#) ]: “All businesses within the City of Birmingham shall comply with the Order of the Jefferson County Chief Health Officer, as amended March 22, 2020, or as may be amended, relating to the closing of nonessential businesses.” The ordinance also notes that this includes businesses that are located within Shelby County, Alabama, but are technically within the Birmingham city limits.

### **Essential / Non-Essential Businesses and Services**

The Jefferson County Department of Health order referenced in the ordinance identified a list of “nonessential businesses and services.” Without expressly saying so, the Jefferson County Department of Health order appeared to take the position that unless a business is deemed to be “nonessential,” it is in turn considered to be “essential” for purposes of being allowed to remain open. This appears to be the case even though the Jefferson County Department of Health Order did provide some examples of “essential” businesses, such as pharmacies, grocery stores, and gas stations. In subsequent press conferences, Jefferson County Department of Health representatives have implied that the order’s intent was to close businesses where the general public regularly congregate, rather than places of employment such as manufacturing facilities and office buildings.

In other words, unless a business is listed as “non-essential” by the Jefferson County Department of Health order—meaning that it must be closed—then the business may remain open. During his initial press conference discussing and recommending the ordinance, Mayor Woodfin stated that unless a business is on the Jefferson County Department of Health’s “non-essential” list, then it could remain open.

Thus, the following businesses would be considered “non-essential” under the ordinance, and must close.

- Entertainment venues and businesses (e.g., night clubs, bowling alleys, indoor children's play areas, etc.);
- Recreational facilities (e.g., gyms, swimming pools, spas, yoga facilities, etc.);
- Barber shops and hair salons;
- Certain retail stores, including furniture, home furnishing, clothing, shoes, jewelry, luggage, leather goods, department, sporting goods, hobby, book, music, and floral stores;
- Nail salons and spas;
- Concert venues and performing arts centers;
- Theaters;
- Tourist attractions;
- Body art and tattoo service facilities;
- Tanning salons;
- Massage therapy establishments;
- Museums, art galleries, and historical sites; and
- Social clubs

A plain reading of the Birmingham ordinance and the Jefferson County Department of Health order appears to allow all other businesses and employers to remain open, as long as such businesses and employers operate under "social distancing" guidelines as outlined by the Centers for Disease Control and Prevention. Mayor Woodfin's comments during his press conference appeared to confirm that interpretation.

### **Social Distancing, Gatherings, and Travel**

The ordinance also closely mirrors the Jefferson County Department of Health order in prohibiting "all public and private gatherings of 10 or more persons or of any size where a consistent distance of at least six feet cannot be maintained." Again, while a bit vague, it appears as though the intent of the ordinance is for it not to apply to places of employment except for "non-essential businesses," which must be closed.

The ordinance allows individuals to leave their residences only in certain circumstances. While somewhat confusing, the ordinance appears to allow for travel to and from work, and an individual's presence in the workplace, assuming that an individual is going to work for a business that is not otherwise closed due to it being a "non-essential business" under the Jefferson County Department of Health Order.

For example, the ordinance allows for travel "to or from a place of business which provides essential services by owners and employees of such business." The ordinance also allows individuals to leave their residences "to perform work providing essential products and services or to otherwise carry out activities specifically permitted in this ordinance." Finally, the ordinance allows for individuals to leave their residences to provide "essential goods and services," including "those businesses and activities deemed essential by Order of the [Jefferson County] Chief Health Officer."

The ordinance also implies that non-Birmingham residents may travel into the city if going to a place of employment that is allowed to remain open, and that Birmingham residents may leave Birmingham to travel to workplaces outside of the city. The ordinance also appears to allow Birmingham residents to travel to places of employment located outside of Jefferson County, Alabama. While these exact scenarios are not expressly laid out in the ordinance, a practical interpretation of the ordinance is that it is meant to restrict travel to workplaces that are allowed to remain open, whether in Birmingham, Jefferson County, or other areas.

The ordinance authorizes punishment up to and including a civil fine of \$500 or imprisonment of up to six months for failure to comply. Notwithstanding, the ordinance also provides an initial 24-hour grace period for “employees and business owners to access their workplaces to gather belongings or address other administrative items, so long as social distancing requirements are followed”.

Notably, after Mayor Woodbin proposed the ordinance, Alabama Governor Kay Ivey stated that she had no current plans to issue a similar statewide “shelter in place” order.

Ogletree Deakins will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm’s [Coronavirus \(COVID-19\) Resource Center](#) as additional information becomes available. Critical information for employers is also available via the firm’s [webinar programs](#).

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