

COVID-19 Guidance 20-16-1 April 11, 2020

Essential Activities and Essential Functions

This guidance is offered by the Kansas Division of Emergency Management (“KDEM”) under the direction of General David A. Weishaar as KDEM chief administrative officer and Adjutant General of the State of Kansas. Kansas law authorizes the Adjutant General, under direction of the Governor, to administer any executive orders issued pursuant to the Governor’s authority under the Kansas Emergency Management Act. K.S.A. 48-925(d). This guidance is offered by KDEM at the direction of the Adjutant General and for the benefit of emergency managers, health officers, law enforcement, affected businesses, and individual Kansas citizens.

Executive Order 20-16, “Establishing a statewide ‘stay-home’ order in conjunction with the Kansas Essential Function Framework for COVID-19 response efforts,” directs Kansans stay in their homes to slow the spread of COVID-19 and allows Kansans to leave their homes only to perform an “essential activity.” This guidance clarifies whether and under what conditions certain activities are essential.

1. **Arts & Crafts Stores.** Obtaining products from arts and crafts or fabric stores is not an essential activity.
 - a. Additionally, arts and crafts or fabric stores do not generally perform essential functions under the Kansas Essential Functions Framework (“KEFF”).
2. **Clothing or Footwear.** Obtaining clothing or footwear is an essential activity only if the clothing or footwear is needed to perform an essential function identified in the Kansas Essential Function Framework (“KEFF”).
3. **Veterinary Care.** Seeking medical care includes seeking veterinary care. Veterinary care does not include pet grooming services. If a business offers both veterinary care and grooming services, employees may only leave their homes to the extent they are performing veterinary services.
4. **Outdoor Activities.**
 - a. “Engaging in an outdoor activity” does not include:

- i. Business activities, sidewalk sales, festivals, fairs, or other outdoor assemblies or conventions
 - ii. Joyriding, cruising, or parades unless all occupants of the vehicle reside in the same residence and vehicles do not stop and congregate
 - iii. Gyms or fitness centers
 - b. “Engaging in an outdoor activity” includes:
 - i. “No touch” golf, including at driving ranges, as long as the following conditions are met:
 - 1. Clubhouses must be closed and sales for driving ranges, green fees, or cart rental must be conducted online or outside with points of sale that do not require physical contact;
 - 2. Golfers must not touch ball washers, pins, holes, or other items or surfaces that would otherwise be subject to repeat touching;
 - 3. Golfers must maintain a six-foot distance, limit groups to 10 or fewer, and not share golf carts; and
 - 4. Golf courses must implement other reasonable measures as necessary to ensure social distancing and must sanitize any equipment such as golf carts between uses.
- 5. **Essential Functions.** “Performing an essential activity” includes leaving one’s home to perform an essential function identified in the Kansas Essential Functions Framework (“KEFF”). The KEFF was developed with reference guidance regarding critical functions developed by the U.S. Department of Homeland Security and the Cybersecurity and Infrastructure Security Agency. Additionally, even when individuals leave their homes to perform an essential function, under Executive Order 20-16 they “must—to the extent possible without significant disruption to essential functions—follow appropriate safety protocols, including maintaining a six-foot distance between individuals and following other directives regarding social distancing, hygiene, and other efforts to slow the spread of COVID-19.” The following applies to or clarifies essential functions under the KEFF and any safety protocols required below are hereby determined not to significantly disrupt the identified essential functions:

- a. **300.9.c** (“Perform the essential operations of State, county, and municipal governments”) - Local governments may decide which of their functions are essential; no State approval or guidance is needed.
- b. **300.12.b** (“Perform or attend religious or faith-based services or activities”) – Religious or faith-based services or activities must comply with KDEM guidance issued on April 3, 2020, which is appended to, and incorporated in, this guidance. Additionally, the provisions of Executive Order 20-18 apply.
- c. **300.15.a** (“Perform accounting services”) – Accounting services as used in this subcategory includes all accounting services for either businesses or individuals
- d. **300.20** (“Provide Medical Care and Services, Including Mortuary Services”) – Providing medical care and services includes conducting blood drives.
- e. **400.5** (“Produce and Provide Agricultural Products and Services”) – Providing agricultural products and services includes flower shops serving customers through delivery or curbside service only.
- f. **400.6.b** (“Prepare or serve meals for takeout or delivery”) – Preparation or service of meals includes preparation or service of beverages. Additionally, Executive Order 20-14 exempts restaurants and bars from its mass gathering prohibition but does not allow self-service of food or drinks. Accordingly, operating self-service beverage stations for coffee, soft drinks, or other beverages is not an essential function and beverages may be sold for takeout or delivery only and not through self-service beverage stations.
 - i. Operating self-serve water refill stations are similarly not an essential function and, consistent with this guidance regarding self-service beverage stations, cannot be operated for self-service.
- g. **400.9** (“Provide Housing”)
 - i. Providing housing includes campgrounds, RV parks, and temporary housing facilities.
 - ii. Providing housing includes operating commercial or residential landscaping or lawn maintenance businesses as long as employees maintain a 6-foot distance from other employees and customers (including no employee carpooling).

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This guidance may be revised as appropriate.

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GUIDANCE FOR THE CONDUCT OF CHURCH SERVICES AND OPERATIONS DURING THE COVID-19 PANDEMIC

Executive Order 20-16 (“EO 20-16”) states that conducting or attending religious services is an essential function and cannot be prohibited by local orders. However, the conduct of any essential function—including performing or attending a religious service—must comply with the provisions of EO 20-16, subparagraph 9(c). That subparagraph states:

All individuals performing essential functions authorized by this order must—to the extent possible without significant disruption to essential functions—use telework capabilities to avoid meeting in person; and any essential functions being performed on-site or in-person must—to the extent possible without significant disruption to essential functions—follow appropriate safety protocols, including maintaining a six-foot distance between individuals and following other directives regarding social distancing, hygiene, and other efforts to slow the spread of COVID-19.

Accordingly, this guidance is offered to clarify the obligations of clergy, church staff, and churchgoers under subparagraph 9(c). In particular, this guidance clarifies what the phrases “appropriate safety protocols” and “other directives regarding social distancing, hygiene, and other efforts to slow the spread of COVID-19” include in the context of church operations.

Under Executive Order 20-16, churches may continue services if they comply with the following provisions:

1. Churches should use online, radio, and other telecommunications tools wherever possible to conduct services or other church operations without congregating in-person.
2. If a church is unable to use online, radio, or other telecommunications tools, a church conducting in-person services or operations must comply with the following requirements, which by this guidance are hereby determined not to significantly disrupt church services:
 - a. Maintain a six-foot distance between individuals;
 - b. Disinfect all doorknobs and other commonly touched surfaces both before a service begins and again before the service ends; and
 - c. Refrain from passing offering plates, communion trays, or other implements that may be repeatedly touched.

3. Additionally, churches must comply with the provisions of Executive Order 20-18 and any local “mass gathering” prohibition that is more restrictive than Executive Order 20-18.
 - a. Executive Order 20-18 supersedes less restrictive local “mass gathering” executive orders but does not supersede more restrictive local “mass gathering” orders. The provisions of any local orders that impose more restrictive “mass gathering” prohibitions are still in effect and must be followed by churches unless the local order exempts churches from its prohibitions.