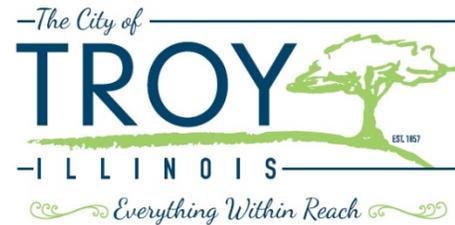


May 13, 2020

For Immediate Release



**Statement from Troy Mayor Allen Adomite on Madison County Reopening Plan:**

*"I join my colleagues in the City of Collinsville and the Villages of Maryville and East Alton in urging citizens to continue complying with the Governor's Executive Orders, even though the Madison County Board of Health has voted to adopt a different plan. As a non-home-rule municipality, the City of Troy is subject to the powers and authority granted under the Illinois State Statutes. Nothing has changed today regarding the State's administration of public health and, moreover, any business not in compliance with the Governor's Executive Order should take extreme caution to understand the immense liability and regulatory considerations of deviating from those Orders."*

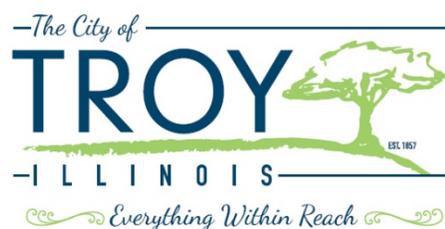
*"In the past 60 days, the City has been working in concert with the Madison County Health Department, the Illinois Department of Public Health, the Illinois Municipal League, and our local Troy-Maryville-St. Jacob-Marine Chamber of Commerce to help support our small businesses during this unprecedented time. While we understand the immense financial and social impact this novel coronavirus and the subsequent stay-at-home order is having on our community, the City hopes that this same spirit of collaboration will provide the foundation for reopening the economy when the time is right."*

*"At this time, it would appear that there is no legal foundation in Madison County's resolution and, therefore, any business deviating from the Executive Orders is assuming their own legal, liability and regulatory risks."*

For additional information regarding this release, contact Mayor Allen Adomite at 618-667-9924 x1, or [mayor@troyil.us](mailto:mayor@troyil.us).

May 14, 2020

For Immediate Release



**(UPDATED) Statement from Troy Mayor Allen Adomite on Madison County Reopening Plan:**

*"I have received both favorable and unfavorable feedback regarding the City of Troy's position on continuing to ask citizens for compliance with the Governor's Executive Orders. As Mayor, I am tasked with the job of protecting the City, its citizens, and the taxpayer-provided resources that keep our workers employed, our services administered and our community safe."*

*"As such, I feel the community needs to be aware of the letter the City received from the attorney representing its liability insurer, ICRMT, which is the company that insures the City and protects the approximately \$9 million in funds the citizens have entrusted to support City services."*

*"Specifically, ICRMT has advised the City of Troy of the following (see attached letter):*

*We are aware of no provision in the Illinois Constitution or IEMAA which would allow an Illinois public entity to enact a Covid-19 reopening plan which is contrary to that issued by the Governor. If a public entity chooses not to enforce all or part of the actual restrictions ultimately adopted by the Governor's plan through the Governor's Executive Order, its liability for doing so is unclear. [...]*

*The ICRMT understands and appreciates each member's discretionary decisions regarding its manner of enforcement of the Governor's Executive Orders related to Covid-19 by its officials and employees. However, **each member needs to consider the potential risks it assumes in the event that it enacts, adopts, affirms or actively or implicitly promotes a reopening plan or set of reopening guidelines that may be in conflict with the Governor's then current Executive Order.** General Exclusion 8(c) of the ICRMT liability coverage form excludes coverage for the following claims:*

*Claims arising from:*

*(c) Acts or omissions by an Insured who knowingly violated a rule, regulation, ordinance, or law of the Insured or the State of Illinois or of the United States;*

***ICRMT members should be aware that claims arising from any such acts or omissions in connection with their decisions to enact, adopt, affirm or actively or implicitly promote a less restrictive reopening plan than that contained in the Governor's Executive Order then in effect may jeopardize their ICRMT coverage.***

*"I, personally, do not fully agree with every provision in the Governor's Executive Orders. However, I am not willing to break the law, leave the City uninsured, and put at risk all of the tax dollars that support the water, sewer, police protection, and a host of other important and vital services. I urge citizens and businesses to continue consulting their own insurers as they make future decisions about their operations."*

For additional information regarding this release, contact Mayor Allen Adomite at 618-667-9924 x1, or [mayor@troyl.us](mailto:mayor@troyl.us).

# OKGC

O'HALLORAN KOSOFF  
GEITNER & COOK, LLC

ATTORNEYS AT LAW

## MEMORANDUM ON THE AUTHORITY OF ILLINOIS PUBLIC ENTITIES TO ENACT RE-OPENING PLANS LESS RESTRICTIVE THAN THE GOVERNOR'S IN CONNECTION WITH COVID-19 AND POTENTIAL INSURANCE COVERAGE ISSUE ARISING AS A RESULT

To: ICRMT Members

From: O'Halloran Kosoff Geitner & Cook, LLC  
Clifford Kosoff ([ckosoff@okgc.com](mailto:ckosoff@okgc.com))

Date: May 12, 2020

Several ICRMT members have inquired whether authority exists under Illinois law to allow them to enact reopening plans which are less restrictive than the plan recently issued by Governor Pritzker. We are not currently aware of any such authority permitting this. Further a member may jeopardize coverage by enacting a less restrictive reopening plan.

### I. LACK OF AUTHORITY TO ENACT LESS RESTRICTIVE REOPENING PLANS.

On May 7, 2020, the Governor laid out a five phase regional plan for reopening Illinois. The plan divides the State into four regions: northeast Illinois, north central Illinois, central Illinois and southern Illinois, each of which could enter different phases of reopening at different times under the plan. The phases and reopenings will depend on the regions meeting certain metrics, which at this point are unclear. It is expected that the ultimate plan adopted by the Governor will be subject to an Executive Order pursuant to the series of Executive Orders in Response to Covid-19 issued by the Governor ("Governor's Executive Orders").

If an ICRMT public entity member only intends to present its reopening plan to the Governor as a means of persuading the Governor to enact less restrictive measures against the member, then an analysis of whether the member's plan is contrary to State law is not needed. (Certainly, a public entity can offer input to the Governor as to what should be considered when implementing his plan to reopen the State. In doing so, it would be a good idea for a public entity to consult with its local health department and hospitals to ensure that the suggestions offered make sense in the context of the number of cases being reported locally.) However, if a public entity intends to enact its plan by ordinance or otherwise then its authority to do so under Illinois law is certainly an issue.

---

*This memorandum was prepared by O'Halloran Kosoff Geitner & Cook, LLC on May 12, 2020 for ICRMT general informational purposes only. The discussion herein may be impacted by subsequent federal or state statutes, rules, regulations or guidelines as well as court decisions. It is not intended to provide legal advice to any public entity. Member entities and their officials and employees should consult their State's Attorney, Corporation Counsel, or other appropriate legal advisor on the subject matter of this memorandum before taking or refraining from taking any action or adopting any plan or policy.*

Our initial thought is that if a public entity tries to implement restrictions which end up being less restrictive than those ultimately imposed by the Governor's plan, a public entity adopting that plan would likely face a challenge asserting that the public entity does not have the lawful authority to enact such restrictions contrary to those contained in the then current Governor's Executive Order. The authority of the Governor to issue his Executive Orders is primarily based on the Illinois Constitution and Sections 7(1), 7(2), 7(3), 7(8), 7(9), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305 ("IEMAA"). We are aware of no provision in the Illinois Constitution or IEMAA which would allow an Illinois public entity to enact a Covid-19 reopening plan which is contrary to that issued by the Governor. If a public entity chooses not to enforce all or part of the actual restrictions ultimately adopted by the Governor's plan through the Governor's Executive Order, its liability for doing so is unclear. Several immunities under the Illinois Tort Immunity Act (745 ILCS 10/1-101 et seq.) and Constitutional defenses may apply. But we do question whether any public entity has the lawful authority to enact restrictions that may contradict the Governor's Plan as ultimately implemented through Executive Order pursuant to the IEMAA. (It must be noted that while the validity of the Governor's Executive Orders is currently being subject to legal challenge, this memorandum accepts those orders to be valid and legal unless and until a court with ultimate authority declares that they are not.)

## II. POTENTIAL ICRMT INSURANCE COVERAGE ISSUE CREATED BY A MEMBER'S AFFIRMATIVE ENACTMENT, ADOPTION OR PROMOTION OF A LESS RESTRICTIVE REOPENING PLAN.

The ICRMT understands and appreciates each member's discretionary decisions regarding its manner of enforcement of the Governor's Executive Orders related to Covid-19 by its officials and employees. However, each member needs to consider the potential risks it assumes in the event that it **enacts, adopts, affirms or actively or implicitly promotes** a reopening plan or set of reopening guidelines that may be in conflict with the Governor's then current Executive Order. General Exclusion 8(c) of the ICRMT liability coverage form excludes coverage for the following claims:

**Claims** arising from:

- (c) Acts or omissions by an **Insured** who knowingly violated a rule, regulation, ordinance, or law of the **Insured** or the State of Illinois or of the United States;

ICRMT members should be aware that claims arising from any such acts or omissions in connection with their decisions to enact, adopt, affirm or actively or implicitly promote a less restrictive reopening plan than that contained in the Governor's Executive Order then in effect may jeopardize their ICRMT coverage.