

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRUMP, INC. d/b/a ONYX HOUSTON,

Plaintiff,

v.

THE CITY OF HOUSTON,
THE CITY OF HOUSTON POLICE
DEPARTMENT, THE CITY OF
HOUSTON FIRE DEPARTMENT,
UNNAMED POLICE OFFICERS AND
FIRE DEPARTMENT OFFICERS, in their
individual and official capacities,

Defendants.

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CIVIL ACTION NO. _____

PLAINTIFF’S VERIFIED ORIGINAL COMPLAINT AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND
PERMANENT INJUNCTIVE RELIEF

Plaintiff Trump, Inc. d/b/a Onyx Houston (“Onyx Houston”) files this Verified Original
Petition and Application for Temporary Restraining Order, Preliminary Injunction, and
Permanent Injunctive Relief (the “Complaint”) against the City of Houston, the City of Houston
Police Department, the City of Houston Fire Department, and Unnamed Police and Fire
Department Officers in their individual and official capacities.

NATURE OF SUIT

1. This is an action for money damages, declaratory judgment, and injunctive relief brought
pursuant to 42 U.S.C. § 1983 for violations of the First and Fourth Amendment protections
against unconstitutional searches and seizures, as well as violating Plaintiff’s Substantive Due
Process rights and rights to free speech.

PARTIES

2. Plaintiff Trump, Inc. d/b/a Onyx Houston is a Texas Corporation doing business in Harris County, Texas.
3. Defendant City of Houston is a municipality organized under the laws and the Constitution of Texas. It may be served through the City of Houston City Secretary, Pat J. Daniel, 900 Bagby Street, Room P101, Houston, Texas 77002.
4. Defendant City of Houston Police Department is an agency of the City of Houston.
5. Defendant City of Houston Fire Department is an agency of the City of Houston.
6. Defendants unnamed Houston Police Department Officers and Houston Fire Department Officers may be served wherever they may be found.

JURISDICTION AND VENUE

7. This Court has original jurisdiction pursuant to the following statutory and common law claims:
 - (a) Defendants' acts, omissions, and wrongful conduct are violations of the First and Fourth Amendments of the United States Constitution;
 - (b) Defendants' acts, omissions, and wrongful conduct violate Plaintiff's civil rights and are actionable pursuant to 42 U.S.C. § 1983.
8. Under 28 U.S.C. § 1331, this Court has original jurisdiction over all civil matters arising under the laws of the United States.
9. Plaintiff is a business incorporated and doing business in Harris County and the State of Texas. The principal activities complained of occurred within or were originated from Harris County, Texas. Therefore, venue is proper in this Court.

FACTS

10. On April 27, 2020, Governor Greg Abbott issued Executive Order GA 18 relating to the expanded reopening of services as part of the safe strategic plan to open Texas in response to the

COVID-19 disaster. That order provided that as of 12:01 AM on Friday May 1, 2020 certain “Reopened Services,” would be allowed to operate even if they were not “Essential Services.” (Exhibit A, Executive Order, p. 3).

11. Those Reopened Services include “dine-in restaurants for restaurants that operate at up to 25% of the total listed occupancy of the restaurant” but only “Restaurants that had less than 51% of their gross receipts from the sale of alcoholic beverages and are therefore not required to post the 51% sign required by Texas law as determined by the Texas Alcoholic Beverage Commission.” In other words, traditional bars with a majority of their revenue generated from the sale of alcohol are not a “Reopened Service.”

12. Plaintiff operates a restaurant and gentlemen’s club on Bering Street in southwest central Houston. It is unique in that it has always generated less than 50% of its revenue from alcoholic beverage sales. It is not required to post the 51% sign described in Governor Abbott’s order and required by the Texas Alcoholic Beverage Commission (the “Red Sign”). The “Red Sign,” among other things, prohibits patrons from entering the premises with a firearm under all circumstances. In contrast, a business which has a liquor permit but generates less than 50% of its revenue from the sale of alcoholic beverages is required to post a sign providing “The unlicensed possession of a weapon on these premises is a felony with a maximum penalty of 10 years imprisonment and a fine not to exceed \$10,000” (the “Blue Sign”).

13. Onyx Houston generates less than 50% of its revenue from the sale of alcoholic beverages and is required to post the Blue Sign. Onyx Houston posts the Blue Sign on the wall in the lobby of Onyx Houston. (Exhibit B, Picture of Blue Sign Posted in Onyx Houston Lobby).

14. Pursuant to Governor Abbott’s Order, Onyx Houston made plans and advertised that it would be opening at 12:01 AM on Friday May 1, 2020. (Exhibit C, Onyx Houston April 29,

2020 Advertisement). The advertisement stated that Onyx Houston would be opening as a “restaurant with entertainment” offering a select food menu, and that it will follow state guidelines and health recommendations of social distancing.

15. At 12:01 AM Friday May 1, 2020, Onyx Houston opened its doors to the public. Pursuant to Governor Abbott's Order, Onyx Houston followed all health protocols recommended by the Texas Department of State Health Services (“DSHS”). This included providing sanitation stations with hand sanitizer, requiring all employees and staff to wear approved masks, maintaining proper social distancing, and only allowing up to seventy five patrons, despite have a Fire Code capacity of nearly 400.¹ Additionally, the Texas Health and Human Services checklist for restaurant customers was posted in several places throughout the business including on the exterior of the building, in the front entryway, the main floor, and the restrooms. (Exhibit D, THHS Restaurant Checklist). Dancers at Onyx Houston were not offering lap dances but were merely providing entertainment from a safe distance.

16. In all ways, Onyx Houston both qualified as a Reopened Service and complied with the requirements and recommendations of Governor Abbot’s Order. Nonetheless, before Onyx Houston had been open even an hour, dozens of Houston Police Department Officers and Fire Department officials raided the business. Onyx management fully cooperated with law enforcement, turned off the music, and provided law enforcement with access to all applicable permits required for the Onyx Houston to be in business.

17. After threatening to shut Onyx down as quote “nonessential,” but lacking a legal basis to do so, the officers informed the owner that the business could remain open so long as it operated using safe distancing and the other health protocols of the DSHS. This decision was made by the

¹ As it would turn out, there were never more than twenty patrons at Onyx Houston at any one time.

Houston Police Officers after about an hour and a half of investigation. Rather than leaving after that decision was made, the police and fire officials would not leave and instead loitered in the parking lot of Onyx from the hours of approximately 12:40 AM until 4:00 AM. The patrons of the establishment had to walk through crowds of police officers to get to the front door and more in the lobby:



(Exhibit E, Photograph of Officers in the Lobby). To say this had a chilling effect on would-be patrons is a gross understatement.

18. After approximately 3 hours of law enforcement occupation, Defendants had a change of heart and decided to shut the business down on threat of arresting the owner and charging him

with a Class B misdemeanor. The law enforcement officers could not and did not specify what crime he allegedly committed, but did indicate arrests would result from continued operations.

19. The reality is, Onyx Houston is a Reopened Service within the plain language of Governor Abbott's Order, and it was operating lawfully when the Defendants threatened to arrest the owner and shut down the business if it continued operations. Onyx Houston has as much of a right to open as any other restaurant in the State of Texas and the Defendants' actions were completely unlawful.

CAUSES OF ACTION

20. 42 U.S.C. § 1983 provides that a person who, acting under color of law, subjects or causes to be subjected any United States citizen to the deprivation of any rights, privileges, or immunities secured by the United States Constitution, shall be liable to the party injured in an action at law.

21. At all relevant times and regarding all relevant actions of the Defendants as alleged in this Complaint, the Defendants were acting in their official capacities, under color of state law, and pursuant to the official policies, practices and customs of the governmental agencies or entities which the Defendants respectively represent.

22. Defendants, acting under color of law, have subjected and caused Plaintiffs to be subjected to the deprivation of its rights, privileges, or immunities as secured by the First, Fourth and Fourteenth Amendments.

23. Specifically, Defendants have violated Plaintiffs' civil rights by intimidating its patrons and employees, by shutting down the business without legal basis, and by threatening its representatives with arrest unlawfully and without authority.

Violation of the First Amendment

24. The First Amendment guarantees the right to free expression and association. U.S. CONST. AMEND. I.

25. The business offers protected expression, *i.e.*, erotic dancing. *City of Erie v. Pap's A.M.*, 529 U.S. 277, 289 (2000). Implicit in the right to engage in First Amendment-protected activities is “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984).

26. “When public officials are given the power to deny use of a forum in advance of actual expression ... the danger of prior restraints exists.” *Collins v. Ainsworth*, 382 F.3d 529, 539 (5th Cir. 2004). Expression loses its meaning with no audience. Deterring and limiting patrons’ right of access to protected expression naturally and necessarily impinges upon the rights of those performing the protected expression and those seeking to engage in such communicative activities. *Virginia v. American Booksellers Ass’n, Inc.*, 484 U.S. 383, 392-94 (1988) (observing that vendors of adult entertainment have standing to assert First Amendment rights of their patrons generally).

27. The pervasive presence of uniformed officers and patrol vehicles on the business’s property, in full view of patrons and others, operates to send a clear message that their mere presence at the business will subject them to temporary detentions, police investigation, and potentially criminal prosecution. *See, e.g., Bee See Books, Inc. v. Leary*, 291 F.Supp. 622 (S.D.N.Y.1968).

Violation of the Fourth Amendment

28. The Fourth Amendment guarantees that the people shall be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST. AMEND. IV. The Fourth Amendment guarantees to citizens the right to be free from arbitrary invasions at the unfettered discretion of officers in the field.

29. Onyx Houston further asserts Defendants’ violations of the Fourth and Fourteenth Amendment on behalf of its patrons, guests, workers and visitors because special circumstances exist that preclude third-parties from effectively vindicating their rights. Onyx Houston has a sufficiently concrete interest in the outcome because it suffers economic injury through constriction of its market or function. The patrons or would be patrons of Onyx Houston who were faced with the chilling effect of having to walk through a crowd of dozens of armed law enforcement officers to reach the business suffered the deprivation of their rights. *See Powers v. Ohio*, 499 U.S. 400 (1991); *Craig v. Boren*, 429 U.S. 190 (1976) (“[V]endors and those in like positions have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function”).

Due Process

30. Defendants’ have no statutory basis (under the Texas Penal Code or otherwise) to threaten arrest of Onyx Houston representatives and employees or close the Onyx Houston’s operations (pursuant to Governor Abbott’s order or otherwise).

31. These actions are arbitrary, capricious, and shock the conscience. These actions are also procedurally deficient and an arbitrary taking and violate Plaintiffs’ right to due process. U.S. CONST. AMEND. IV.

DAMAGES

32. As a result of Defendants' actions, Onyx Houston has been damaged in an amount that exceeds this Court's minimal jurisdictional limit. Accordingly, Onyx Houston requests all actual damages resulting from, or proximately caused by Defendants' actions as described in this Complaint, including attorneys' fees incurred to mitigate damages caused by Defendants' actions. Onyx Houston also requests all consequential, out-of-pocket or reliance, lost profits, restitution, goodwill or business reputation, and loss-of-use damages. Onyx Houston also requests pre-judgment and post-judgment interest on any award of damages along with its costs of court.

ATTORNEYS' FEES

33. Onyx Houston requests payment of its reasonable attorneys' fees and costs. Plaintiffs are entitled to recover reasonable and necessary attorneys' fees and expert fees pursuant to 42 U.S.C. § 1988(b) and (c).

APPLICATION FOR INJUNCTIVE RELIEF

34. Onyx Houston seeks a temporary and permanent injunction order prohibiting Defendants as follows:

- a. Defendants are prohibited from arresting any employee or representative of Onyx Houston for conducting Operations;
- b. Defendants are prohibited from maintaining a physical presence at the Onyx Houston or within 400 meters of the Onyx premises for longer than thirty minutes unless investigating criminal activity with probable cause;
- c. Defendants are prohibited from closing or attempting to close Onyx under color of Governor Greg Abbott's Executive Order GA 18;
- d. Defendants shall produce all documents and communications relating to investigations of Onyx Houston from the time period of April 27, 2020 through May 15, 2020, and shall produce them five days before the hearing on Plaintiff's temporary injunction; and

- e. Defendants shall produce a privilege log and articulate the legal basis for any privilege they assert for all documents withheld from subsection d. above, and shall produce it five days before the hearing on Plaintiff's temporary injunction.

35. Onyx Houston is entitled to injunctive relief because it has (1) a substantial likelihood of success on the merits; (2) Defendants' conduct presents a substantial threat that it will suffer irreparable injury absent the injunction; (3) this threatened injury outweighs any harm the injunction might cause the Defendants; and (4) the injunction will not impair the public interest.

36. Absent an injunction, Plaintiffs will suffer irreparable injury. Businesses have a right to transact lawful business. The loss of constitutional freedoms for "even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

37. Monetary relief is insufficient as a matter of law because the harm Plaintiff will suffer between now and trial if not allowed to operate will result in the loss of business.

38. An injunction will not significantly burden any of the Defendants' interests because nothing in the injunction in any way inhibits Defendants' legal law enforcement function. Indeed, the public interest favors the issuance of injunctive relief to protect the constitutional rights at stake in this case.

CONDITIONS PRECEDENT

All conditions precedent have been performed or have occurred.

PRAYER

WHEREFORE, Onyx Houston respectfully request judgment be entered in their favor awarding;

- a. Monetary damages;
- b. Injunctive relief;
- c. Prejudgment and post-judgment interest as allowed by law;
- d. Attorneys' fees;

- e. Expert fees;
- f. Costs of suit; and
- g. All other relief, in law and in equity, to which plaintiffs may be entitled.

Respectfully submitted,

/s/ Casey T. Wallace

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Federal I.D. No. 20117
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Plaintiff,

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THE CITY OF HOUSTON,
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CIVIL ACTION NO. _____

DECLARATION OF JOSHUA BROOKS

1. My name is Joshua Brooks. I am over the age of twenty-one (21) years and am fully competent to make this affidavit. All statements contained in this declaration are true and correct and are based on my personal knowledge.

2. I am an employee of Trump, Inc. d/b/a Onyx Houston. I have read the foregoing Petition and Application for Temporary and Permanent Injunctive Relief and every factual statement in it is true and correct.

3. I, Joshua Brooks, declare under penalty of perjury that the above is true and correct and based on my personal knowledge. I am executing this declaration within the territorial limits of the United States of America.

EXECUTED on May 1, 2020.



Joshua Brooks

EXHIBIT A



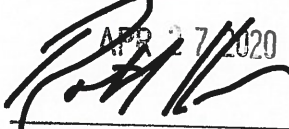
GOVERNOR GREG ABBOTT

April 27, 2020

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SECRETARY OF STATE
1 PM O'CLOCK

APR 27 2020

The Honorable Ruth R. Hughs
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701


Secretary of State

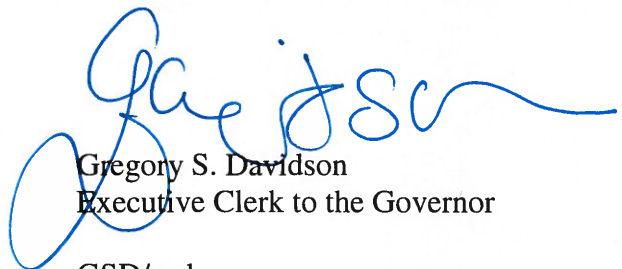
Dear Secretary Hughs:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

Executive Order No. GA-18 relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster.

The original executive order is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

Executive Order

BY THE
GOVERNOR OF THE STATE OF TEXAS

Executive Department
Austin, Texas
April 27, 2020

EXECUTIVE ORDER
GA 18

Relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, on April 12, 2020, I issued a proclamation renewing the disaster declaration for all counties in Texas; and

WHEREAS, the Commissioner of the Texas Department of State Health Services (DSHS), Dr. John Hellerstedt, has determined that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code, and renewed that determination on April 17, 2020; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Order GA-08 on March 19, 2020, mandating certain obligations for Texans in accordance with the President's Coronavirus Guidelines for America, as promulgated by President Donald J. Trump and the Centers for Disease Control and Prevention (CDC) on March 16, 2020, which called upon Americans to take actions to slow the spread of COVID-19 for 15 days; and

WHEREAS, shortly before Executive Order GA-08 expired, I issued Executive Order GA-14 on March 31, 2020, based on the President's announcement that the restrictive social-distancing Guidelines should extend through April 30, 2020, in light of advice from Dr. Anthony Fauci and Dr. Deborah Birx, and also based on guidance by DSHS Commissioner Dr. Hellerstedt and Dr. Birx that the spread of COVID-19 can be reduced by minimizing social gatherings; and

WHEREAS, Executive Order GA-14 superseded Executive Order GA-08 and expanded the social-distancing restrictions and other obligations for Texans that are aimed at slowing the spread of COVID-19, including by limiting social gatherings and in-person contact with people (other than those in the same household) to providing or obtaining "essential services," and by expressly adopting federal guidance that provides a list of critical-infrastructure sectors, workers, and functions that should continue as "essential services" during the COVID-19 response; and

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April 27, 2020

Executive Order GA-18
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WHEREAS, after more than two weeks of having in effect the heightened restrictions like those required by Executive Order GA-14, which have saved lives, it was clear that the disease still presented a serious threat across Texas that could persist in certain areas, but also that COVID-19 had wrought havoc on many Texas businesses and workers affected by the restrictions that were necessary to protect human life; and

WHEREAS, on April 17, 2020, I therefore issued Executive Order GA-17, creating the Governor's Strike Force to Open Texas to study and make recommendations on safely and strategically restarting and revitalizing all aspects of the Lone Star State—work, school, entertainment, and culture; and

WHEREAS, also on April 17, 2020, I issued Executive Order GA-16 to replace Executive Order GA-14, and while Executive Order GA-16 generally continued through April 30, 2020, the same social-distancing restrictions and other obligations for Texans according to federal guidelines, it offered a safe, strategic first step to Open Texas, including permitting retail pick-up and delivery services; and

WHEREAS, Executive Order GA-16 is set to expire at 11:59 p.m. on April 30, 2020; and

WHEREAS, Texas must continue to protect lives while restoring livelihoods, both of which can be achieved with the expert advice of medical professionals and business leaders; and

WHEREAS, the “governor is responsible for meeting ... the dangers to the state and people presented by disasters” under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the “governor may issue executive orders ... hav[ing] the force and effect of law;” and

WHEREAS, under Section 418.016(a), the “governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance with the provisions ... would in any way prevent, hinder, or delay necessary action in coping with a disaster;” and

WHEREAS, under Section 418.017(a), the “governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster;” and

WHEREAS, under Section 418.018(c), the “governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;” and

WHEREAS, under Section 418.173, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable by a fine not to exceed \$1,000, confinement in jail for a term not to exceed 180 days, or both fine and confinement.

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately, and continuing through May 15, 2020, subject to extension based on the status of COVID-19 in Texas and the

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Governor Greg Abbott
April 27, 2020

Executive Order GA-18
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recommendations of the Governor's Strike Force to Open Texas, the White House Coronavirus Task Force, and the CDC:

In accordance with guidance from DSHS Commissioner Dr. Hellerstedt, and to achieve the goals established by the President to reduce the spread of COVID-19, every person in Texas shall, except where necessary to provide or obtain essential services or reopened services, minimize social gatherings and minimize in-person contact with people who are not in the same household. People over the age of 65, however, are strongly encouraged to stay at home as much as possible; to maintain appropriate distance from any member of the household who has been out of the residence in the previous 14 days; and, if leaving the home, to implement social distancing and to practice good hygiene, environmental cleanliness, and sanitation.

"Essential services" shall consist of everything listed by the U.S. Department of Homeland Security (DHS) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.0 or any subsequent version, plus religious services conducted in churches, congregations, and houses of worship. Other essential services may be added to this list with the approval of the Texas Division of Emergency Management (TDEM). TDEM shall maintain an online list of essential services, as specified in this executive order and any approved additions. Requests for additions should be directed to TDEM at EssentialServices@tdem.texas.gov or by visiting the TDEM website at www.tdem.texas.gov/essentialservices.

"Reopened services" shall consist of the following to the extent they are not already "essential services:"

1. Retail services that may be provided through pickup, delivery by mail, or delivery to the customer's doorstep.
2. Starting at 12:01 a.m. on Friday, May 1, 2020:
 - a) In-store retail services, for retail establishments that operate at up to 25 percent of the total listed occupancy of the retail establishment.
 - b) Dine-in restaurant services, for restaurants that operate at up to 25 percent of the total listed occupancy of the restaurant; provided, however, that (a) this applies only to restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages and are therefore not required to post the 51 percent sign required by Texas law as determined by the Texas Alcoholic Beverage Commission, and (b) valet services are prohibited except for vehicles with placards or plates for disabled parking.
 - c) Movie theaters that operate at up to 25 percent of the total listed occupancy of any individual theater for any screening.
 - d) Shopping malls that operate at up to 25 percent of the total listed occupancy of the shopping mall; provided, however, that within shopping malls, the food-court dining areas, play areas, and interactive displays and settings must remain closed.
 - e) Museums and libraries that operate at up to 25 percent of the total listed occupancy; provided, however, that (a) local public museums and local public libraries may so operate only if permitted by the local government, and (b) any components of museums or libraries that have interactive functions or exhibits, including child play areas, must remain closed.
 - f) For Texas counties that have filed with DSHS, and are in compliance with, the requisite attestation form promulgated by DSHS regarding five or fewer cases of COVID-19, those in-store retail services, dine-in restaurant services, movie theaters, shopping malls, and museums and libraries, as otherwise defined and limited above, may operate at up to 50 percent (as opposed to 25 percent) of

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Governor Greg Abbott
April 27, 2020

Executive Order GA-18
Page 4

- the total listed occupancy.
- g) Services provided by an individual working alone in an office.
 - h) Golf course operations.
 - i) Local government operations, including county and municipal governmental operations relating to permitting, recordation, and document-filing services, as determined by the local government.
 - j) Such additional services as may be enumerated by future executive orders or proclamations by the governor.

The conditions and limitations set forth above for reopened services shall not apply to essential services. Notwithstanding anything herein to the contrary, the governor may by proclamation identify any county or counties in which reopened services are thereafter prohibited, in the governor's sole discretion, based on the governor's determination in consultation with medical professionals that only essential services should be permitted in the county, including based on factors such as an increase in the transmission of COVID-19 or in the amount of COVID-19-related hospitalizations or fatalities.

In providing or obtaining essential services or reopened services, people and businesses should follow the minimum standard health protocols recommended by DSHS, found at www.dshs.texas.gov/coronavirus, and should implement social distancing, work from home if possible, and practice good hygiene, environmental cleanliness, and sanitation. This includes also following, to the extent not inconsistent with the DSHS minimum standards, the Guidelines from the President and the CDC, as well as other CDC recommendations. Individuals are encouraged to wear appropriate face coverings, but no jurisdiction can impose a civil or criminal penalty for failure to wear a face covering.

Religious services should be conducted in accordance with the joint guidance issued and updated by the attorney general and governor.

People shall avoid visiting bars, gyms, public swimming pools, interactive amusement venues such as bowling alleys and video arcades, massage establishments, tattoo studios, piercing studios, or cosmetology salons. The use of drive-thru, pickup, or delivery options for food and drinks remains allowed and highly encouraged throughout the limited duration of this executive order.

This executive order does not prohibit people from accessing essential or reopened services or engaging in essential daily activities, such as going to the grocery store or gas station, providing or obtaining other essential or reopened services, visiting parks, hunting or fishing, or engaging in physical activity like jogging, bicycling, or other outdoor sports, so long as the necessary precautions are maintained to reduce the transmission of COVID-19 and to minimize in-person contact with people who are not in the same household.

In accordance with the Guidelines from the President and the CDC, people shall not visit nursing homes, state supported living centers, assisted living facilities, or long-term care facilities unless to provide critical assistance as determined through guidance from the Texas Health and Human Services Commission (HHSC). Nursing homes, state supported living centers, assisted living facilities, and long-term care facilities should follow infection control policies and practices set forth by the HHSC, including minimizing the movement of staff between facilities whenever possible.

In accordance with the Guidelines from the President and the CDC, schools shall remain temporarily closed to in-person classroom attendance by students and shall not

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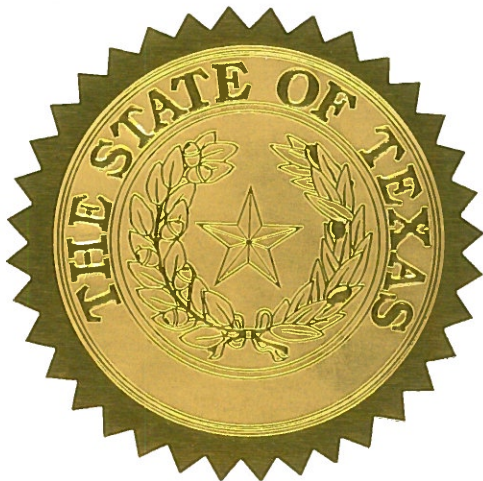
Governor Greg Abbott
April 27, 2020

Executive Order GA-18
Page 5

recommence before the end of the 2019-2020 school year. Public education teachers and staff are encouraged to continue to work remotely from home if possible, but may return to schools to conduct remote video instruction, as well as perform administrative duties, under the strict terms required by the Texas Education Agency. Private schools and institutions of higher education should establish similar terms to allow teachers and staff to return to schools to conduct remote video instruction and perform administrative duties when it is not possible to do so remotely from home.

This executive order shall supersede any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts essential services or reopened services allowed by this executive order, allows gatherings prohibited by this executive order, or expands the list of essential services or the list or scope of reopened services as set forth in this executive order. I hereby suspend Sections 418.1015(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes, to the extent necessary to ensure that local officials do not impose restrictions inconsistent with this executive order, provided that local officials may enforce this executive order as well as local restrictions that are consistent with this executive order.

This executive order supersedes Executive Order GA-16, but does not supersede Executive Orders GA-10, GA-11, GA-12, GA-13, GA-15, or GA-17. This executive order shall remain in effect and in full force until 11:59 p.m. on May 15, 2020, unless it is modified, amended, rescinded, or superseded by the governor.



Given under my hand this the 27th
day of April, 2020.

Handwritten signature of Greg Abbott in black ink.

GREG ABBOTT
Governor

ATTESTED BY:

Handwritten signature of Ruth R. Hughs in black ink.

RUTH R. HUGHS
Secretary of State

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EXHIBIT B



NOTICE



The unlicensed possession of a weapon on these premises is a felony with a maximum penalty of 10 years imprisonment and a fine not to exceed \$10,000.

Texas Alcoholic Beverage Commission
P.O. Box 13127 - Austin, Texas 78711-3127
TOLL FREE 1 - 888 - THE - TABC



- UNDER 21 -
IT'S A CRIME



EXHIBIT C



Onyx Houston



April 29 at 12:16 AM · 🌐

Club Onyx Houston is happy to announce that we will be opening our doors Thursday at 12 midnight as a restaurant with entertainment. Seating will be limited as we will be following state guidelines and health recommendations of social distancing. We will have sanitary stations set up with hand sanitizer and all staff will be practicing the strictest sanitary guidelines. Please make reservations online ASAP and no parties over 6 people can be booked.



EXHIBIT D



TEXAS
Health and Human
Services

Texas Department of State Health Services

John Hellerstedt, M.D.
Commissioner

CHECKLIST FOR RESTAURANT CUSTOMERS

Page 1 of 1

In accordance with Governor Abbott's executive order GA-18, the following are the minimum recommended health protocols for all restaurant customers in Texas. These minimum health protocols are not a limit on the health protocols that individuals may adopt. Individuals are encouraged to adopt additional protocols consistent with their specific needs and circumstances to help protect the health and safety of all Texans.

The virus that causes COVID-19 can be spread to others by infected persons who have few or no symptoms. Even if an infected person is only mildly ill, the people they spread it to may become seriously ill or even die, especially if that person is 65 or older with pre-existing health conditions that place them at higher risk. Because of the hidden nature of this threat, everyone should rigorously follow the practices specified in these protocols, all of which facilitate a safe and measured reopening of Texas. The virus that causes COVID-19 is still circulating in our communities. We should continue to observe practices that protect everyone, including those who are most vulnerable.

Please note, public health guidance cannot anticipate every unique situation. Individuals should stay informed and take actions based on common sense and wise judgment that will protect health and support economic revitalization.

Health protocols for restaurant customers:

- Maintain at least 6 feet separation from other individuals not within the same party. If such distancing is not feasible, other measures such as face covering when not sitting at the table, hand hygiene, cough etiquette, cleanliness, and sanitation should be rigorously practiced.
- Self-screen before going into a restaurant for any of the following new or worsening signs or symptoms of possible COVID-19:

<input type="checkbox"/> Cough	<input type="checkbox"/> Sore throat
<input type="checkbox"/> Shortness of breath or difficulty breathing	<input type="checkbox"/> Loss of taste or smell
<input type="checkbox"/> Chills	<input type="checkbox"/> Diarrhea
<input type="checkbox"/> Repeated shaking with chills	<input type="checkbox"/> Feeling feverish or a measured temperature greater than or equal to 100.0 degrees Fahrenheit
<input type="checkbox"/> Muscle pain	<input type="checkbox"/> Known close contact with a person who is lab confirmed to have COVID-19
<input type="checkbox"/> Headache	
- Wash or disinfect hands upon entering a restaurant and after any interaction with employees, other customers, or items in the restaurant.
- No tables of more than 6 people.
- Customers should wash or sanitize their hands after the payment process.
- Consistent with the actions taken by many individuals across the state, consider wearing cloth face coverings (over the nose and mouth) when not at the table, or when within 6 feet of another person who is not a member of the individual's household. If available, individuals should consider wearing non-medical grade face masks.

MINIMUM STANDARD HEALTH PROTOCOLS



CHECKLIST FOR RESTAURANT CUSTOMERS

Page 1 of 1

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EXHIBIT E



- c. Defendants are prohibited from closing or attempting to close Onyx under color of Governor Greg Abbott's Executive Order GA 18;
- d. Defendants shall produce all documents and communications relating to investigations of Onyx Houston from the time period of April 27, 2020 through May 15, 2020, and shall produce them five days before the hearing on Plaintiff's temporary injunction; and
- e. Defendants shall produce a privilege log and articulate the legal basis for any privilege they assert for all documents withheld from subsection d. above, and shall produce it five days before the hearing on Plaintiff's temporary injunction.

IT IS FURTHER ORDERED that Defendants and their agents, servants, employees, attorneys, and all persons and entities acting, by, through, under or in concert with them, from the date of this Order until the date of the hearing set below, not to exceed fourteen (14) days after the entry of this Order unless further ordered by this Court, be and are hereby enjoined and commanded to cease, desist, and refrain from engaging in the activities described above.

IT IS FURTHER ORDERED that this temporary ex parte restraining order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law. The clerk of this Court shall issue a writ of injunction and show cause notice, attaching a copy of this order and a copy of Plaintiff's Original Petition and Application for Temporary and Permanent Injunctive Relief, to Defendants, commanding them to appear before this Court on _____, 2020, at _____ o'clock, _____m., in the courtroom of the ____ Judicial District Court in Harris County, Texas, to show cause, if any, why the temporary injunction requested in the Petition should not be granted.

IT IS FURTHER ORDERED that before the clerk issues this temporary restraining order, Plaintiff shall execute and file with the clerk of the Court a bond or deposit of cash or check in conformity with the law in the amount of \$ _____.

WARNING

A person who violates this order may be punished for contempt of court by a fine of as much as \$500 or by confinement in jail for as long as six months, or both. No person, including a person who is protected by this order, may give permission to anyone to ignore or violate any provision of this order. During the time in which this order is valid, every provision of this order is in full force and effect unless a court changes the order. It is unlawful for any person who is subject to a protective order to possess a firearm or ammunition.

SIGNED on _____, _____, at _____
o'clock, _____m.

JUDGE PRESIDING

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Trump, Inc. d/b/a Onyx Houston

(b) County of Residence of First Listed Plaintiff Harris (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Casey T. Wallace, Wallace & Allen, LLP, 440 Louisiana, Suite 1500, Houston, Texas 77002. Telephone: 713-224-1744

DEFENDANTS

The City of Houston, The City of Houston Police Department, The City of Houston Fire Department, Unnamed Police Officers and Fire Department Officers, in their individual and official capacities

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983

Brief description of cause: Civil lawsuit for constitutional violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/01/2020 SIGNATURE OF ATTORNEY OF RECORD (Handwritten signature)

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.