



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 9, 2020

Juan “Trey” Mendez III
Mayor, City of Brownsville, Texas
1001 E. Elizabeth Street
Brownsville, Texas 78520

Dear Mayor Mendez:

This letter concerns the City of Brownsville’s attempt to limit all restaurant capacity to less than 25 percent of total listed occupancy through its most recent emergency orders.¹ Because this limitation contradicts the Governor’s order and exceeds the city’s lawful authority, it is invalid.

Relevant here, Executive Order GA-28’s capacity limitation is greater than that which is permitted by your order.² That is, the Governor’s order expressly allows certain restaurants to “operate at *up to 50 percent*.”³ By contrast, the city’s order purports to limit restaurant capacity to 25 percent.

The Governor’s order establishes a ceiling on capacity at these restaurants, and it allows restaurants—not local governments—to decide whether to operate at a capacity that does not exceed this limitation. Indeed, nothing in the order allows local governments to alter the capacity limitation as the city attempts to do. Because the city’s restriction conflicts with the Governor’s order and exceeds its lawful authority, it is invalid.⁴

¹ See Twelfth Amend. Dec. of Loc. Disaster for Pub. Health Emergency, City of Brownsville, Tex., at 4, https://www.cob.us/DocumentCenter/View/10367/Twelfth_Amendment-Declaration_Local_Disaster_Public_Health_Emergency.

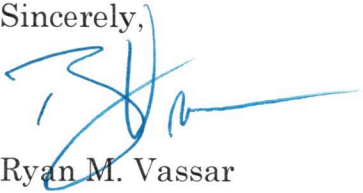
² Compare *id.* with Exec. Order GA-28 at 3.

³ Exec. Order GA-28 at 3 (emphasis added).

⁴ See *id.* at 4 (providing that the Governor’s order supersedes any conflicting local order “to the extent that such a local order restricts services allowed by this executive order” and suspending local authority to impose restrictions “that are inconsistent with this executive order”); see also Tex. Const. art. XI, § 5(a) (prohibiting local restrictions that are “inconsistent with” applicable law); *City of Laredo v. Laredo Merchants Ass’n*, 550 S.W.3d 586, 592 (Tex. 2018) (recognizing same); Tex. Gov’t Code 418.012 (providing that the Governor’s emergency executive orders “have the force and effect of law”).

As we offered in our previous discussions concerning this matter, please feel free to contact this office if we can assist further.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ryan M. Vassar', with a long horizontal flourish extending to the right.

Ryan M. Vassar
Deputy Attorney General for Legal Counsel