

## Closed SC Businesses in Covid's Wake: Protecting Public Health?

Published: Monday, 20 April 2020 14:27

By Rick Brundrett - The Nerve

Having 20 customers in his Columbia glass art shop posed no public threat, if you ask Tom Lockart of One Eared Cow Glass.

Yet after Gov. Henry McMaster put the S.C. Department of Commerce in charge of deciding what businesses are allowed to stay open or which must close when “clarification” requests are made, Lockart’s store made the official “non-essential” list.

Meanwhile, high-volume stores such as Wal-Mart and Lowe’s remain open to the public – along with [golf courses](#) – in the wake of the coronavirus outbreak, while many other retailers and a variety of other businesses were forced to close their doors after being designated as “non-essential.”

“We had maybe one or two customers in the place at the same time, as opposed to going to all these big-box stores,” Lockart said about his business in the downtown area of the state’s capital city. “We have it set up in our gallery where you don’t touch anything. You don’t come into contact with anybody.”

Still, both the city of Columbia and state of South Carolina deemed the business, founded in 1991, as “non-essential” based on separate emergency orders issued in response to the COVID-19 outbreak, Lockart told The Nerve when contacted Wednesday.

Lockart is not alone.

Commerce records released last Friday to The Nerve show that as of April 10, Lockart’s shop was among more than 250 businesses statewide classified by the state agency as “non-essential.”

Besides art stores, the agency’s “non-essential” list includes florists, hair salons and barber shops, fitness centers, massage therapy businesses, music and book stores, and certain nonprofit organizations.

On the flip side, Commerce designated more than 3,900 businesses statewide as “essential” as of April 10, including landscapers, pet groomers, vape shops and at least one adult entertainment business, The Nerve’s review found.

There likely are thousands of more businesses and organizations in South Carolina that are considered “non-essential” under local emergency ordinances or statewide orders issued by McMaster. The governor also temporarily banned in-dining at restaurants statewide and hotel reservations by travelers from coronavirus hotspots.

McMaster said his orders “supersede and preempt” local emergency ordinances, but only if a local

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regulated: "conflicts" with the state order, as dictated by state law. That gives municipalities wiggle room to draft their own lists of "essential" and "non-essential" businesses – creating confusion for business owners struggling to understand the reasoning behind the decisions, and to determine whether they must close their doors to foot traffic.

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The recent shutdown of many businesses that regularly provide consumer goods and services has resulted in a massive surge in unemployment claims. McMaster on Monday said more than 260,000 workers in South Carolina over the past month "have lost their jobs."

"Every business is essential to somebody, particularly the one working there," McMaster said, though he noted earlier during the Monday press conference that there were businesses that "we unfortunately decided must be closed in order to protect the public."

At another press conference Thursday, McMaster told reporters he didn't have a "set time" for reopening businesses in the state. But he added, "I think we'll have businesses opening back up certainly sometime in May, and we'll be ... humming again by the end of June."

McMaster in his emergency orders hasn't specifically explained how designated "non-essential" businesses better protect the public from the coronavirus compared to "essential" businesses. For example, certain big-box stores that can attract large crowds, such as Walmart and Lowe's, are considered "essential," while much smaller businesses are listed on the state's "non-essential" list.

As of Thursday afternoon, there were a total of 109 confirmed COVID-19 deaths and 3,931 positive cases statewide, according to the S.C. Department of Health and Environmental Control.

McMaster also hasn't defined an "essential" business, which, by default, could include many things not covered under the "non-essential" categories of "entertainment venues and facilities," "recreational and athletic facilities," "close-contact service providers," and certain retail stores.

Instead, McMaster left that determination up to the Department of Commerce, through a seven-member review team that doesn't have any public health or medical experts. The agency last week could provide no evaluation criteria other than the "non-essential" categories cited in the governor's emergency orders, as The Nerve [reported](#) then.

In contrast, the cities of Columbia and Charleston defined "essential" businesses or services based on the U.S. Department of Homeland Security's "Essential Critical Infrastructure Workers" list, according to local officials. The federal list, however, is advisory only and not binding on states.

The local "essential" business or services lists in Columbia and Charleston included such things as:

- Medical providers;

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- Food and medical manufacturers;
- Grocery stores and pharmacies;
- Utilities and transportation companies;
- Laundromats, dry cleaners and garbage collectors;
- Funeral homes;
- Banks, law firms and real estate offices;
- Homeless shelters and food banks; and
- Skilled trades and news media.

Also included were certain government operations, such as emergency management and building code enforcement, police and firefighters.

## No paycheck 'in over two months'

Among local business owners, there has been a lot of confusion – and frustration – over what is considered “essential” or “non-essential.”

Lockart, for example, said his glass art shop wasn't included when Columbia mayor Steve Benjamin and the City Council adopted an “essential” business list last month under an emergency stay-at-home ordinance. He closed his business to in-store customers to comply with the order, though he believes the city overreached its authority.

“To me, it (the ordinance) was reading more or less ... if some people aren't supposed to work, then nobody should work – not that we need to do this smart where we don't spread the virus,” he said.

After McMaster issued his “non-essential” business list, Lockart said he didn't see his type of business specified and asked the Department of Commerce in writing for a determination, as outlined in McMaster's emergency order. He said Commerce informed him that his business was “non-essential,” though he contended the agency didn't clearly explain to him at first what a shutdown entailed.

“Their explanation was, ‘You're a non-essential business; you have to shut down, or you're going to get fined and put in jail,’” he recalled.

Violation of South Carolina's state-of-emergency law is a misdemeanor punishable by a maximum penalty of 30 days in jail or a \$100 fine.

Lockart said when he later called Commerce for clarification, he was informed he could continue doing online sales from his store, noting, “I have to be at my business because I have equipment running that has to be monitored.”

Lockart said he has kept his sole employee working, but it hasn't been easy financially while he

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public health professionals will be approved for emergency federal aid.

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"I haven't seen a paycheck in over two months now," he said.

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The stay-at-home ordinance passed by the City Council on March 26 allowed the mayor and council to modify its "essential services" list "as necessary for the health, safety and welfare" of the city. The Nerve last week asked the city if its list had been modified, what criteria that the council used in making any official changes, and whether any public health professionals provided any input.

In a written response to The Nerve, Benjamin said, "There is no process for council to approve or not approve a business." He said the city's "essential services" list was "developed using the City of Charleston's list that was authorized days before ours," which, in turn, was based on the U.S. Department of Homeland Security's workforce list.

"The list is very explicit," he said.

As for the City Council receiving input from public health professionals, Benjamin replied: "We consult with public health professionals literally every day on the policy decisions we make. From DHEC, Prisma Health Systems, Johns Hopkins, Harvard and several other places."

The stay-at-home ordinance was set to expire after 14 days. Last week, the City Council renewed a [daily citywide curfew](#) from 11 p.m. to 6 a.m., with the exception of "traveling to and from work and for healthcare."

In an email response Tuesday, city spokesman Skot Garrick said 10 businesses were cited when the stay-at-home ordinance "was in place," noting most of the affected businesses were "vape/smoke shops." Under existing city code, violators could face a maximum penalty of 30 days in jail and a \$500 fine.

Garrick didn't identify the cited businesses or respond to a follow-up question if those cases were dropped given the Department of Commerce's designation of vape shops statewide as "essential" businesses.

### 'Instant freak-out'

In Charleston, a total of two businesses – a fitness center and hair salon – which were designated as "non-essential" under the city's stay-at-home ordinance, had been cited as of last week for being open, according to city spokesman Jack O'Toole, who added each business received a prior warning.

The maximum penalty allowed under the ordinance is 30 days in jail and a \$100 fine.

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Before McMaster issued his initial statewide order on March 31 designating “non-essential” businesses, the city’s stay-at-home ordinance, which the City Council passed on March 24 and amended on April 1, allowed mayor John Tecklenburg to determine – if asked – whether specific businesses were “essential” or “non-essential,” based on the recommendations of a committee made up of city legal and emergency staff members, O’Toole said.

Asked if the “Essential Business Review Committee” included any public health experts, O’Toole said although the city has no public health department, city staff members consult “daily with medical health professionals” on dealing with the COVID-19 outbreak.

After McMaster issued his “non-essential” business list and review process, the city began referring businesses to the Department of Commerce, O’Toole said, adding, “His (McMaster’s) orders, the minute they touch ours directly, take precedence, and we respect that.”

The city review committee received inquiries from 252 businesses,” O’Toole said, though he couldn’t immediately provide a breakdown of how many of them Tecklenburg designated as “essential” or “non-essential.”

Contacted Tuesday by The Nerve, Lisa Holmes, owner of Tiger Lily Florist in downtown Charleston, said her business was designated as “non-essential” by both the city and state. She said she closed her downtown store last month, adding she was allowed to continue handling online orders at a James Island production facility.

“It’s an instant freak-out when you’re told that you’re specifically named, that you have to shut down,” she said.

Holmes said although she is keeping busy with online orders, the closure of the downtown store “affected business significantly,” noting she had to lay off 90% of her staff and currently has three employees working.

Holmes said while “everything we’re doing is legal and on the up-and-up,” other businesses that might be considered “non-essential” haven’t contacted the city or state for a determination.

“I asked,” she said. “A lot of people aren’t asking. They’re just hoping it’s OK.”

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