Stay-At-Home Orders Cascade Across the Country

Government-Imposed Social Distancing Aims to Contain COVID-19

March 30, 2020







Brian Finch Partner

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Today's Presenters



Callie Bjurstrom Partner Intellectual Property



Brian Finch Partner Cybersecurity



Amanda Halter Partner Crisis Management



Robert James Partner Energy



Cassie Lentchner Senior Counsel Financial Services



At Least 229 Million Americans told to "Stay Home"

See Which States and Cities Have Told Residents to Stay at Home

By Sarah Mervosh, Denise Lu and Vanessa Swales Updated March 28, 2020





Amanda Halter Partner Crisis Management

- 26 states
- 66 counties
- 14 cities
- 1 territory

"We are at war."

- Gov. Mike DeWine, Ohio



At Least 229 Million Americans told to "Stay Home" – Varying Durations

STATE:	CURRENT END DATE OF STAY	
	HOME ORDER:	
California	Until further notice.	
District of Columbia	April 24, 2020	
Louisiana	April 13, 2020	
Maryland	Until rescinded, superseded,	
	amended, or revised.	
New Jersey	Until revoked or modified.	
New York	April 19, 2020	
Pennsylvania	April 6, 2020	



Amanda Halter Partner Crisis Management



Can We See Through to an Endpoint?

Trump Extends Social Distancing Guidelines Through End of April

The president, facing grim figures from his health advisers, starkly reversed an earlier upbeat assessment that the country could relax the guidelines by Easter.



President Trump during the coronavirus task force briefing in the Rose Garden of the White House on Sunday. Pete Marovich for The New York Times



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"The better you do, the faster this whole nightmare will end."

- President Trump





To America's Governors:

As you know, on March 16, 2020, I published my *Coronavirus Guidelines for America*. States, localities, and citizens across our country have responded to this call to action in full force, making tremendous sacrifices in support of our National effort to defeat the virus. I want to thank each of you, along with your frontline responders and essential workers, for stepping up to help America confront this unprecedented global pandemic. Together, we are proving that no challenge can match the indomitable strength, ingenuity, and determination of the American people.

There is still a long battle ahead, but our efforts are already paying dividends. As we enhance protections against the virus, Americans across the country are hoping the day will soon arrive when they can resume their normal economic, social, and religious lives.

In furtherance of this shared goal, my Administration is working to publish new guidelines for

Through it all, I am deeply inspired by the unflinching dedication of Americans in every state who are rallying together to defeat the virus. I look forward to witnessing that same boundless spirit drive our recovery and quickly return us to the path of exceptional health, safety, and prosperity for all of our citizens.

Sincerely,

In furtherance of this shared goal, my Administration is working to publish new guidelines for State and local policymakers to use in making decisions about maintaining, increasing, or relaxing social distancing and other mitigation measures they have put in place.

been infected, we are tracking the virus and isolating it to prevent further spread. This new information will drive the next phase in our war against this invisible enemy.

The virus has inflicted a heavy toll on our country. A number of our fellow citizens have tragically succumbed to its ravages, while many more are fighting for their lives. We mourn alongside those who have lost loved ones, and we send our prayers for the recovery of all who are still sick. In their honor, we pledge to marshal every resource and power we have to overcome and vanquish this threat.



U.S. Department of Homeland Security Cybersecurity & Infrastructure Security Agency Office of the Director Washington, DC 20528



March 28, 2020

ADVISORY MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE

FROM:

Christopher C. Krebs Director Cybersecurity and Infrastructure Security Agency (CISA)

As the Nation comes together to slow the spread of COVID-19, on President issued updated Coronavirus Guidance for America that h importance of the critical infrastructure workforce.

The Cybersecurity and Infrastructure Security Agency (CISA) exec Homeland Security's authorities to secure critical infrastructure. Co authorities, CISA has developed, in collaboration with other federal local governments, and the private sector, an "Essential Critical Infr advisory list. This list is intended to help State, local, tibal and tenitorial o

protect their communities, while ensuring continuity of functions character or puone near and safety, as well as economic and national security. Decisions informed by this list should also take into consideration additional public health considerations based on the specific COVID-19-related concerns of particular jurisdictions.

This list is advisory in nature. It is not, nor should it be considered, a federal directive or standard. Additionally, this advisory list is not intended to be the exclusive list of critical infrastructure sectors, workers, and functions that should continue during the COVID-19 response across all jurisdictions. Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion.

The advisory list identifies workers who conduct a range of operations and services that are typically essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing operational functions, among others. It also includes workers who support crucial supply chains and enable functions for critical infrastructure. The industries they support represent, but are not limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement,

and public works.

State, local, tribal, and territorial governments are responsible for implementing and executing response activities, including decisions about access and reentry, in their communities, while the Federal Government is in a supporting role. Officials should use their own judgment in issuing implementation directives and guidance. Similarly, while adhering to relevant public health guidance, critical infrastructure owners and operators are expected to use their own judgment on issues of the prioritization of business processes and workforce allocation to best ensure continuity of the essential goods and



Amanda Halter Partner Crisis Management

"Essential Critical Infrastructure Workers"

Should you have questions about this list, please contact CISA at CISA.CAT@cisa.dhs.gov.

Attachment: "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 2.0"

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Brian Finch

Partner

Who Is Defining Essential Employees?

VS

State by State Laws



All 50 States Under DHS





How Are The States And Feds Communicating With Each Other?

- Some states, like California, explicitly incorporate the CISA definition:
 - "I as State Public Health Officer ... order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, <u>as outlined at</u> <u>https://www.cisa.gov/identifying-critical-infrastructure-duringcovid-19.</u>"
- Other states and localities make no reference to the DHS CISA order.



Remember, the DHS list "Advisory" only

- "It is not, nor should it be considered, a federal directive or standard . . . Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion."
- Why would DHS not issue mandatory guidance?
 - Because it has no statutory authority to make a list that dictates a list of "essential" workers or "critical" sectors to the states.



The DHS Guidance Is Still Critical

- Companies are incorporating in the their "safe passage note"
- It can also be cited to when memorializing why operations are open
- It could be vital at a later date too, including for stimulus funding
- Also could be relevant for liability questions:

 Classifying a business as critical or an employee as essential will be relevant for liability questions that come up



DHS Is Regularly Updating Its Guidance

- DHS plans to update its guidance every two weeks.
- First revisions came out on Saturday March 28, 2020.
- Significant additions include:
 - Vastly expanded definition of covered energy sector works (including renewable energy),
 - Personal transportation employees (taxis, car sharing services),
 - Construction and building materials workers.
- Ask to be included if you are not!



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Callie Bjurstrom

Partner

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

EXECUTIVE ORDER N-33-20

WHEREAS on March 4, 2020, I prodaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

WHEREAS for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately head the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <u>https://cavid19.ca.a.gov/</u> Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living. In the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical Infrastructure sectors, as outlined at

https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c], 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

California Stay at Home Order

"To protect public health...order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors...."





Healthcare Public Health



Communications and Information Technology



Chemical

California Critical Industry Sectors



Emergency Services

Other

Community

Based Essential

Functions



Food and Agriculture



Energy



Critical Manufacturing



Defense Industrial Base



Water and Wastewater

Hazardous

Materials



Transportation and Logistics



Financial Services



California – Additional Critical Industry Sectors

Veterinary hospitals and clinics	Behavioral health workers	Private security services	Plumbers, electricians, waste disposal workers and exterminators
Convenience and liquor stores that sell food, farmers markets and big box stores	Cannabis retailers	Construction workers including housing construction	Commercial retail stores (auto supply and repair, hardware and home improvement, and home appliances)



Practical Tips

- Stay informed—sign up for alerts and check government websites frequently
- Document the factual and legal bases supporting your exempt status
 - Your review and analysis of all government orders
 - Identify the critical industries in which you operate and the importance of your business to these sectors
- Notify suppliers, manufacturers and other key partners
- Notify customers of continued operations
- Provide essential employees with a letter to show law enforcement if necessary
- Implement social distancing measures and Cal/OSHA infection prevention guidelines
- Implement screening and notification measures for sick and exposed workers



Callie Bjurstrom Partner Intellectual Property



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Rob James

Partner

State and Local Order Interplay



Rob James Partner _{Energy}

- Welcome to federalism in the public health arena
- Before and after Governor's order, counties, cities and tribes issued stay-home orders and FAQ sites [Pillsbury charts]
- Some are *more* restrictive, others *less* restrictive
 - California construction vs. SF public, housing and healthcare construction
 - Los Angeles County *technology sector* definition
- Localities often provide interpretations—and an interpreter
 - Santa Clara County on internet vs. "commercial" activity
 - Localities are current sources of enforcement



State and Local Order Interplay

Coexistence or preemption?



Rob James Partner _{Energy}

- Some state orders express an intent: Massachusetts "supersedes and makes inoperative" local orders impeding state's objectives
- Then there is California
 - Initial silence, then comply with stricter of state/local, now "this is a statewide order"
- State/local preemption rules like federal/state preemption, but:
 - Localities in California have total police power not in "conflict" with law
 - Precedents for state law coexisting with *stricter* local ordinances



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Callie Bjurstrom

Partner

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Amanda Halter

Partner

Deference to Local Governments

CORONAVIRUS IN TEXAS

Gov. Greg Abbott resists calls for statewide shelterin-place; moves to expand hospital capacity

Abbott said he would applaud some local authorities for issuing such an order, while he would remain flexible on strategies as the new coronavirus continues to spread.

BY PATRICK SVITEK MARCH 22, 2020 UPDATED: 6 PM



Texas Tribune



Biggest Metropolises Follow Behind

- 3/24 Austin (Travis Cty.)
- 3/24 San Antonio (Bexar Cty.)
- 3/25 Dallas (Dallas Cty.)
- 3/25 Houston (Harris Cty.)



Minority of Counties, Majority of Population



Credit: Texas Oil & Gas Association



Harris County – Houston, TX



ORDER OF COUNTY JUDGE LINA HIDALGO Stay Home, Work Safe

Whereas, on March 11, 2020, Harris County Judge Lina Hidalgo issued a Declaration of Local Disaster for Public Health Emergency to allow Harris County to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Harris County residents in accordance with Section 418.108 of the Texas Government Code; and

Whereas, on March 13, 2020, a Declaration of State of Disaster was issued by Governor Abbott to take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of Texans; and

Whereas, on March 16, 2020, President Trump acknowledged the gravity of the COVID-19 pandemic, releasing strict new guidelines to limit people's interactions, including that Americans should avoid groups of more than 10 people; and

Whereas, on March 17, 2020, the Harris County Commissioners Court issued an Order at a Special Meeting of Commissioners Court approving the extension to March 25, 2020, of the Declaration of Local Disaster for Public Health Emergency declared by County Judge Lina Hidalgo and signed on March 11, 2020; and

Whereas, on March 19, 2020, County Judge Lina Hidalgo issued an Order effective as of 8:00 a.m. on March 17, 2020, and continuing until 11:59 p.m. on March 31, 2020, requiring restaurants and bars to provide only carry-out, delivery or drive-thru services as allowed by law, and closing nightclubs, lounges and taverns, and restricting private clubs; and

Whereas, on March 19, 2020, Governor Abbott issued the first Public Health Disaster Declaration released in the State of Texas since 1901 and an Executive Order which, among other things, prohibits Texans from gathering in groups of more than 10 people; and

Whereas, on March 24, 2020, the Harris County Commissioners Court issued an Order approving the extension until April 29, 2020, of the Declaration of Local Disaster for Public Health Emergency declared by County Judge Lina Hidalgo and signed on March 11, 2020, and extended at a Special Meeting of Commissioners Court on March 17, 2020 to March 25, 2020; and

Whereas, the COVID-19 virus is contagious and spreads through person-to-person contact, especially in group settings; and

Whereas, the COVID-19 virus causes property loss or damage due to its ability to attach to surfaces for prolonged periods of time; and

Whereas, the Centers for Disease Control and Prevention ("CDC") recommends an "All of Community" approach focused on slowing the transmission of COVID-19 through social distancing to reduce illness and death, while minimizing social and economic impacts; and

Whereas, given the ongoing evaluation of circumstances related to the COVID-19 virus, the updated recommendations of the Centers for Disease Control and the Texas Department of State Health Services, and the substantial risks posed by the COVID-19 virus to Harris County residents and their property, the following extraordinary measures must be taken to protect the public's safety.

NOW THEREFORE, I, COUNTY JUDGE FOR HARRIS COUNTY, TEXAS, PURSUANT TO THE AUTHORITY VESTED BY TEXAS GOVERNMENT CODE CHAPTER 418, HEREBY FIND AND ORDER:

That the findings and recitations set out in the preamble to this ORDER are found to be true and correct and they are hereby adopted by the County Judge and made a part hereof for all purposes. This Order is in addition to any previous orders issued by the Harris County Judge and hereby incorporates all previous orders by reference, including the Order of March 19, 2020, pertaining to restaurants and bars.

Summary. The virus that cause transmitted through person-to-person content to spread of the virus be slowed to prote to handle the influx of new patients and sate their place of residence except for Essential Activities as defined in this order. All persons may leave their Residences only for Essential Activities,

community, this Order requires all individuals anywhere in Harris County, to stay at home – except for certain Essential Activities and work to provide Essential Business and Essential Government services or perform essential infrastructure construction, including housing. This Order takes effect at 11:59 p.m. on March 24, 2020 and will continue through 11:59 p.m. on April 3, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below.

- Effective as of 11:59 p.m. on March 24, 2020, and continuing until 11:59 p.m. on April 3, 2020:
 - a. All individuals currently living within Harris County are ordered to stay at their place of residence except for Essential Activities as defined in this order. All persons may leave their Residences only for Essential Activities, or to provide or perform Essential Governmental Functions, or to operate Essential Businesses, as defined in Section 2. For purposes of this Order,

Essential Activities

Distancing Guidelines, including the six-foot social distancing.

2. Definitions:

- a. For purposes of this Order, individuals may leave their residence only to perform any of the following "Essential Activities":
 - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (for example, obtaining medical supplies or medication, visiting a healthcare professional, or obtaining supplies needed to work from home).
 - ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others (for example, food, pet supplies, and any other household consumer products, supplies needed to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences).
 - To engage in outdoor activity, provided the individuals comply with social distancing requirements of six feet (for example, walking, biking, hiking, running, or fishing).
 - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order.
 - v. To care for a family member or pet in another household.
- b. For purposes of this Order, "Essential Businesses" include:
 - i. Essential Critical Infrastructure. Work necessary to the operations and maintenance of the 16 critical infrastructure sectors identified by the U.S. Department of Homeland Security National Cybersecurity and Infrastructure Security Agency (CISA), provided that they carry out those services or that work in compliance with social distancing requirements of six feet to the extent possible. See

4. Any manufacturer who retools so that a substantial part of their business is for the purpose of manufacturing and producing ventilators, personal protective equipment, or other medical supplies and equipment necessary for the COVID-19 response may apply for an "Essential Business" exemption under this Order. Any industry or business that is not an Essential Business may apply for an exemption from the requirements imposed by this Order. To be eligible for an exemption, the

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industry or business must complete and submit an application form, which will be made available to the public at www.ReadyHarris.org, along with evidence that the continuing operations of the business or industry are essential to promoting the general welfare of the residents of Harris County and the State of Texas during the COVID-19 response. Businesses or industries that retool or amend their operations to provide or support Essential Services during the COVID-19 response may also submit an application for exemption.



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Insurance Recovery



ORDER OF COUNTY JUDGE LINA HIDALGO Stay Home, Work Safe

Whereas, on March 11, 2020, Harris County Judge Lina Hidalgo issued a Declaration of Local Disaster for Public Health Emergency to allow Harris County to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Harris County residents in accordance with Section 4¹⁰ 100 of the Taxon County and County and

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Americans should avoid groups of more than 10 people; and

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Whereas, on March 19, 2020, County Judge Lina Hidalgo issued an Order effective as of 8:00 a.m. on March 17, 2020, and continuing until 11:59 p.m. on March 31, 2020, requiring restaurants and bars to provide only carry-out, delivery or drive-thru services as allowed by law, and closing nightclubs, lounges and taverns, and restricting private clubs; and

Whereas, on March 19, 2020, Governor Abbott issued the first Public Health Disaster Declaration released in the State of Texas since 1901 and an Executive Order which, among other things, prohibits Texans from gathering in groups of more than 10 people; and

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Enforcement



Whereas, or Local Disaster for P the possibility of ex residents in accordan

Whereas, on Abbott to take addition protect the health and

Whereas, on 19 pandemic, releas Americans should av Pursuant to Appendix 9 to and Section V(A)(5)(a) Annex U of the Harris County Basic Plan adopted by Harris County Commissioners Court on October 29, 2019, and in accordance with Tex. Gov't Code § 418.173, any law enforcement agency based in Harris County is hereby authorized to enforce this order and the failure to comply with this Order is an offense under this Order and is punishable by a fine that does not exceed \$1,000.00 or confinement in jail for a term that does not exceed 180 days.

Whereas, on March 17, 2020, the Harris County Commissioners Court issued an Order at a Special Meeting of Commissioners Court approving the extension to March 25, 2020, of the Declaration of Local Disaster for Public Health Emergency declared by County Judge Lina Hidalgo and signed on March 11, 2020; and

9.

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Enforcement



Linda Hidalgo, Harris County Judge; Sylvester Turner, Houston Mayor; Umair Shah, Harris County Public Health - Houston Chronicle

"We are not a police state, we are relying on folks to do their part. I trust that they will," Hidalgo said. "If folks are willingly violating the order in a way that puts people at risk, then we will work with law enforcement. But I really believe, and I trust, that folks will comply, because this is about the health of all of us."

- Lina Hidalgo



Cassie Lentchner

pillsbury

Senior Counsel

New York State on PAUSE

Stay-At-Home Orders Cascade Across the Country

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New York State on PAUSE

ANY ESSENTIAL BUSINESS OR ENTITY PROVIDING ESSENTIAL SERVICES OR FUNCTIONS SHALL NOT BE SUBJECT TO THE IN-PERSON RESTRICTIONS





New York State on PAUSE

- Essential Businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health and every business, even if essential, is strongly urged to maintain social distance to the extent possible.
- Business not identified as essential may request designation as an essential business through an on-line submission to the NY Economic State Development Corporation.
- Requests should only be made if they are **NOT** covered by the guidance.





Brian Finch Partner

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Reputation Considerations

ENGLISH ESPAÑOL 中文

Ehe New York Eimes

Essential? Retailers Like Guitar Center and Michaels Think They Are

Some chains are loosely interpreting what it means to be a critically important business.





Brian Finch Partner Cybersecurity

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State Line Checkpoints

Gov. Abbott expands quarantine for travelers to Texas, announces back-up housing plans for COVID-19 patients

Any air traveler entering Texas from Miami, Atlanta, Detroit, Chicago, and the states of California and Washington must self-quarantine for 14 days, Abbott said.

His original order, which included air travel from New Orleans, now includes any road travel from people entering Texas from Louisiana.

On Thursday, he announced an executive order requiring a mandatory self-quarantine for air travelers arriving to Texas from airports in New York, New Jersey, Connecticut and New Orleans.

The Texas Department of Public Safety began administering the program Saturday at noon. Travelers must fill out DPS forms and be subject to follow-up check-ins from troopers. The quarantines are for 14 days, or the duration of the stay in Texas, whichever is shorter, Abbott said.

Violators face fines up to \$1,000, up to 180 days in jail, "or both," Abbott said.



State Line Checkpoints

Checkpoints set up along Florida-Alabama border to keep COVID-19 from spreading in the sunshine state

ESCAMBIA COUNTY, Fla. (WKRG) – Florida law enforcement agencies set up checkpoints at the Alabama-Florida border. On Friday, Governor Ron Desantis issued an executive order to keep people travelling from areas known to have a lot of COVID-19 cases out of the state.



COVID-19 (Coronavirus)

If you have questions about how the 2019 Novel Coronavirus impacts you or your business, please contact us.

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