

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

KING JAMES BIBLE BAPTIST CHURCH, |

Plaintiff,

v.

**ERRICK SIMMONS, in his official
capacity as Mayor of Greenville, and
the CITY OF GREENVILLE,
MISSISSIPPI,**

Defendants

Civil Action No. _____

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff King James Bible Baptist Church (“KJBBC” or the “Church”) brings this action to stop Mayor Errick Simmons and the City of Greenville, Mississippi (collectively, “Defendants”) from violating its rights under the First Amendment to the United States Constitution and the Mississippi Religious Freedom Restoration Act, and alleges as follows:

I. Preliminary Statement

1. Christianity requires an assembled church. For two millennia, with rare exception, Christians have met together in-person. In times of persecution, such meetings took place in secret, yet the church nonetheless assembled in-person. With war raging around them, Christians even paused on the battlefield to worship with others. The bodily assembly of the church, rooted in the scriptural command that believers “not forsak[e] the assembling of ourselves together” (Hebrews 10:25 KJV), is of particular importance and significance for Christians generally and KJBBC particularly.

2. Unfortunately, the assembly of Christian believers this year poses unique challenges because of the COVID-19 pandemic that has spread throughout the United States of

America. Still, KJBBC remains committed to physically gathering for regular services in a manner consistent with guidelines issued by the Centers for Disease Control and Prevention (“CDC”) and the Mississippi State Department of Health (“MSDH”) for community and faith-based organizations to ensure the safety and well-being of congregants.

3. For some members of KJBBC, the only option available to attend worship services is by having a physical presence. Several congregants do not have social media accounts or, if they have them, are unaware of how to use them. For those who are able to connect online, KJBBC broadcasts its services over the Internet via Facebook Live. For those who cannot connect online, the Church’s pastor, Charles Hamilton, Jr., broadcasts services in the church parking lot.

4. While the idea of a “drive-in church service” is of recent interest, it is not a recent invention. Rev. Robert Schuller first developed the idea as a means of ministry and evangelism in the 1950s. His famed “Hour of Power” started with the \$500 purchase of a drive-in movie theater in 1955, and he used the motto, “Come as you are in the family car.” *See* “How Robert Schuller Turned a Drive-In Ministry into a Megachurch.” April 3, 2015, <https://www.inc.com/associated-press/how-robert-schuller-turned-a-drivein-movie-ministry-into-a-megachurch.html> (last accessed April 13, 2020).

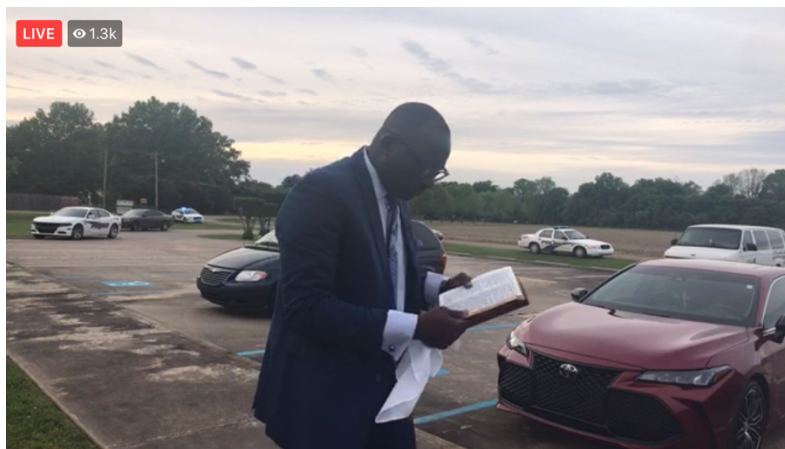
5. On March 14, 2020, Governor Tate Reeves proclaimed a state of emergency for the State of Mississippi in response to the COVID-19 pandemic, followed by a series of executive orders directing residents of Mississippi to shelter in place through April 20, 2020.

6. Shortly thereafter, Defendants announced that drive-in church services are categorically prohibited in Greenville for as long as Mississippi’s shelter in place order remains in effect. In conjunction with this announcement, Defendants recently dispatched the city’s

police force to enforce Defendants' order. Members of Temple Baptist Church, also located in Greenville, Mississippi, received citations of \$500 for each person participating in drive-in church services.

7. On the evening of Thursday, April 9, 2020, members of KJBBC arrived for a drive-in service at the Church only to be greeted with nearly the entire Greenville Police Department. One officer, recorded by Pastor Hamilton's Facebook Live recording, announced that Pastor Hamilton's "rights were suspended." Officers stated that if Pastor Hamilton's parishioners participated in drive-in church, they would be ticketed. Pastor Hamilton persisted in leading his service that evening.

8. A photo of the service below shows at least four police cruisers (with at least one partially hidden from view).



9. The police remained at the church for the duration of the service. While no citations were issued that evening, Pastor Hamilton and members of KJBBC remain intimidated by the presence of the police and fearful that the police will return to ticket them.

10. Defendants' directive goes beyond the CDC and MSDH guidelines, conflicts with the Governor's executive order, and targets religious exercise and assembly contrary to both federal and Mississippi state law.

II. Parties

11. KJBBC, founded in 2013, is a Christian church in Greenville, Mississippi. It is a religious non-profit organization, the principal office of which is located at 101 Gamari Road, Greenville, Mississippi 38701.

12. Defendant Errick Simmons is and was at all times relevant hereto the duly-elected Mayor of Greenville and as such was responsible for the promulgation and implementation of the policies, procedures, and practices of the City of Greenville, Mississippi. He is named as a defendant in this action in his official capacity as Mayor.

13. Defendant the City of Greenville, Mississippi, is and was at all times relevant hereto a municipality chartered by the State of Mississippi and, as such, was and is responsible for the policies, procedures, and practices implemented through its various agencies, agents, departments, and employees.

III. Jurisdiction and Venue

14. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983 because KJBBC alleges an imminent violation of its rights under the Constitution of the United States. It has supplemental jurisdiction over KJBBC's state-law claims under 28 U.S.C. § 1367.

15. The Court may declare the legal rights and obligations of the parties in this action pursuant to 28 U.S.C. § 2201 because the action presents an actual controversy within the Court's jurisdiction.

16. Venue is proper in this judicial district under 28 U.S.C. § 1391(b). All Defendants are residents of and/or perform their official duties in this district. In addition, a substantial part of the events giving rise to the claims in this Complaint arose in this district, because the

prohibition of KJBBC's midweek and Sunday services will be enforced in this district. KJBBC resides in this district as well.

IV. Facts

A. Plaintiff King James Bible Baptist Church

17. KJBBC is a church plant, sent from a church in Memphis, Tennessee, to establish "many Independent, Fundamental, Soul-winning, Baptist Churches throughout the state of Mississippi." King James Bible Baptist Church, *Our Beginning*, <http://www.kingjamesbiblebaptist.com/our-beginning/> (last accessed April 12, 2020).

18. Charles Hamilton, Jr., the Church's pastor, is a native of Mississippi. His athletic prowess gained the attention of the Kansas City Royals, which drafted him in 1998. But, Hamilton's hard-living forced the Royals organization to dismiss him from the team. A gang member since the age of 16, Hamilton's drug dealing led to his incarceration in the Mississippi Department of Corrections. There he met Robert Washington, a minister to the Greenville County Jail, who told Hamilton of Jesus and led him to salvation. Months after his conversion to Christianity, Hamilton sensed the call to be a pastor, to which he committed his life while still in prison. On April 28, 2013, Hamilton founded King James Bible Baptist Church. See King James Bible Baptist Church, *Meet Our Pastor* <http://www.kingjamesbiblebaptist.com/staff/#charles-hamilton> (last accessed April 12, 2020).

B. The Significance of Gathering

19. For more than 2,000 years, Christians have gathered physically each Sunday throughout the year in observance of Christ's resurrection from the dead on the first day of the week, and the physical gathering of the church is central to that celebration. Indeed, the Greek word translated "church" in our English versions of the Christian scriptures is "ekklesia," which

literally means “assembly.” A.T. Robertson, A GRAMMAR OF THE GREEK NEW TESTAMENT IN THE LIGHT OF HISTORICAL RESEARCH (3d ed. 1919).

20. As with other communities of Christian faith around the country, KJBBC believes that a central part of building relationships is worshipping in the same physical space. Indeed, the Christian scriptures exhort believers to “not forsak[e] the assembling of ourselves together.” Hebrews 10:25 (KJV).

21. KJBBC and its members have a sincerely held religious belief that physical corporate gathering of believers during the week and twice each Sunday is a central element of religious worship commanded by the Lord.

22. It is a substantial burden on the religious exercise of KJBBC and its members if they cannot meet at all for in-person corporate worship.

23. The Church has been hosting drive-in church services in its parking lot for several weeks consistent with CDC and MSDH guidelines.

24. Difficulties posed by the current COVID-19 outbreak have only inspired the diverse community of KJBBC to find creative ways of meeting together.

25. To address the challenges posed by the COVID-19 outbreak, KJBBC is committed to physically gathering in a manner consistent with guidelines issued by the CDC and MSDH for community and faith-based organizations to ensure the safety and well-being of congregants. See Centers for Disease Control and Prevention, *Interim Guidance for Administrators and Leaders of Community- and Faith- Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/guidance-community-faith-organizations.html>.

26. Consistent with CDC and MSDH guidelines, at KJBBC's planned drive-in church services for its midweek and Sunday services, cars will park at least six feet apart and all congregants will remain in their cars with windows closed for the entirety of the service. Pastor Hamilton will preach outside with speakers or just his voice. As parishioners arrive, Pastor Hamilton will remind them to remain in their vehicles with the windows and doors closed. Members, accustomed to respond with an "Amen!" or "Hallelujah" will instead honk their car horn or flash their headlights. No one will leave the vehicle at any time. The only persons not restricted to a car is Pastor Hamilton who, at all times, will remain a safe distance from the parked cars. This will provide strong protection for the health of the church community and others by preventing potential contact and ensuring against the transmission of disease through the service.

C. Prohibition of Drive-In Church Services

27. On March 14, 2020, Tate Reeves, in his official capacity as the Governor of Mississippi, signed a Proclamation, instituting a state of emergency due to the COVID-19 outbreak. Office of the Governor, State of Mississippi, "Proclamation," available at https://www.sos.ms.gov/Content/documents/about_us/WhatsNew/GovernorProclamationPublicHealth.pdf (Mar. 14, 2020).

28. In a series of Executive Orders, Governor Reeves directed the people of Mississippi to shelter in place during the declared state of emergency. Executive Order Nos. 1458–1471.

29. On March 24, 2020, Governor Reeves signed Executive Order 1463 designating "[r]eligious entities" as an "Essential Business or Operation" for the duration of the order, "provided that they adhere to CDC and the Mississippi State Department of Health recommendations and guidance to the spread of COVID-19." Executive Order No. 1463.

30. Two days later, on March 26, 2020, Governor Reeves issued a clarification to Executive Order 1463. It stated that, while local orders related to the COVID-19 State of Emergency could be more restrictive in their measures, political subdivisions of the state cannot prevent an “Essential Business or Operation” from providing essential services. Supplement to Executive Order No. 1463 (“[N]o governing body, agency, or political subdivision of the State shall adopt any measures that are less restrictive than the provisions of Executive Order No. 1463 and the orders, rules, regulations, resolutions, and actions taken by political subdivisions of the State . . . may continue to be in effect and shall not be suspended or unenforceable, so long as the same . . . do not impose restrictions that prevent any Essential Business or Operation . . . from operating as such level necessary to provide essential services and functions during this COVID-19 State of Emergency.”).

31. On April 1, 2020, Governor Reeves reaffirmed Executive Order No. 1463 in Executive Order 1466, including the provisions designed to ensure that Essential Businesses or Operations are able to provide their essential services. Executive Order No. 1466.

32. On April 7, 2020, the City of Greenville issued an “Executive Order Regarding Church Services,” which states that “all church buildings will be closed for in person and drive in church services, until the State of Mississippi’s ‘Shelter In Place’ Executive Order No. 1466 is lifted by Governor Tate Reeves.” The Executive Order Regarding Church Services is attached hereto as Exhibit A.

33. Defendants’ order conflicts with the Executives Orders No. 1463 and 1466 by prohibiting an Essential Business or Operation from providing services deemed essential during a declared state of emergency.

34. On April 8, 2020, Greenville Police officers ticketed parishioners sitting in their cars for drive-in church services at Temple Baptist Church in Greenville.

35. The next day, April 9, 2020, the City of Greenville released a statement. Concerning the City Council’s decision to affirm the previously issued executive order closing churches even for drive-in services, the City said, “This is no infringement on the right to religion or right to worship. Although it impacts on our traditional way of gathering for worship, it does not prevent us from worshipping.” City of Greenville, Facebook Post of April 9, 2020, *available at* <https://www.facebook.com/GreenvilleMS/photos/pcb.10158581354460362/10158581344860362/?type=3&theater>.

36. On April 10, 2020, the City of Greenville updated its website to include the following graphic, indicating permissible and impermissible types of activity under the Defendants’ executive order.

<p><u>Churches Can:</u></p> <ul style="list-style-type: none">• Stream Facebook Live• Zoom• Conference Call• Have any and all other social media, streaming, and telephonic platforms <p>(Pastors, musicians, and production/media teams are allowed in church buildings, as long as there is less than 10)</p>	<p><u>Churches Cannot:</u></p> <ul style="list-style-type: none">• Have In-person Church Services• Have Drive-in Church Services <p>(Church buildings are closed to general membership)</p>
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City of Greenville, “Mayor Errick D. Simmons Holds Meeting with Religious and Faith-Based Leaders,” *available at* <https://conta.cc/2K1t1ZF> (April 10, 2020).

37. Despite the Governor’s inclusion of religious gatherings as “Essential Businesses or Operations,” Defendants also included “Churches” in a list of “NONESENTIAL BUSINESSES” on the city’s website, as seen below.

NONESSENTIAL BUSINESSES	ESSENTIAL BUSINESSES:
<ul style="list-style-type: none"> • Dance Halls • Bars • Taverns • Movie Theaters • Restaurant Dining Areas • Churches • Funerals • Gyms • Outdoor Recreations Facilities • Tattoo Parlors • Museums • Salons, Barber Shops, and other grooming facilities • All non essential retail stores and businesses are closed. 	<ul style="list-style-type: none"> • Grocery Stores • Pharmacies • Convenient Stores • Gas Stations • Laundry Mats • Discount/Dollar Stores • Hospitals/Medical Clinics • ALL businesses and industries deemed essential by state and federal orders.

City of Greenville, “Mayor and Greenville City Counsel Issue Orders on Church Services and City Curfew Effective Immediately,” *available at* <https://conta.cc/2VoP9m2> (April 7, 2020).

38. On Wednesday, April 8, 2020, Mayor Simmons posted a video to the City of Greenville’s Facebook page in which he cited Governor Reeves’ executive order and guidance from the MSDH as the basis for relabeling churches as “nonessential” and closing churches to drive-in services and repeating that this order is no “no infringement on one’s right to worship” and “no attack on religion at all.” *See* City of Greenville, *Mayor Errick D. Simmons Press Conference and News Interview on Executive Order Regarding Church Services*, Facebook.com (April 8, 2020), <https://www.facebook.com/GreenvilleMS/videos/548391345882020/>.

39. On April 13, 2020, Mayor Simmons held a press conference regarding the closing of churches in Greenville, Mississippi. During that press conference, Mayor Simmons reiterated that the ban on drive-in church services would remain in place and claimed that, during a call with the Governor of Mississippi, the Governor said, “Drive-in services will not work because people of faith like to fellowship.” City of Greenville, *Press Conference Regarding Council Order on Church Services* at timestamp 11:15, Facebook.com (April 13, 2020), <https://www.facebook.com/GreenvilleMS/videos/235793907622738/>.

40. During that same press conference, Mayor Simmons stated, “On Easter, on Resurrection Day, we told our officers, ‘Stand down.’ Because we wanted people to enjoy one of the holiest days of the year. And so people had services, some folks had drive-in, but want our officers stand down. And that’s our way of loving our faith-based communities” *Id.* at timestamp 28:15.

41. In short, Mayor Simmons has declared that drive-in church services would violate state and local laws and orders. The subsequent actions by the Greenville City Police Department has threatened participating persons and entities with penalties for violating Defendants’ executive orders.

42. Under the rules that Mayor Simmons articulated, the mandate is violated even if a congregation abides by the social distancing and hygiene guidelines provided by the CDC and the MSDH.

43. Mayor Simmons’ directive is directly targeted at religious gatherings, conflicts with the executive order of Governor Reeves, and is in contravention of the federal Constitution and the laws and constitution of the State of Mississippi.

V. First Cause of Action
The Free Exercise Clause of the First Amendment to the U.S. Constitution

44. Paragraphs 1 through 43 are hereby incorporated as if set forth fully herein.

45. The First Amendment of the Constitution protects the “free exercise” of religion. Fundamental to this protection is the right to gather and worship. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) (“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts . . .

[such as the] freedom of worship and assembly.”). The Free Exercise Clause was incorporated against the states in *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

46. As the Supreme Court has noted, “a law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny.” *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993).

47. Defendants have prohibited drive-in religious services, have threatened criminal penalties for holding such services, and have thus substantially burdened Plaintiff’s religious exercise.

48. “[T]he minimum requirement of neutrality is that a law not discriminate on its face.” *Id.* at 533.

49. Defendants’ restrictions have specifically and explicitly targeted drive-in religious gatherings and people of faith and are thus not neutral on their face.

50. Relatedly, government action is not generally applicable if its prohibitions substantially under-include non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect. *Id.* at 542–46.

51. Defendants’ prohibition of drive-in church services in the name of social distancing is not generally applicable. There are numerous organizations and activities that Defendants are not cracking down on, such as holding press conferences and establishments like retail stores, where far more people come into closer contact with less oversight.

52. Laws and government actions that burden religious practice and are either not neutral or not generally applicable must satisfy a compelling governmental interest and be narrowly tailored to achieve that end. *See id.* at 546.

53. Defendants' mandate is not "narrowly tailored" because the ban on drive-in religious services is absolute, not accounting for services, like Plaintiff's, where the CDC and MSDH guidelines are followed, and thus satisfy the public health concerns to which the guidelines are directed.

54. Requiring Plaintiff to abstain from its religious gatherings, despite substantial modifications to satisfy the public health interests at stake, violates Plaintiff's constitutional right to free exercise of its religion.

VI. Second Cause of Action
The Freedom of Assembly Clause of the First Amendment to the U.S. Constitution

55. Paragraphs 1 through 54 are hereby incorporated as if set forth fully herein.

56. The First Amendment of the Constitution protects the "right of the people peaceably to assemble." The Freedom of Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299 U.S. 353 (1937).

57. The Supreme Court has long-recognized that the First Amendment's freedom on assembly includes religious assemblies. *See NAACP v. Alabama*, 357 U.S. 449, 460-62 (1958). "Joining a lawful organization, like attending a church, is an associational activity that comes within the purview of the First Amendment 'Peaceably to assemble' as used in the First Amendment necessarily involves a coming together, whether regularly or spasmodically." *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 562 (1963) (Douglas, J., concurring) (noting that while, historically, the right to assembly was considered part of the right to petition the government for a redress of grievances, the right to assembly has since become "equally fundamental" with the right to free speech and thus applies to "attending a church").

58. "The right of free speech, the right to teach, and the right of assembly are, of course, fundamental rights." *Whitney v. California*, 274 U.S. 357, 373 (1927). When a

government practice restricts fundamental rights, it is subject to “strict scrutiny” and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available. *See, e.g., San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16–17 (1973); *Dunn v. Blumstein*, 405 U.S. 330 (1972).

59. By denying Plaintiff the ability to assemble via a drive-in church service, Defendants are in violation of the Freedom of Assembly Clause. Defendants cannot meet the no-less-restrictive-alternative test. The CDC’s social distancing guidelines are appropriate to limit the spread of COVID-19. Imposing more restrictive requirements that target only churches and their drive-in services is not the least restrictive means of achieving Defendants’ public safety goal.

60. Requiring Plaintiff to abstain from its religious gatherings, despite substantial modifications to satisfy the public health interests at stake, violates Plaintiff’s Constitutional right to peaceably assemble.

VIII. Third Cause of Action
Mississippi Religious Freedom Act, Miss. Code Ann. § 11-61-1.

61. Paragraphs 1 through 60 are hereby incorporated as if set forth fully herein.

62. The Mississippi Religious Freedom Act, Miss. Code Ann. § 11-61-1 (“MRFRA”), states that “[g]overnment shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability” unless the government “demonstrates that application of the burden to the person: (i) Is in furtherance of a compelling governmental interest; and (ii) Is the least restrictive means of furthering that compelling governmental interest.” Miss. Code Ann. § 11-61-1(5).

63. In short, the MRFRA imposes strict scrutiny on all government actions that “substantially burden a person’s exercise of religion.” *Id.*

64. The MRFRA is based on the federal Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb *et seq.* Like RFRA, the MRFRA is a codification by the legislature of the strict scrutiny test applied in case law. Miss. Code Ann. § 11-61-1(2) and (3). Because the statutes are substantially similar, cases interpreting RFRA are instructive in interpreting MRFRA.

65. A compelling interest includes “only those interests of the highest order.” *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). And the least-restrictive-means standard is “exceptionally demanding.” *Hobby Lobby*, 573 U.S. at 728. To pass the least-restrictive-means test, the government must show “that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion” by the religious objector. *Id.*

66. By denying Plaintiff the ability to hold a drive-in church service, Defendants are in violation of the MRFRA. Defendants cannot meet the least-restrictive-means test. The CDC’s social distancing guidelines are appropriate to limit the spread of COVID-19. Imposing more restrictive requirements that target only churches and their drive-in services is not the least restrictive means of achieving Defendants’ public safety goal.

IX. Prayer for Relief

WHEREFORE, Plaintiff requests this Court enter an order:

- a. Declaring that Defendants have unlawfully burdened Plaintiff’s religious free exercise rights in violation of the Free Exercise Clause of the First Amendment to the U.S. Constitution;
- b. Declaring that Defendants have unlawfully burdened Plaintiff’s religious free exercise rights in violation of the Mississippi Religious Freedom Act, Miss. Code Ann. § 11-61-1;

- c. Declaring that Defendants have unlawfully burdened Plaintiff's right to peaceably assemble in violation of the Freedom of Assembly Clause of the First Amendment to the U.S. Constitution;
- d. Permanently enjoining Defendants from prohibiting Plaintiff from physically gathering via a drive-in church service;
- e. Awarding Plaintiff costs and reasonable attorneys' fees and expenses; and
- f. Granting Plaintiff all such other and further relief as the Court deems just and proper.

Dated: April 15, 2020

Respectfully submitted,

/s/ Aaron R. Rice

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Attorneys for Plaintiff King James Bible Baptist Church

Exhibit A

Executive Order Regarding Church Services



EXECUTIVE ORDER REGARDING CHURCH SERVICES

ORDER: Mandating, effective immediately, that in an effort to prevent the spread of the Coronavirus (COVID-19), all church buildings will be closed for in person and drive in church services, until the State of Mississippi's "Shelter In Place" Executive Order No. 1466 is lifted by Governor Tate Reeves. Churches are strongly encouraged to hold services via Facebook Live, Zoom, Free Conference Call, and any and all other electronic, social media, streaming, and telephonic platforms available for the safety and protection of life. Pastors, musicians, and media and production teams are allowed in the church buildings, so long as, there are no more than ten (10) people in accordance to CDC guidelines. Further, in compliance with the Mississippi Department of Health guideline stating, "Because of recent COVID-19 cases specifically linked to church gatherings, it is vital that Mississippians not attend in-person church services at any church or other type of facility," the Greenville City Council enters this Order to prevent the spread of COVID-19 linked to church gatherings and to protect the most vulnerable suffering with health conditions such as diabetes, hypertension, heart conditions, and other life-threatening conditions in the community.

This Order further supports the emergency declared by Proclamation of the Greenville City Council on March 17, 2020 stating that conditions of extreme peril have arisen within the city caused by COVID-19 (Coronavirus).

Adopted by the Greenville City Council on April 7, 2020