

MEMORANDUM

TO: Boardman & Clark Municipal Clients
FROM: Steven C. Zach
DATE: March 25, 2020
RE: “Safer At Home Order” – Emergency Order #12

Governor Evers issued Emergency Order # 12 on March 24, 2020 titled the “Safer at Home Order” dealing with the COVID-19 virus. It generally restricts individuals from travel for pleasure and work subject to significant exceptions. The general prohibition applies to all individuals present within the State of Wisconsin and orders them to stay at home or at their place of residence within certain exceptions. All for-profit and non-profit businesses with a facility in Wisconsin are required to cease all activities at facilities located within Wisconsin, except as outlined in the Order.

The Order requires the closure of public libraries and places of public amusement and activity, such as water parks, swimming pools, splash pads, aquariums, zoos, museums, children’s play centers and playgrounds, concert halls and theaters, golf course and gyms and fitness centers.

Many municipal operations are included in the exceptions to this rule and permit a number of municipal employees to continue to work. In particular, excluded from this rule are:

- The operation and maintenance of utilities, including water, sewer, gas, and electric operations, including power generation, distribution, production of raw materials, and Wisconsin Department of Natural Resources-certified and registered drinking water and wastewater testing laboratories;
- “Essential Governmental Functions” needed “to ensure the continuing operation of [the municipality] and provide and support the health, safety, and welfare of the public.” Each governing body is permitted to determine its “Essential Government Functions” and the employees and contractors necessary to the performance of those functions;
- Those “Minimum Basic Operations” necessary to preserve the condition of the physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions, including where these functions are outsourced to other entities. I interpret this to include billing operations;
- All paid or volunteer first responders including law enforcement, EMS, and firefighters; first responder training academies; building inspectors; emergency management personnel; emergency dispatchers; and others working for or to support “Essential Businesses and Operations”;

- Municipal governing bodies are not prohibited from meeting. The Order provides that municipalities should continue to follow the Wisconsin Department of Justice's Office of Open Government guidance allowing under specific criteria government meetings with remote access. Municipalities should explore using remote meetings.
- To the extent municipalities provide “human service operations” construed broadly, those tasks which involve long-term care and assisted living facilities; residential settings and shelters for adults, seniors, children, victims of domestic abuse, people with disabilities; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, or developmental disabilities, seniors, adults, or children; adult day care, adult day services, and supportive home care; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, vocational services, or rehabilitation services; developmental centers;
- Construction necessary for “Essential Governmental Functions,”; airport operations; operation and maintenance of utilities, including water, sewer, gas, and electric (including power generation, distribution, production of raw materials, and Wisconsin Department of Natural Resources-certified and registered drinking water and wastewater testing laboratories); Wisconsin Home Energy Assistance, Low Income Home Energy Assistance Program, and Public Benefits Energy Assistance Program offices, customer service centers, and public intake centers; distribution centers; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

The Order requires a municipality to use technology to the greatest extent possible to avoid having employees and officials meet in person. This includes using virtual meetings, teleconferencing, and remote work. This requires municipalities to determine which job functions and positions can be performed remotely, which will likely involve office personnel.

The Order does not require employees to carry any documentation verifying that they are engaged in employment exempt from the general restriction on travel. The Order does not require a municipality to adopt an official declaration or policy declaring it or certain of its operations as exempt.

Those municipal employees who are allowed to work at their regular work site must maintain appropriate social distancing of six feet when reasonably possible. This includes members of the public who are at municipal facilities. In addition, employees should wash their hands as frequently as possible with hand sanitizer or soap or water, high touch areas of municipal buildings should be regularly cleaned, and personnel should avoid personal contact, including hand shaking.