

Marathon County Board of Health

Tuesday, December 8, 2020 at 7:45 AM

**Meeting Location: 1000 Lake View Drive, Suite 100
Wausau, WI 54403**

The meeting site identified above will be open to the public. However, due to the COVID-19 pandemic and associated public health directives, Marathon County encourages Board of Health members and the public to attend this meeting remotely. To this end, instead of attendance in person, Board of Health members and the public may attend this meeting by telephone conference. If Board of Health members or members of the public cannot attend remotely, Marathon County requests that appropriate safety measures, including adequate social distancing, be utilized by all in-person attendees. Persons wishing to attend the meeting by phone may call into the telephone conference beginning five (5) minutes prior to the start time indicated above using the following number. When you enter the telephone conference, put your phone on mute.

Dial +1 312 626 6799 US (Chicago)
Meeting ID: 851 2896 1112
Password: 882227

Committee Members: John Robinson, Chair; Craig McEwen, Vice-Chair; Lori Shepherd, Secretary; Sandi Cihlar; Dean Danner; Kue Her; Tiffany Lee; Corrie Norrbom

Marathon County Mission Statement: Marathon County Government serves people by leading, coordinating, and providing county, regional, and statewide initiatives. It directly or in cooperation with other public and private partners provides services and creates opportunities that make Marathon County and the surrounding area a preferred place to live, work, visit, and do business. (Last updated: 12-20-05)

Marathon County Health Department Mission Statement: To advance a healthy Marathon County community by preventing disease, promoting health, and protecting the public from environmental hazards. (Last updated: 5-7-13)

- 1. Call to Order**
- 2. Public Comment Period**
- 3. Approval of the Minutes of the November 10, 2020 Board of Health Meeting**
- 4. Operational Functions Required by Statute, Ordinance, or Resolution**
 - A. None
- 5. Policy Discussion and Possible Action**
 - A. Update on the Board of Health training session focused on health equity along with the WALHDAB October 19 Forum
 - B. Update on the 2021 Marathon County and Health Department Budget and implications for the Health Department’s COVID-19 response
 - C. Overview of Wisconsin Counties Association publication on ‘stepped’ enforcement process for communicable disease

- D. Report from the Health & Human Services Committee December 2, 2020 meeting on policy issues impacting public health
 - i. Stepped Enforcement Process Under Administrative Code 145
 - ii. Responding to the Housing Needs of our COVID Positive Homeless Population
 - iii. Update on Discussions with WIPPS Relative to Community Conversation about COVID-19

- E. Discuss local efforts to control the spread of COVID-19 in Marathon County
 - i. Community engagement initiatives
 - ii. Housing for homeless population in need of isolation and quarantine
 - iii. Influenza and COVID-19 vaccination efforts
 - iv. Other

6. Educational Presentations/Outcome Monitoring Reports

- A. Update on Marathon County’s COVID-19 response efforts and focus for the next 30-60 days
 - i. Community testing, disease investigation/contact tracing, vaccination plans, communication to the public, and demands on community resources

7. Announcements

8. Next Meeting Date & Time, Location, Future Agenda Items:

- A. Confirm January 14, 2021 meeting date and determine agenda topics
 - i. Formalizing the reporting relationship between the Board of Health and the Health & Human Services Committee

9. Adjourn

FAXED TO: Daily Herald, City Pages,
Marshfield News, Mid-West Radio Group

Signed _____

THIS NOTICE POSTED AT THE COURTHOUSE

Date _____ Time _____

By _____

Date _____ Time _____

Any person planning to attend this meeting who needs some type of special accommodation in order to participate should call the County Clerk’s Office at 715-261-1500 or e-mail infomarathon@mail.co.marathon.wi.us one business day before the meeting.

MARATHON COUNTY BOARD OF HEALTH
Meeting Minutes
November 10, 2020

Present (Via Zoom): John Robinson, Craig McEwen, Sandi Cihlar, Corrie Norrbom, Kue Her, Tiffany Rodriguez-Lee, Lori Shepherd (telephone)

MCHD Staff: Joan Theurer, Dale Grosskurth, Chris Weisgram

Others Present: Tim Buttke

1. Call to Order

John Robinson called the meeting to order at 7:48 a.m.

2. Public Comment Period

3. Approval of the Minutes of the October 13, 2020 Board of Health Meeting

Motion to approve the minutes of the October 13, 2020 meeting made by Craig McEwen. Seconded by Sandi Cihlar. Motion approved.

4. Operational Functions Required by Statute, Ordinance, or Resolution

A. None

5. Policy Discussion and Possible Action

A. Update on the Board of Health training session focused on health equity

John Robinson shared he will be connecting with Board members before the next meeting to work on developing the agenda for the training session.

B. Share letter from the WI Department of Health Services regarding findings from the 140 Review

Joan shared a copy of the letter was included in the packet for review, and provided a brief overview of the results.

Motion to accept the chapter 140 report, and extend to the staff of the health department appreciation for their work during the pandemic made by Lori Shepherd. Second made by Tiffany Rodriguez-Lee. Motion carried.

C. 2021 Funding for the Marathon County Start Right Program

John Robinson shared a budget amendment is going before the County Board of Supervisors to cover funding of positions in the District Attorney's office. The proposed amendment would decrease funding for Start Right home visiting by \$59,935. John encouraged the Board to

support funding for the Start Right program, given the benefits to the families who receive services.

Discussion on the need for early childhood services to support families in the community as they live through the challenges of the pandemic. Corrie Norrbom shared that research from the Minneapolis Federal Reserve Bank will present on return on investment in early childhood interventions on November 19.

Joan Theurer shared that the data that is collected locally on an annual basis is align with the outcomes that have been identified at the state and national levels.

Motion to support continued funding for the Start Right program at its current level made by Craig McEwen. Seconded by Kue Her. Motion approved.

John Robinson shared that the finance committee of the County Board will be taking up the proposed budget amendments at 3:30 p.m. today.

- D. Report from the Health & Human Services Committee November 4, 2020 meeting on policy issues impacting public health
 - i. Public Engagement Strategies for Local Communicable Disease Ordinance

Joan Theurer provided an overview of the November 4 discussion held at the Health & Human Services Committee meeting. During the summer, a draft ordinance was brought forward regarding enforcement powers related to COVID-19, and put on hold until guidance documents from state associations were available. In early fall, it was determined that it was necessary to engage the public and gather input as far as strategies to consider for an ordinance providing enforcement powers. Currently, a proposal will be put together by WIPPS to engage the community in a conversation with the intended outcome to be creating a forum allowing differing perspectives to hear each other and move forward more aligned.

Tim Buttke, Chair, Health & Human Services Committee, shared the need to come to commonality regarding responding to COVID-19. The goal of the forum is to bring different perspectives together to discuss the issues surrounding the pandemic.

John Robinson reiterated the need to engage the community and have a dialogue in the community. Further updates will be provided at next month's meeting.

Joan Theurer encouraged Board Members to reach out to John Robinson or Supervisor Buttke if they know of leaders in the community with varying perspectives who would contribute constructively to the conversation.

John Robinson shared the plan is to have the proposal from WIPPS moved forward as a contract in December, so the discussion can begin in January 2021.

- ii. Declaring Every Third Thursday in November as Rural Health Day

Tim Buttke shared an update on the resolution being brought for consideration at the County Board meeting tonight, declaring Rural Health Day.

Sandi Cihlar shared background information on the importance of recognizing Rural Health Day, given recent increases in disparities faced by farmers in Marathon County.

Tim Buttke clarified that the fiscal impact statement at the bottom of the resolution was included as the County Board considers fiscal impact on every resolution.

Motion to support the resolution declaring the third Thursday in November as rural health day made by Sandi Cihlar. Seconded by Corrie Norrbom. Motion approved.

- iii. Wisconsin Changes Policy relative to Medicaid Coverage for Incarcerated Individuals <https://www.dhs.wisconsin.gov/news/releases/101620.htm>

Joan Theurer shared that recently a change was made at the state level which will suspend Medicaid coverage for individuals who are incarcerated, rather than terminating coverage. When someone is released from jail, their Medicaid benefits will resume.

- E. Discuss local efforts to controlling the spread of COVID-19 in Marathon County

Joan Theurer asked Corrie Norrbom to share an update on an effort to reach out to Hmong and Hispanic residents, and the proposal to promote influenza vaccines for sub-populations in Marathon County.

Corrie Norrbom shared that immigrant populations are typically impacted disproportionately in any public health problem, and a project to improve communication between communities was undertaken. Community liaisons were trained on basic recommendations for COVID-19 to act as community health workers, and provide two way communication. Since May, over a thousand families have been reached to provide them with basic information and resources. Grant funding from WI Department of Health Services will allow information resources to be shared with communities around the County.

John Robinson shared the Wausau City Council will be voting tonight on the proposed city ordinance requiring wearing of masks in certain settings.

Joan Theurer shared issues that have arisen when ordinances have been discussed or proposed, as well as the importance of hearing the perspectives of law enforcement.

6. Educational Presentations/Outcome Monitoring Reports

- A. Update on Marathon County's COVID-19 response efforts and focus for the next 30-60 days to include: disease investigation/contact tracing, community testing, vaccination plans, communication to the public, and demands on community resources

Joan Theurer shared updates on several areas of COVID-19 response, including challenges in determining where to put limited resources. Current levels of new cases require the health department to work under crisis standards for contact tracing. Changes have been made to information provided to residents and businesses, empowering them to complete their own

contact tracing, so health department staff can prioritize specific populations. Currently the State is providing assistance with caseload and is handling about 25 cases on behalf of the health department daily.

Community testing continues with the WI National Guard, and will extend through mid-December. Testing during the winter months is being planned at the West Street location, with services being provided by Aspirus.

The goal is to provide a safe and effective vaccine, including community distribution when adequate quantities are made available. Health care providers are being encouraged to enroll in the COVID-19 Vaccine Program. There may be a gap in enrollment with long-term care facilities because of staff capacity issues. The vaccination program contains three phases. Phase one will be health care workers, long term care residents, individuals over age 65, and other essential workers. The role of the health department during phase one will be coordination with health care providers, and identifying how to address potential gaps in providing vaccine. Currently, sources of funding are unknown. Phase two of the program would expand to providing vaccine to the general public. Phase three of the program would be the point at which residents needing vaccine have received it, and plans would be underway to integrate vaccination into primary care.

Discussion on the amount of staffing that would be needed to be able to operate at the needed level to cover the caseload and plans for vaccine distribution.

John Robinson asked what is being done to address public concern for a safe and effective vaccine. Joan Theurer shared there is hope for better alignment nationally for COVID-19 response, which will provide effective messaging around response and vaccine. It will be important to health care providers to step forward and be vocal, as well as the business community.

Joan Theurer shared that the UW system has implemented a rapid antigen testing for UW campus communities around the state. Plans are being made to include PCR confirmation tests as part of their testing protocol.

B. Update on Staffing

Joan Theurer shared Patti Poverski, Administrative Specialist for more than 30 years has retired as of November 2. Kim Wieloch, current director of finance at North Central Health Care has accepted the Director of Operations position and will start November 30.

7. Announcements

8. Next Meeting Date & Time, Location, Future Agenda Items:

- A. Confirm December 8, 2020 meeting date and determine agenda topics
 - i. Formalizing the reporting relationship between the Board of Health and the Health & Human Services Committee

9. Adjourn

Motion to adjourn made by Craig McEwen. Seconded by Lori Shepherd. The meeting adjourned at 9:22 a.m.

Respectfully submitted,

Lori Shepherd, Secretary
Chris Weisgram, Recorder

DRAFT

**Health Officer Notes
December, 2020**

To facilitate diverse perspectives, consider the following questions during the policy discussion.

- Who benefits from or will be burdened by your proposal?
- What are the strategies for mitigation unintended consequences?

Policy Discussion and Possible Action

A. Update on the Board of Health training session focused on health equity along with the WALHBAB October 19 Forum

The Board of Health will further define the scope of the training session and timeframe. Members who attended the WALHDAB October 19 Forum will share ideas generated on the discussion on health equity and how it can inform plans for the training session.

B. Update on the 2021 Marathon County and Health Department Budget and implications for the Health Department's COVID-19 response

John Robinson, Board of Health Chair will provide an update on the adoption of the 2021 Marathon County Budget. Joan Theurer, Health Officer will share funding status of the COVID-19 response. Enclosed find Wisconsin's COVID-19 Pandemic Response: Urgent Resource Needs issued by Governor Evers on November 16, 2020.

C. Overview of Wisconsin Counties Association publication on 'stepped' enforcement process for communicable disease

Joan Theurer, Health Officer will provide an overview of the Supplement to Guidance: Enforcement of Local Health Orders Utilizing Process Set Forth in the Administrative Code, dated October 14, 2020. Enclosed find document.

D. Report from the Health & Human Services Committee December 2, 2020 meeting on policy issues impacting public health

- i. Stepped Enforcement Process Under Administrative Code 145
- ii. Responding to the Housing Needs of our COVID Positive Homeless Population
- iii. Update on Discussions with WIPPS Relative to Community Conversation about COVID-19

John Robinson, Board of Health Chair, members of the board in attendance, along with Joan Theurer, Health Officer will provide an update on policy issues discussed.

E. Discuss local efforts to control the spread of COVID-19 in Marathon County

- i. Community conversation initiatives
- ii. Housing for homeless population in need of isolation and quarantine
- iii. Influenza and COVID-19 vaccination efforts
- iv. Other

Judy Burrows, Program Director, Community Health Improvement will share community conversation initiatives occurring in an effort to regain control of the spread of COVID-19. Joan Theurer, Health Officer will share efforts to address the needs of the homeless population and initiatives underway to promote COVID-19 vaccinations. Board members will share and discuss conversations and initiatives they are participating in.

November 27, 2020

Educational Presentations/Outcome Monitoring Reports

F. Update on Marathon County's COVID-19 response efforts and focus for the next 30-60 days

- i. Community testing, disease investigation/contact tracing, vaccination plans, communication to the public, and demands on community resources

Joan Theurer, Health Officer will do an overview of the department's response efforts for the next 30 days, fielding questions and concerns from Board of Health members.

G. Announcements

H. Next Meeting Date & Time, Location, Future Agenda Items:

- a. Confirm January 14, 2021 meeting date and determine agenda topics
 - i. Formalizing the reporting relationship between the Board of Health and the Health & Human Services Committee

I. Adjourn

Wisconsin's COVID-19 Pandemic Response: Urgent Resource Needs

The Centers for Disease Control (CDC) currently lists Wisconsin **as one of the top states in the country** for the rate of positive COVID-19 cases per capita. And, data forecasting shows that the spread of COVID-19 will only worsen in nearly every corner of the state as we head into the winter months.



↑44%

Wisconsin has seen a 44% increase in COVID-19 cases over the past two weeks. That's an average of 6,426 per day.



24%

Wisconsin's COVID-19 patients occupy 24% of Wisconsin's ICU beds and represent 13% of all current Wisconsin hospital patients.



↑24%

Wisconsin has seen a 24% increase in COVID-19 deaths over the past two weeks. That's an average of 46 deaths per day.

To date, our state's COVID response efforts have been funded nearly 100% by Federal Coronavirus Aid, Relief, and Economic Security (CARES) funding

This funding is currently scheduled to end on December 30, 2020.



The following financial investments must be committed to to maintain **CURRENT** pandemic response activities in Wisconsin through April 1, 2021.

Existing Pandemic Response Activity	Current Utilization Rate for Pandemic Response Activity	Investment Required to Maintain Existing Pandemic Response Activity	State Agency Currently Responsible for Activity
COVID-19 Testing	Over 215 active community testing sites are serving between 30,000-40,000 individuals per day. These sites are operated by the State of Wisconsin, local health systems and health departments, higher education institutions, as well as the Wisconsin National Guard.	\$58 million	Department of Health Services & Department of Administration
Contact Tracing	Over 1,500 state and local contract tracers have interviewed people with COVID-19 diagnoses and their contacts instructing them to isolate and quarantine. Contact tracing resources are expanding to meet the growing number of positive cases.	\$36 million	Department of Health Services
COVID-19 Testing Supplies & Lab Diagnostics	To date, 1.8m testing and lab supplies have been distributed to testing sites throughout Wisconsin. Completed tests are being processed daily by nearly 130 public and private labs.	\$255 million	Department of Administration
Hospital System Surge Capacity Support, including Alternative Care Facility (ACF) Operations	42/133 Wisconsin hospitals are reporting a critical staffing shortage, and 53/133 are expecting to reach a critical staffing shortage this week	\$105 million	Department of Administration
Infrastructure Preparedness for COVID-19 Vaccine	Proactive work is currently underway to ensure Wisconsin has an effective infrastructure to rapidly distribute an FDA-Approved COVID-19 vaccine.	\$10 million	Department of Health Services
Public Health Guidance & Awareness	The "You Stop the Spread" multimedia campaign encourages Wisconsinites to take steps - staying home, wearing a mask - to protect themselves and their communities from COVID-19.	\$2 million	Department of Health Services

**SUPPLEMENT TO GUIDANCE: ENFORCEMENT OF LOCAL HEALTH ORDERS
UTILIZING PROCESS SET FORTH IN THE ADMINISTRATIVE CODE**

October 14, 2020

Shortly following the Supreme Court’s decision in *Wisconsin Legislature v. Palm*, 2020 WI 42, the Wisconsin Counties Association created a task force to address questions surrounding the implementation and enforcement of local health orders under Wis. Stat. Chap. 252. In August of 2020, the task force completed its work and the Association released the publication *Guidance in Implementing Regulations Surrounding Communicable Diseases – An Analysis of Local Health Department and Local Health Officer Powers, Duties, and Enforcement Actions*. The Guidance may be found at https://www.wicounties.org/uploads/legislative_documents/guidance-communicable-diseases-final.pdf.

As indicated in the *Guidance*, local health officers are vested with the power to issue orders that are reasonable, based on local conditions, and that the local health officer deems necessary to curtail the spread of communicable diseases.¹ The orders a local health officer may issue related to communicable disease can be categorized as follows: (1) orders of general application that impact the public at large; and (2) orders that apply to a specific person, group, establishment, or gathering spot. Both policy and legal considerations suggest that the categories be treated differently in terms of how a local government and health officer craft relevant regulations, including enforcement mechanisms (*i.e.*, penalties/civil forfeitures). This Supplement addresses the challenges counties are facing with the creation of an ordinance to enforce local health orders applicable to the public at large and, as well, the enforcement mechanism discussed in the *Guidance* whereby a local health officer may petition a court to enforce a local health order pursuant to Wis. Admin. Code § DHS 145.06. Due to the challenges associated with drafting, implementing and enforcing a county ordinance related to local health orders, many counties have instead considered a “stepped” enforcement process, which is founded upon Wis. Admin. Code § 145.06. As with any consideration surrounding how a county best creates a regulatory mechanism, counties should work closely with corporation counsel to ensure compliance with all applicable laws and ordinances.

A. Enforcement Issues and Concerns Related to Orders of General Applicability

Section 252.25, relating to the enforcement of health orders issued under Wis. Stat. ch. 252, provides as follows:

¹ Local health officers also enjoy a variety of other powers and responsibilities, the discussion of which are beyond the scope of this Supplement.

Any person who willfully violates or obstructs the execution of any state statute or rule, county, city or village ordinance or departmental order under this chapter and relating to the public health, for which no other penalty is prescribed, shall be imprisoned for not more than 30 days or fined not more than \$500 or both.

(Emphasis added).

There exist two important considerations surrounding the interpretation and application of Wis. Stat. § 252.25. First, the statute provides an enforcement mechanism for local health orders only where a county has adopted a concomitant ordinance allowing for enforcement. Second, county ordinances may not provide a penalty for violation that imposes imprisonment or other criminal penalties, as the Wisconsin Legislature has limited the definition of a “crime” to only include conduct prohibited by state law. Wis. Stat. § 939.12; *State v. Thierfelder*, 174 Wis. 2d 213, 222, 495 N.W.2d 669 (1993) (holding that municipalities cannot impose imprisonment under a municipal ordinance, because municipalities cannot create crimes under Wisconsin Statutes). Based upon these two considerations, it is apparent that a county ordinance² is required to provide for the enforcement of a local health order and the penalty for noncompliance imposed by the ordinance must be a civil forfeiture, as opposed to a fine or imprisonment.³

The analysis surrounding adopting, implementing and enforcing a county ordinance relating to a local health order is further complicated by the Supreme Court’s decision in *Wisconsin Legislature v. Palm*.⁴ 2020 WI 42. The *Palm* Court opined that any actions that give rise to a “crime” “must ‘meet the standards of definiteness applicable to statutory definitions of criminal offenses.’” *Id.* (citing *State v. Courtney*, 74 Wis. 2d 705, 709, 247 N.W.2d 714 (1976)). While a civil forfeiture is not, by definition, a “crime,” the constitutional principles applicable to proceedings involving the imposition of a civil forfeiture are similar to those involved in the prosecution of a crime, as both circumstances may impact an individual’s constitutional liberties.⁵

In addition, the Court in *Palm* was concerned with what may be described as health officer regulatory overreach. Indeed, the *Palm* Court emphasized its concern with the extent of power

² Reference is made to a county ordinance, but a city or village ordinance may also provide enforcement authority for city or village health departments and joint city/county health departments.

³ In addition to a civil forfeiture, an ordinance could also make injunctive relief available as a remedy.

⁴ The *Palm* Court interpreted Wisconsin Department of Health Services authority to issue orders and rules of general application, and, therefore, is not directly applicable to local health officer authority. However, the authority granted to local health officer’s to issue orders of general application is similar to, and mostly analogous with, DHS authority. As a result, many of the issues raised by the *Palm* Court would likely also be held to apply to local health officer authority in this regard. For this reason, there is a great deal of ambiguity surrounding the scope of authority local health officers possess in issuing orders of general application, particularly the means by which such orders may be enforced. Further, legislative oversight is likely necessary in order to issue an “enforceable” order of general application, presenting further logistical and timing challenges.

⁵ For a more detailed discussion surrounding the constitutional principles, please see the *Guidance* at pp. 24-26.

that Secretary Palm would necessarily possess if no legislative oversight were required (*i.e.*, the power to create a law applicable to all people and to “subject people to imprisonment when they disobeyed her order.) *Palm* at ¶ 24. The Court acknowledged that the delegation of powers to an unelected official raised serious constitutional concerns, particularly separation of powers issues. *Id.* at ¶ 67. The same concerns exist when analyzing a local health officer’s powers – the unelected health officer should not be delegated the absolute power to declare the conduct that will give rise to a penalty (civil forfeiture) and prescribe the enforcement mechanism absent the procedural safeguards discussed in the *Guidance*.

In summary, while a local health officer may issue orders of general application that are reasonable and necessary to limit or prevent the spread of a communicable disease, the ability to enforce such orders through a forfeiture process presents challenges, both legally and practically.

B. Enforcement Actions Pursuant to Wis. Admin Code ch. DHS 145.

The Administrative Code provides an enforcement mechanism completely separate from the ordinance and forfeiture mechanism described above. Section DHS 145.06(4) provides local health officers with the authority to direct a person who is known to have or is suspected of having a contagious medical disease to comply with any of the following (singularly or in combination), as appropriate:

- (a) Participate in a designated program of education or counseling.
- (b) Participate in a defined program of treatment for the known or suspected condition.
- (c) Undergo examination and tests necessary to identify a disease, monitor its status or evaluate the effects of treatment on it.
- (d) Notify or appear before designated health officials for verification of status, testing or direct observation of treatment.
- (e) Cease and desist in conduct or employment which constitutes a threat to others.
- (f) Reside part-time or full-time in an isolated or segregated setting which decreases the danger of transmission of the communicable disease.
- (g) Be placed in an appropriate institutional treatment facility until the person has become noninfectious.⁶

In addition, Wis. Admin Code § DHS 145.06(6) empowers a local health officer to “direct persons who own or supervise real or physical property or animals and their environs, which present a threat of transmission of any communicable disease ... to do what is reasonable and necessary to abate the threat of transmission.”

Pursuant to Wis. Admin Code § DHS 145.06(5), a local health officer may petition a court of record to order a person in violation of a specific directive issued pursuant to 145.06(4) or (6) to comply. When petitioning a court, the local health officer must ensure the following:

⁶ Wis. Admin Code § DHS 145.06(4).

- (a) The petition is supported by clear and convincing evidence of the allegation;
- (b) The respondent has been given the directive in writing, including the evidence that supports the allegation, and has been afforded the opportunity to seek counsel; and
- (c) The remedy proposed is the least restrictive on the respondent which would serve to correct the situation and to protect the public's health.

Based upon these regulations and because of the challenges associated with drafting, implementing and enforcing a county ordinance related to local health orders, many counties have considered the following “stepped” enforcement process, which is founded upon Wis. Admin. Code § DHS 145.06.

Step One: A local health officer issues COVID-19 guidelines for individuals, groups, and establishments to utilize and follow that the local health officer deems reasonable and necessary to prevent the spread of the communicable disease. The authority to issue the guidelines is firmly established in Wis. Stat. § 252.03 and Wis. Admin. Code § DHS 145.06(4)(e).

The guidelines should, of course, seek voluntary compliance to ensure maximum acceptance and effectiveness. Guidelines should follow recommendations and guidance issued by recognized sources such as the Centers for Disease Control, the Occupational Safety and Health Organization, and the Wisconsin Department of Health Services, but should also be based on local conditions (an important legal requirement underlying local health officer authority based in Wis. Stat. § 252.03). For example, guidelines applicable to a “hotspot” will likely be different from those issued in a community with a lower number of cases.

When issuing the guidelines, it will be important for a local health officer to specify in as much detail as possible (1) the local conditions that led to the decision to issue the guidelines; (2) the necessity for the guidelines in the context of attempting to curtail the spread of COVID-19; (3) the reasonableness of the measures identified as guidelines; (4) the statutory and regulatory foundation for the guidelines (Wis. Stat. § 252.03 and Wis. Admin. Code § DHS 145.06); and (5) a discussion of other and further orders, directives, and/or guidelines that may result in the event COVID-19 continues to spread, including the specific directives that may be issued (pursuant to Wis. Admin. Code § DHS 145.06) for failure to comply with the guidelines when such failures result in the transmission of COVID-19.

Step Two: If COVID-19 continues to spread and there are one or more individuals, groups, or establishments that refuse to comply with the guidelines, a local health officer may then issue targeted directives applicable to a specific individual, group, or establishment or to multiple similarly situated individuals, groups, or establishments that are not following the guidelines *and*, for groups and establishments, based upon confirmed conditions that are resulting in the transmission of COVID-19. Wis. Admin. Code § DHS 145.06 refers to such targeted measures as “directives.” As a result, the local health officer should use the phrase

“directive” when issuing and, as well, discuss application of the five factors in Step One above to the particular circumstances that led to the directive being issued.

As indicated in Wis. Admin Code § DHS 145.06(4), directives issued to specific individuals may only be issued to persons who are known to have, or who are suspected of having, a communicable disease. Likewise, it is important to remember that directives issued to groups or establishments may only be issued under Wis. Admin Code § DHS 145.06(6) if the groups or establishments are known to present a threat of transmission of COVID-19. Further, such directives must be reasonable and necessary to abate the threat of transmission. For this reason, such directives should generally only be utilized when the group(s) and establishment(s) at issue fail to adhere to the guidance issued under Step One, *and* when measures such as contact tracing have established clear evidence of transmission because of the failure to adhere to the guidance. These steps are necessary in order to meet the “reasonable and necessary” threshold embedded in Wis. Stat. § 252.03 and Wis. Admin Code § DHS 145.06.

Step Three: If the targeted individual(s), group(s), or establishment(s) refuse to adhere to the local health officer’s directive issued under Step Two, the local health officer may petition the circuit court to order the individual(s), group(s), or establishment(s) to comply with the order under the process set forth in Wis. Admin. Code § DHS 145.06 discussed above.

Following the “stepped” enforcement mechanism set forth in Wis. Admin Code § DHS 145.06 likely does not implicate the primary concerns identified in the Supreme Court’s decision in *Palm*.⁷ As indicated above, the Wis. Stat. ch. 252 issues arising from the *Palm* decision relate primarily, if not exclusively, to orders of general application under Wis. Stat. § 252.02, which would seemingly likewise implicate Wis. Stat. § 252.03 (relating to local health officers.) Indeed, the procedural safeguards in the Administrative Code relating to judicial findings surrounding burden of proof, notice of the directive and the implementation of the least restrictive remedy address many of the concerns the Court identified in *Palm*. In addition, the process relies upon an enforcement mechanism explicitly contemplated in the Administrative Code, the lack of which was the primary complaint surrounding the order at issue in *Palm*.

C. Practical Considerations

The onset of the COVID-19 global pandemic is unprecedented. The reaction from federal, state and local governmental agencies around the country has likewise been unprecedented. The Wisconsin statutes and administrative code were not designed with COVID-19 in mind. For this reason, it is important that counties review their legal options carefully with corporation counsel. Similarly, it will be important for counties to discuss enforcement options and mechanisms with their local health officer, the Sheriff’s office, the courts, administration, the county board and, of

⁷ While the *Palm* decision is not implicated, the relevant statutes and administrative code nonetheless constrain what may be “ordered” to those measures deemed reasonable and necessary to suppress or prevent the spread of COVID-19. As well, and as indicated in this Supplement, there are constitutional considerations associated with the imposition of any restriction on an individual’s constitutional rights.

course, corporation counsel. In the end, it will be important to not only devise a logical and legally-defensible mechanism to slow the spread of COVID-19, but to also provide the public confidence that the county is proceeding in a reasonable manner.

If you have any questions or concerns with this Supplement, please do not hesitate to contact the Association.

Mask mandated

The city is considering its own mask ordinance — it's inspired talk of a lawsuit, and a Trump parade



Wausau's Mayor, Katie Rosenberg, announced a series of executive orders late Friday that declared a state of emergency in the face of COVID-19, barred firearms and weapons from polling sites and limited capacity in city buildings to allow for six feet of social distancing.

At the same time, a special Public Health and Safety Meeting was called to consider a potential ordinance that would mandate wearing masks in indoor spaces within the city limits and impose fines for those who don't.

The moves sparked threats of lawsuits and a parade of pickup trucks bearing Trump flags past Rosenberg's house Saturday. So far, according to online court records, that lawsuit has not materialized.

And neither did the ordinance. The Public Health and Safety Committee Monday chose instead to recommend a

▲ Mayor Katie Rosenberg speaks while wearing a mask at a voting event Thursday. Rosenberg initiated a series of executive orders the next day.

resolution, to start at the end of Gov. Tony Evers' statewide mask mandate that is set to expire Nov. 21. The resolution simply asks residents to wear masks but includes no penalties for failure to do so.

The decision came after Wausau Police Chief Ben Bliven essentially said he wouldn't be able to enforce a mask mandate. Business owners can already request law enforcement intervene if a customer refuses to wear a mask, and depending on the situation the offender might face charges of trespassing or disorderly conduct.

Public Health and Safety Chair Lisa Rasmussen told the committee that she

has received a lot of feedback on the potential mandate, as have other council members. In her case, the feedback was 3 to 1 in favor of a mandate, and comments sent via the city clerk's online form were 4 to 1. Committee member Dawn Herbst says she had the opposite experience, with 3 to 1 against the mandate.

The mandate consideration comes as the county and state as a whole have been hit with a new wave of COVID-19 cases in October. Census tract data shows new COVID cases in the middle weeks of October tend to be somewhat concentrated around the Wausau metro, but nearly every census tract has a high number of new cases in the period between Oct. 11 and Oct. 24. Marathon County Health Officer Joan Theurer says COVID-19 cases have increased ten-fold from only a month ago, which Department of Health Services data confirms. Hospitals are on the verge of being overwhelmed.

The committee voted 3-2 to forward the resolution, which doesn't contain penalties, to the city council. The council will take up the resolution Nov. 10; it could choose to pass the resolution, the ordinance which includes penalties, or nothing.

Baldwin calls on Verso to run or sell their Wisconsin Rapids mill

U.S. Senator Tammy Baldwin is calling on Verso to either run or sell its Wisconsin Rapids mill.

Baldwin sent a letter last week to Verso's Corporate headquarters after the company announced it was suspending

its attempts to find a buyer for its mill.

"Many in the community were hoping for a quick sale to a buyer that would operate the mill and preserve its nearly one thousand jobs," Baldwin wrote. "The disappointing news that the sale is on hold raises concerns that Verso will close the mill instead of selling it to an operator."

The mill stopped operations in July and 902 workers were laid off as a result. Baldwin criticized the company's decision to spend \$100 million on a special dividend and \$150 million on stock buybacks only one week after shutting down the mill.

Verso's announcement was a shock to a task force that was working on easing the transition as hundreds in the community found themselves without jobs.

City setting aside funding for strategic plan

Talk of a strategic plan, a key initiative in Mayor Katie Rosenberg's mayoral campaign, had pretty much ceased as the city turned its attention to dealing with COVID-19. But now, that process has begun.

The city's finance committee recently approved setting aside \$50,000 to hire a consultant to help develop a strategic plan.

The goal of the plan is to lay out the city's measurable goals so that decision can align with that strategy. A similar example is the county's strategic plan, where decisions are evaluated by how they fit with the plan. The plan outlines metrics — real hard and fast numeric goals — the county can use to evaluate whether it has met its goals.

Finance committee member Deb Ryan

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COVID winter

As the weather turns cold and COVID-19 cases rise, what will the Wausau area look like?

Tyler Vogt recently found himself constructing an archway over the doorway to Malarkey's Pub and Townies Grill. Dubbed the Archway of Understanding, the concept is simple but also brilliant. To pass through the Archway of Understanding and enter the pub/restaurant and participate in its new social distancing scheme, one must agree to follow the rules of the pub.

Those rules, by the way, include wearing your mask when you're not at your table, and to otherwise remain at your table with your group while masked servers bring your drinks and food.

Conversations between store employees and customers have gone viral with customers refusing to wear masks, and so the placement of the archway is crucial: it forces that conversation before the customer even enters the business, instead of a potential scene later on when the customer is inside.

"I put it in a similar category as smoking," Vogt told City Pages. "Malarkey's decided it would go smoke free before there was a law. We thought there was a space in our market for it. We didn't want to be a smoochy bar." The bar will be the same for people who want to go out and be socially distanced.

Vogt put big screens in the dining area of the bar and plans to have trivia, comedy and music shows at the pub/restaurant, and diners will be able to watch the screens from their tables.

The point is to find a way to stay open while the pandemic rages. Into late September, only 14 people had died of COVID-19. That number in Marathon County now spiked to 61. Also spiking is the number of daily cases. Based on data from the Wisconsin Department of Health Services,

the daily case total tended to be less than a dozen per day, often much less. By October, the numbers had spiked to well more than 100 per day. In Marathon County, roughly 1 in 100 (1.1%) of people who contract COVID-19 ultimately die from it.

All that means winter might look very different than summer did, when outdoor spaces provided a safe haven for folks to still enjoy dining and having a few drinks while still staying socially distant and avoiding the potential of spreading COVID. It also allowed businesses to stay in business, as takeout orders helped but were only barely sustainable for many small businesses.

That's all going to change as the winter shuts that down. How will it affect business, child care, and those in crisis? We talked to people in those fields to get a sense of what this winter, with the COVID pandemic in full effect, would bring.

COVID business

COVID-19 sparked a shift in business that was already in the works, says Wausau Chamber of Commerce CEO and President Dave Eckmann. The pandemic caused it to happen a lot more rapidly than it would have otherwise.

"You look at where we were in March," Eckmann says. "It was a shock for businesses. Over the course of the first few weeks businesses learned to adapt and set up a different means of doing commerce." Those included changes in delivery and curbside pickup for restaurants and even retail stores.

Some shifted their in-person businesses to a takeout model. Some others found some truly innovative ideas, Eckmann says. He points to Evolutions in Design, where customers could set up a Facebook



▲ Tyler Vogt poses with his Danny DeVito cutout in front of the Archway of Understanding - customers will have to agree to follow the COVID-19 rules before passing through.

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appointment and staff would walk them through the store to shop via video stream. If they bought something, Evolutions would have it delivered.

Ecommerce saw a 129% year over year growth already as of April, and ecommerce is expected to hit \$710 billion in sales this year, a share of 14.5% of all retail sales. That's up from only 11% of retail sales the year before. World wide, ecommerce is expected to hit \$4.2 trillion dollars, according to Forbes magazine.

What will help business get through? Following social distancing practices recommended by the DHS and Center for Diseases Control, shopping local when possible, and following the rules businesses set in place for the safety of their customers and employees. "They're trying to be proactive to keep their business going," Eckmann says. Eckmann also lauds the kind of innovative thinking of places such as Evolutions and Malarkey's are doing. Innovation is the key to maintaining business during the pandemic, and he implored people to shop local as much as possible.

Blake Opal-Wahoske, executive director of the Wausau River District, shared that message. Winter temperatures shut down such activities as Dining in the Street, in which Third Street shut down to allow for a large outdoor dining area. The event was a boon for downtown restaurants that otherwise struggled. Cio owner Adam Jamgochian told City Pages in the past that Wednesday nights had become the new Friday nights because of the increase in business at the event.

The River District still plans to hold Small Business Saturday and the holiday open house events, but many aspects of it were canceled to avoid gathering points that could lead to COVID-19 spread, Opal-Wahoske told City Pages. Businesses will have their own policies in store to prevent against COVID-19 spread. "We will also have full business listings for each event that includes online and delivery methods, so community members can still shop locally from the safety of their own home," Opal-Wahoske told City Pages.

Will need increase?

The shutdowns in March affected those who work in the retail and food industries disproportionately, and those workers tend to be in the lower economic stratas. "We knew this would be bad," says North Central Community Action Program Executive Director Diane Sennholz. "Many of our clients hold retail jobs, or work as waitresses, bartenders, or in nail or beauty salons. They would need help staying in their apartments."

NCCAP ended up helping more than 200 individuals with rental assistance over the course of the pandemic,

helping those people remain in their homes, says Chandra Wakefield, a case manager at NCCAP.

What does that mean for the coming winter season? While the potential for a capacity limit could have some impact, they're not expecting a huge uptick of people seeking out services, Sennholz says. Most restaurants are already operating at lower capacities to maintain social distancing and those who need help are currently getting it.

In other words, those who were struggling will probably keep struggling, but they're not expecting a huge uptick in new people struggling.

But for those who lost a job due to changes sparked by COVID-19, it's not likely they're going to easily find one. Many currently are struggling to find new jobs, Sennholz says. Those who worked for temp agencies and office cleaning services are especially struggling, she says.

And some employers are hiring, but the fear factor of COVID-19 might keep them away. Grocery stores in the area have many openings, Wakefield says, but many are afraid of catching the virus.

NCCAP applied for and received a number of grants to help people affected by COVID-19 and its impacts. Also available to Wausau residents is a Community Development Block Grant that can help with rent and mortgages if they're impacted by COVID-19.

The challenge isn't just total job loss; being stuck in quarantine can mean a temporary loss of income that can be a challenge to households living on a tight budget.

And, the child care scene has gotten slightly better in Marathon County, says Micki Krueger, assistant director for Childcare. The number of providers has stayed roughly the same, around 103-105 providers in the county, but the number of child care slots has increased by 300, Krueger says.

How bad is the pandemic?

Pretty bad. There was a time early on in the pandemic that positive test percentages were very low compared to the rest of the state. Between March and May, outbreaks seemed contained to the areas with denser populations, such as the Madison and Milwaukee area. Early surges were largely the result of increased testing as the percentages of positive cases remained unchanged.

But positive test percentages have risen to 14.5%, a dramatic rise. Calculating the percentage is a way to mitigate the variability in the number of tests in any given week.

And it's important to note that the percentage repre-

sents all the tests and all the positive cases since testing for COVID-19 started. For the percentage to be that high now, when it previously was so low, it had to be much higher in the last few months to balance out at 14.5%.

Those percentages have come as testing rates have increased. Marathon County Health Department last month, in conjunction with the Wisconsin National Guard, started conducting weekly tests.

Meanwhile, the state just hit 2,000 deaths over Halloween weekend, WisPolitics reports. According to the CDC, Wisconsin ranks No. 3 in the nation for cases per 100,000 people, WisPolitics reports.

Marathon County's Health Department now has a dashboard on its site with a data tool that drills down to the census tract level. It looks roughly like one might expect, with more concentration of cases near the Wausau metro area, and fewer cases in rural areas. But there are a lot of exceptions, with low numbers of cases in some city areas and higher cases in some rural tracts. The block west of Rib Mountain had 102 cases in the Oct. 11-24 period, and the northeast county tract had 90.

Although those tracts are proximate to population centers, so is the southwestern tract just north of Marshfield, with only 34 cases in that time period.


All of that is a roundabout way of saying COVID-19 cases are dramatically on the rise.

But will it get worse, or better, over winter? That depends, says Marathon County Coronavirus Information Officer Judy Burrows. "If people stay home more than they did in the summer, it may be better," Burrows told City Pages. "If they host and/or attend holiday celebrations, dinner parties, etc. with different groups of people, it may get worse (increased spread). What we know is that social distancing slows the spread."

Gov. Tony Evers's statewide mask mandate is set to expire Nov. 20. City leaders on Monday weighed whether to implement a city wide mask mandate that would start when the governor's order ends, if it is not renewed. The city's Public Health and Safety Committee chose to recommend a resolution, versus an ordinance, which would have contained penalties for failing to comply with the law.

No one can know for sure what the pandemic will look like this winter. Burrows points out that the state and nation hasn't been through a winter with COVID-19 yet, and experts aren't sure what to expect. But right now, Marathon County Health Office Joan Theurer summed up the current situation: "We have COVID, it is widespread and it is uncontrolled." ☐

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