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DATE: March 13, 2020

TO: Interested Parties

FROM: Margaret C. Daun, Corporation Counsel
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SUBJECT: County Executive's Authority to Issue Administrative Orders During Declared Emergencies

The Office of Corporation Counsel ("OCC") has been asked whether the County Executive has the authority to issue and implement immediately, without prior County Board approval, administrative orders during the COVID-19 pandemic. The answer is yes. Under section 323.14(4)(b) of the Wisconsin Statutes, the County Executive can issue such orders if (1) he first declares that a state of emergency exists within Milwaukee County; and (2) the administrative orders are necessary to protect the health, safety and welfare of the people in Milwaukee County. However, the proclamation and administrative orders are subject to subsequent review, ratification, repeal, and/or modification by the County Board. *Id.*

What is COVID-19?

COVID-19, a/k/a Coronavirus, is a respiratory illness that can spread from person to person.¹ It was first identified during an investigation into an illness outbreak in Wuhan, China. *Id.* The virus is spread mainly between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs or sneezes. *Id.* It also may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes. *Id.*

What are the Symptoms of COVID-19?

People infected with COVID-19 have had mild to severe respiratory illness with symptoms of fever, cough, and shortness of breath. *Id.* COVID-19 has caused pneumonia in both lungs, multi-organ failure, and in some cases death. *Id.*

Is there a vaccine or treatment for COVID-19?

¹ <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>

No. There is currently no vaccine or treatment for COVID-19. The Centers for Disease Control and Prevention (“CDC”) recommends the following:

- Avoid close contact with people who are sick.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Wash your hands often with soap and water for at least 20 seconds. Use an alcohol-based hand sanitizer that contains at least 60% alcohol if soap and water are not available.

If you are sick:

- Stay home.²
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Clean and disinfect frequently touched objects and surfaces.

COVID-19 has been Declared a Global Pandemic by the World Health Organization.

On Wednesday, March 11, 2020, the World Health Organization declared COVID-19 a global pandemic as the new coronavirus, which was unknown to world health officials just three months ago, has rapidly spread to more than 121,000 people from Asia to the Middle East, Europe and the United States.³ At the time of the writing of this opinion, there are currently up to 8 active cases in Wisconsin.⁴ Evidence shows that COVID-19 spreads rapidly if exigent measures are not taken. For example, Italy has closed its borders, closed schools, restricted travel within its borders, and recorded over 15,000 cases and 1000 deaths in less than a month of when a case first was diagnosed.⁵

The State of Wisconsin has Declared COVID-19 a Public Health Emergency.

On Thursday, March 12, 2020, Governor Evers declared COVID-19 a public health emergency as defined as an “imminent threat” under Wis. Stat. § 323.02(16) in the state of Wisconsin.⁶ See also Wis. Stat. § 323.10. The Governor’s declaration designated the State Department of Health Services (“DHS”) as the lead agency to respond to the public health emergency and directed DHS to take all necessary and appropriate measure to prevent and respond to incidents of COVID-19 in the state. The declaration also authorized the Adjutant General to activate the Wisconsin National Guard as appropriate and necessary.

² The CDC recommends self-quarantine for a period of fourteen (14) days.

³ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>; https://www.who.int/docs/default-source/coronaviruse/20200312-sitrep-52-covid-19.pdf?sfvrsn=e2bfc9c0_2

⁴ <https://www.dhs.wisconsin.gov/outbreaks/index.htm>

⁵ Supra n. 3.

⁶ Executive Order No. 72, 2020; https://content.govdelivery.com/attachments/WIGOV/2020/03/12/file_attachments/1399035/EO072-DeclaringHealthEmergencyCOVID-19.pdf

What is the Authority of Milwaukee County to Declare an Emergency?

Wis. Stat. § 323.11 authorizes the County Board “to declare, by ordinance or resolution, an emergency existing within” Milwaukee County. The powers conferred by such a declaration include the “general authority to order ... whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property within” the County. Wis. Stat. § 323.14(4)(a). “If, because of the emergency conditions, [the Board] is unable to meet promptly, [the County Executive] shall exercise by proclamation all of the powers conferred upon the [Board] ... that appear necessary and expedient.” Wis. Stat. § 323.14(4)(b). Such a proclamation by the Executive is “subject to ratification, alteration, modification, or repeal by [the Board] as soon as [the Board] can meet, but the subsequent action taken by the [the Board] shall not affect the prior validity of the proclamation.” *Id.*

Executive’s Power to Issue Administrative Orders with Immediate Effect

As noted above, the County Executive is authorized to declare, by proclamation, a local emergency. Wis. Stat. § 323.14(4)(b). Just yesterday, the Governor declared a state of emergency in Wisconsin due to COVID-19. The County Board does not meet for another 2 weeks, or until March 26, 2020. Recognizing the seriousness of this public health emergency, the County Executive earlier today issued proclamation declaration a County-wide public health emergency. Therefore, he now has the authority to do “whatever is necessary” to protect Milwaukee County, including issuing Administrative Orders.

Shortly after declaring a County-wide public health emergency earlier today, the County Executive issued Administrative Orders 20-1v1 & 20-2v1, both effective immediately. He has the legal authority to do so, subject to later review, ratification, repeal, and/or modification by the County Board. Both orders refer to the Governor’s declaration of a public health emergency associated with COVID-19. The orders also specifically cite to Milwaukee County’s principal goal of protecting the health of its employees and the public. The orders further recognize that the populations that Milwaukee County serves have essential needs that must be met, and that County employees are essential in fulfilling that mission. Therefore, the Executive has the legal authority to issue Administrative Orders 20-1v1 & 20-2v1 and other such orders required to protect public health and safety with immediate effect.

However, the proclamation and attendant orders are not without possibility of modification or repeal. The same statutory provision that confers upon the County Executive the authority to issue proclamations and orders also requires the same to be reviewed by the County Board. Wis. Stat. § 323.14(4)(b). Once presented “as soon as the body can meet,” the Board can either ratify, amend, modify or repeal the proclamation and/or orders. *Id.* This is consistent with the County Board’s powers under Wis. Stat. § 323.11.⁷

⁷ This same process was recently used in Res. File No. 20-144.

<https://milwaukeecounty.legistar.com/LegislationDetail.aspx?ID=4312163&GUID=2C286E6A-719C-4686-9B3F-B94FB1B6561D>