

COVID-19 (Novel Corona Virus 2019): Powers of Local Health Officer; Enforcement; Penalty

(1) Introduction:

- (a) Declaration of policy. This ordinance has been adopted in direct response to the COVID-19 pandemic. It has been created because institutions of Wisconsin State Government have determined that individual municipalities must take charge of managing enforcement of public health orders on a local level. The Marathon County Board of Supervisors recognizes and trusts that the clear majority of persons and businesses located within Marathon County will voluntarily follow recommendations and guidance from Public Health authorities to protect themselves, their employees, their families and each other.
- (b) Purpose and Intent. It is the purpose and intent of the Marathon County Board to ensure that any local public health orders are narrowly tailored to address specific individuals, businesses, and localities where a cluster or outbreak of cases is identified. Any public health orders issued in Marathon County must be based on confirmed cases of persons actually infected or suspected of being infected with COVID-19. This ordinance is intended to limit overly broad, universally applicable restrictions provided for within the State's "Safer at Home" order. It is also intended to protect the health and safety of the majority persons and businesses from the actions of a few, whose behavior endangers the public, by providing for clear enforcement and penalties for persons or organizations that violate lawful public health orders.
- (c) Authority. This ordinance is adopted pursuant to the authority granted in Wisconsin Statutes, Chapter 252, to prevent and suppress communicable diseases on a local level, and Wis. Stats, §59.54(6), to preserve the public peace, safety and good order within the county.
- (d) Findings. The County Board finds that:
 - 1. COVID-19 and the spread of that virus poses a unique and direct threat to the health and safety of persons living, working or visiting in Marathon County because the virus has no known treatment or vaccine, is extremely contagious, and causes death in a large percentage of persons over the age of sixty (60), or those with underlying health conditions, who contract it. Some models suggest that up to 50-70% of the population of the United States could contract COVID-19. The threat requires vigilance by the Local Health Officer and may require swift and decisive action to protect the community.
 - 2. The Wisconsin Supreme Court has declared that the Wisconsin Department of Health Services (DHS) exceeded its authority when it issued Order #28, Safer at Home. The Court took issue with DHS's order because DHS had not complied with necessary rulemaking procedures and because the Order quarantined all people within the state without regard to whether they were infected or suspected of being infected.

3. Economic, social and personal activity is essential to the well-being of our community. Any public health orders issued in Marathon County must strive to avoid inequity amongst the individuals, businesses, and communities impacted.
4. In Marathon County, the Local Health Officer is the Director of the Marathon County Health Department. The Local Health Officer is authorized to take reasonable and necessary actions to prevent and suppress communicable diseases, pursuant to the authority granted under Wis. Stats. §252.03(1) and (2) and §252.06.
5. The power of the Local Health Officer extends to the regulation of:
 - a. Individuals, when they have tested positive for COVID-19, they are a probable case, or are suspected of being infected,
 - b. Specific businesses and other organizations, when multiple or a cluster of cases has been identified,
 - c. Localities within Marathon County, when a localized outbreak has occurred, and
 - d. County-wide, under the limited circumstances described below.
6. The need to issue such orders is limited in Marathon County because individuals, businesses, and other organizations should not be subjected to mandatory requirements when they are voluntarily following reasonable and necessary measures recommended by the Local Health Officer.

(e) Applicability. This ordinance automatically sunsets effective December 31, 2021, except with respect to the continued enforcement of actions commenced prior to that date.

(2) Definitions. In this ordinance terms have the following meanings:

- (a) "Cluster" means an aggregation of cases in a given area over a particular period.
 1. In a business or other entity, a cluster would be deemed to have occurred if cases were epidemiologically linked to the business or other entity.
- (b) "Epidemiologically linked" means that the Local Health Officer has made a determination that the cases have a common cause or are related to one another in some way by time, place, and person. "Interfere with investigation" means knowingly giving false information to the Marathon County Health Department or knowingly preventing an investigation from being carried out properly.
- (c) "Locality" means a geographically defined area within Marathon County.
- (d) "Measures" means actions taken to prevent, suppress, and/or control the spread of COVID-19. Measures can include but are not limited to changes in behaviors and practices; carrying out environmental controls; screening and/or testing; restricting people's movement; and instituting workplace policies.

- (e) "Non-compliance" means failure or refusal to implement all measures recommended by the Local Health Officer or specified in a written order within a reasonable period of time.
- (f) "Outbreak" means the occurrence of more cases than expected in a localized area or community.
- (g) "Reasonable period of time" means reasonable period of time under the circumstances. Some measures may need to be implemented by recipients of written orders immediately and without delay. Most written orders will set forth a time period for recipients to implement measures.

(3) Local Health Officer's Duties and Authority [Sec. 252.03, Wis. Stats.]

- (a) Sec. 252.03, Wis. Stats. (as it currently exists or is hereafter revised) is incorporated herein by reference as if fully set forth.
- (b) The Health Officer, upon the appearance of any communicable disease in Marathon County, shall immediately investigate all the circumstances and make a full report to the County Board and Wisconsin Department of Health Services.
- (c) The Health Officer shall promptly take all measures necessary to prevent, suppress and control communicable diseases, and shall report to the County Board the progress of the communicable diseases and the measures used against them, as needed to keep the County Board fully informed, or at such intervals as the Wisconsin Secretary of Health may direct.
- (d) The Health Officer may do what is reasonable and necessary for the prevention and suppression of disease; may forbid public gatherings when deemed necessary to control outbreaks or epidemics and shall advise the Wisconsin Department of Health Services of measures taken.
- (e) No person may interfere with the investigation under this ordinance of any place or its occupants by the Health Officer or their assistants.

(4) Local Health Officer Isolation and/or Quarantine Order [Sec. 252.06, Wis. Stats.]

- (a) Sec. 252.06, Wis. Stats. (as it currently exists or is hereafter revised) is incorporated herein by reference as if fully set forth.
- (b) The diagnostic report of a physician, the notification or confirmatory report of a parent or caretaker of the patient, or a reasonable belief in the existence of a communicable disease shall require the local health officer immediately to quarantine, isolate, require restrictions or take other communicable disease control measures in the manner, upon the persons and for the time specified in rules promulgated by the department.

- (c) If deemed necessary by the local health officer for a particular communicable disease, all persons except the local health officer, his or her representative, attending physicians and nurses, members of the clergy, the members of the immediate family and any other person having a special written permit from the local health officer are forbidden to be in direct contact with the patient.
- (d) The local health officer shall employ as many persons as are necessary to execute his or her orders and properly guard any place if quarantine or other restrictions on communicable disease are violated or intent to violate is manifested. These persons shall be sworn in as quarantine guards, shall have police powers, and may use all necessary means to enforce the state laws for the prevention and control of communicable diseases, or the orders and rules of the department or any local health officer.
- (e) Any person found in violation of an order issued pursuant to § 252.06, Wis. Stats., or its successor statute, shall be subject to enforcement as set forth below.

(5) Administration.

- (a) Voluntary compliance through education, recommendation and referral – The primary means of prevention, suppression and control of COVID-19 is through communication with the persons, organizations and municipalities impacted by positive tests for the virus. As of the time of passage of this ordinance, there have still been fewer than 100 positive tests for COVID-19 in Marathon County. However, the mere fact that Marathon County has fewer cases than certain other counties does not eliminate the risk of local transmission. Similarly, as there no barriers preventing people travelling to and from Marathon County, continued prevention, suppression and control efforts are necessary. While it is unlikely that testing will be able to discern whether one person actually caught the COVID-19 virus from another specific person, cases can be sufficiently “epidemiologically linked” when a group of people who have tested positive share common contacts. The mission of the Marathon County Health Department is to follow up on positive tests and to recommend appropriate measures be taken voluntarily to control the transmission of the virus. There may be resources available to provide technical advice to businesses and organizations to assist with specific modifications of physical plant, policy or practice to control transmission. There is no reason to issue a mandatory order when people, businesses, organizations and localities are implementing recommendations voluntarily.
- (b) Written Order – When a person, business, organization or locality fails or refuses to implement recommendations voluntarily, the Health Officer or designee may issue a written order. With respect to persons, businesses, or organizations, said order shall be delivered personally, by First Class Mail, or sent by Certified Mail to the person, owner, operator, or occupant as the case may require. With respect to locality-specific or countywide orders, notice of said order shall be provided by publication of a Class I notice. Any order shall specify the following:

1. The findings of the Health department.
 2. The measures needed to prevent, suppress or control further transmission of COVID-19.
 3. The time period in which the individual, business or organization, or locality must implement or comply with various measures. Time extensions may be granted by the Health Officer.
 4. The penalty or penalties the order recipient would be subject to in the event of non-compliance within the given time period, see subsection (7) below.
- (6) Measures to prevent, suppress, and control COVID-19. The Health Officer is authorized to issue orders directing the implementation of the following measures to prevent, suppress, and control COVID-19 in the event voluntary compliance with recommendations is not achieved:
- (a) Individuals.
 1. Finding: An Individual that is diagnosed as a case of COVID-19, a probable case, or a suspected case or the individual is identified as a close contact to an individual diagnosed as probable or case of a communicable disease who is capable of developing and spreading the disease.
 2. Measures may include but are not limited to:
 - a. Isolate and/or quarantine to their home or another safe place, including no contact with people outside the place the individual is ordered
 - b. Provide information regarding the people and places with which the individual had contact during the infectious period of the disease
 - c. Permit staff from the health department to contact the individual to evaluate health status, basic needs and compliance.
 - (b) Business, Non-Profit, Other Organizations and Entities.
 1. Finding: Multiple cases, or a cluster of cases, are epidemiologically linked to the business or organization over a period of time.
 2. Measures may include but are not limited to:
 - a. Direct that the entity to create an Incident Response Team
 - b. Daily health monitoring of employees and non-employees entering the premises for symptoms
 - c. Testing of employees
 - d. Environmental modifications to reduce the spread (cleaning, physical barriers)
 - e. Mandate the use of appropriate personal protective equipment and personal hygiene
 - f. Not allow employees under isolation or quarantine to come to work
 - g. Reduce the number of employees and/or stagger shifts

- h. Limit face-to-face interactions with customers
- i. Reduce hours or days of operations
- j. Temporary close operations

(c) Locality.

1. Finding: COVID-19 outbreak occurring in a defined area of the county as evidenced by a substantial increase in the number of cases over a short period of time.
2. Trigger measures are highly dependent upon the size and density of the population within the geographical area affected (*e.g.*, a 10% increase in cases on 3 consecutive days, doubling time of less than 5 days).
3. Measures may include but are not limited to:
 - a. Limitation on gatherings of non-household members.
 - b. Mandate the use of face coverings while in public areas.

(d) County Wide.

1. Finding: Widespread COVID-19 outbreak occurring whereby the health care and/or public health system is at risk of operating under crisis standards in light of the number of cases.
2. Trigger measures may include:
 - a. Insufficient Testing. Testing is unavailable or interrupted, such that local health care systems are unable to meet the Centers for Disease Control or Wisconsin Department of Health Services priority levels.
 - b. Insufficient Hospital Care Capacity. Hospitals are approaching crisis standards of care in treating all patients, as defined by the Institute of Medicine, regarding (1) availability of ICU beds, (2) availability of ventilators, or (3) availability of PPE.
 - c. Insufficient Public Health System Capacity. The Marathon County Health Department is unable to complete necessary contact tracing within 48 hours of report.
3. Measures that may be ordered include but are not limited to:
 - a. Limitations on gatherings of non-household members.
 - b. Mandate the use of face coverings while in public areas.

(7) Enforcement.

- (a) Interference with investigation – If a person, business, organization or other entity interferes with a COVID-19 investigation, they are subject to the enforcement actions and penalties set forth below.
- (b) Noncompliance with Order – If a person, business, organization or other entity is non-compliant with a written order from the Health Officer, they are subject to the enforcement actions and penalties set forth below.
- (c) Enforcement actions:

1. The issuance of a citation by a law enforcement officer.
2. Commencement of legal action seeking a court-imposed forfeiture for violation of this ordinance [see penalty below].
3. Commencement of legal action seeking an injunction and/or restraining orders to abate the interference with the investigation or non-compliance with a written order.
4. The suspension of any license or permit issued by the Health Department.
5. Any other action authorized by this ordinance or by other applicable laws as deemed necessary by the Health Officer.
6. The initiation of one action or penalty under this section does not exempt the alleged violator from any additional actions and/or penalties listed in this section.

(d) Penalties

1. Anyone violating a provision of this ordinance shall be subject to forfeiture of not less than \$100 nor more than \$25,000 per violation.
2. Continued violations. Each violation, and each day a violation continues or occurs, shall constitute a separate offense.

(e) Initiation of Legal Action – Prosecution of violations of this ordinance shall be conducted by the Office of Corporation Counsel for Marathon County. Legal action shall be initiated against a violator as requested by the Health Officer.