



FOR IMMEDIATE RELEASE

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It's important for county residents to know that Portage County's approach is focused on being methodical, logical, and sensible with the safety of all county residents in mind. We are working very hard toward finding solutions, but we all have a role in this and need to do our part. This situation is unprecedented, frustrating, and exhausting for us all. We can ill afford the sort of rancor and discord that permeates other levels of government and which led to counties being placed into this position in the first place. This is a fight against a virus and not each other.

I know that the nature of the situation we're in creates a sense of urgency and for obvious reasons, but there is little-to-no benefit to knee-jerk responses. Leadership in this moment means focusing on responses that are practical, actionable, and effective, and that's what we are doing in Portage County. There is also a statewide workgroup that has been meeting and discussing the specifics of local health officer authority as well as every other aspect of the situation that counties find themselves in. We began discussing our county's response in detail at the last Health and Human Services Committee meeting, and this workgroup's analysis will help to further guide those discussions as they continue.

As cases continue to rise, local jurisdictions are looking for paths forward that steer clear of the legal and socio-cultural turmoil that have been happening around the country. Finding these clear paths is often difficult, though a multitude of legal opinions have come out in recent weeks and some of those opinions are in current court cases at the state and federal levels. It seems there is almost always room for interpretation and technical legal challenge of laws that are designed to regulate peoples' conduct in order to prevent the spread of COVID-19. We learned this recently with our own Wisconsin Supreme Court's ruling that overturned the state's Safer-At-Home order and effectively ended the Badger Bounce Back plan.

Similarly, some chapters of Wisconsin's statutes that you'd expect would specifically apply to a pandemic situation like COVID-19 are somewhat problematic and even use terms that are not defined in context. We can always try to interpret statutory language, but it helps when the Legislature provides clear guidance in the form of clear language that can help withstand legal challenges. One example of this from our judicial branch is [the Wisconsin Supreme Court's own guidance](#) for how the state's county circuit court systems must operate during COVID-19.

Unfortunately, when the Supreme Court and then the Legislature handed off the state's response down to counties and local government to address, it created new legal challenges and questions. There has been a lot of legal analysis done and the Attorney General even issued an opinion in the wake of the supreme court ruling, but none of it has provided Wisconsin leaders with a clear, workable path forward. That's why the vast majority of counties are in the same position and working together to tackle these dilemmas. County leaders and agencies like the Wisconsin Counties Association and the Wisconsin Association of Local Health Departments and Boards have also been working overtime to determine what that workable path looks like. Like a lot of the work being done right now it doesn't often show up in the press or on Facebook, but rest assured that Portage County is involved with the ongoing, statewide effort along with key stakeholders.

Almost every Wisconsin county is in the position of needing to update the health chapter of its ordinances because of COVID-19. Many county health ordinances do not specifically address communicable diseases well enough to craft specific ordinances or orders, and the role of local health officers has most often been in response to episodic health issues rather than a prolonged pandemic. This is important to note because current legal understandings amongst health officers is that the supreme court ruling also affected the scope and duration of local health orders, and we will be navigating COVID-19 for a long time.

So what does the legal landscape look like? On July 3rd, a request for an immediate injunction [against Madison-Dane and City of Milwaukee Health Officers](#) was filed that essentially said that those jurisdictions cannot enforce their orders and that aspects of the orders are unconstitutional. Then you have the City of Racine, which was once again [ruled against last week](#) before an [Appeals Court then ruled](#) a couple of days later that the contended order could remain in place pending the outcome of any appeal. It's possible that this and other cases end up back at the Supreme Court. Even if they don't, the outcomes of these cases may have a direct impact on the validity of county legislation designed to address COVID-19 issues.

It remains to be seen whether or not the City of Milwaukee looking into instituting a mask order will generate the same legal activity, but suffice it to say, we are all watching closely. The City's Public Safety and Health Committee is [debating a scaled back version of the order](#) today (July 9), and that committee may then pass on its recommendation to the full Common Council, which is meeting on July 14. If an order is passed by the Council, the Mayor will have ten days to decide what action(s) he will take.

Another order in Dane County is set to be in place starting Monday, and several cities—which have specific powers under Home Rule—have instituted orders of their own. Even the Governor has signaled that he may institute a statewide mask order despite the legal challenge that is all but certain to take place. Of course, the [U.S. Chamber of Commerce also sent a letter to the White House and the National Governors Association](#) asking them to lead on creating national guidance for imposing mask mandates at the local level. Chambers in Wisconsin are also participating in productive efforts such as [“Check The Spread”](#) in La Crosse County. The Eau Claire Chamber of Commerce has also [asked its members to require employees and customers to wear a mask](#). So it's clear to see that this conversation is moving quickly and has gained a lot of momentum with the stakeholders you'd want in the last week.

Although wearing a mask has morphed into a political act for some, counties and public health officers are not asking questions that center around the politics. Instead, counties and public health officers are focusing on the practicality, legality, and effectiveness of legislation and orders that mandate conduct such as mask wearing. To be very clear, there is a strong consensus that wearing a mask is a simple and important measure that we can all take.

A primary concern associated with local government legislating too quickly—before some of the key pending lawsuits are resolved—is that the legislation could be struck down by the decisions in those cases. The same concerns exist when it comes to the Legislature, which has adopted its own version of a law if it feels that local jurisdictions pushed the envelope too far. In fact, the state was warned of this very thing when metallic mining made its comeback a year or so ago and counties—with or without mining interests—were tasked with coming up with their approach to the issue and doing so in a way that didn't attract the Legislature's attention.

As for enforcement, even counties that have had orders in place are not seeing much in the way of enforcement occurring. Counties with orders in place are seeking voluntary compliance with their business community more so than focusing on enforcement of the county's order. That mirrors what counties without orders are doing, so in some ways there are few differences in how counties are approaching the situation they're in.

Ideally, local solutions can be found that bring all stakeholders together in addressing COVID-19 concerns. We need to remember that we are all in this together and to emphasize positive and constructive approaches in the midst of a complex situation. Doing so will allow us to avoid conversations that needlessly and counter-productively pit people against each other.

So who can act and what might that look like? There are still—maybe—some emergency powers at the state level via the Governor’s Office, the Legislature could decide to act, or if legal analysis and court decisions establish clearer authority for counties to rely on in adopting certain ordinance language and issuing other orders, then counties could have firmer ground to take action. More municipalities could take actions as well since their authority is clearer in statute.

These questions need durable answers, and as schools and universities look to re-open later this year, it’s not just counties who are looking for ways forward that recognize we have left the old “normal” far behind and are charting new paths that involve a vaccine and verified medical treatments for a new virus that we are learning more about each day. Thank you to everyone who has contacted us, and I assure you that we will continue our work in helping to curb this pandemic and update you along the way.