

**Q: How do Wisconsin Supreme Court decisions factor into local response, and the alternatives for these ordinances?**

A: Supreme Court and Court of Appeals decisions have all been closely examined in the drafting of these ordinances, and are one of the leading reasons in bringing these ordinances forward. The cases have also informed the purpose section and procedural and substantive safeguards.

**Q: What about individual liberty rights under the US and state constitutions?**

A: Our constitutional rights do not take a backseat in emergency conditions and constitutional rights were in the forefront of our minds as we drafted these ordinances, and are therefore written in such a way as to respect those rights. The ordinances take the protection of individual rights into account along with the need for protection of the public health, safety, and welfare when human life is threatened. With these ordinances, only orders that strike a balance of public health benefits with impact on liberty interest, timely professional response, with required democratic legislative participation, will be found legitimate by the public and lawful and enforceable by the courts.

**Q: Where do we stand if these ordinances are not enacted?**

A: Without these ordinances as a responsive public health tool, any general orders by the health officer will be advisory and legislative bodies can look to direct legislative options. Even with the passing of the ordinances, these remain options; however, in times of emergency, alternate means of response may be more desirable for a quick, professionally-informed response, with legislative oversight. The absence of the ordinances will limit the ability to respond in a timely manner and ignore the applicability of recent Wisconsin case law.

**Q: Enforcement: How will enforcement citations actually work? What would constitute a violation that would carry a fine, and what is the due process for a business who is fined? Can a business be fined multiple times on the same day, for example, if several customers who refuse to wear masks? Might customers be fined instead of businesses in some cases?**

A: Citations are not a new authority to the Health Department and inspectors are well trained in the best-practice process of giving notice of violations, giving time to correct, and conducting follow-up inspections for such health issues as food service safety violations, safe housing standards, and refuse disposal. It depends on the order issued, but any violation will be documented before a citation is issued. The ordinances also require a great deal of public notice and publication before any order is enforceable, informing the public of the requisite standards of conduct.

Citations will follow the due process path that all municipal citations follow of the opportunity to plead not guilty, opportunity for a pretrial conference with the prosecuting attorney, and if necessary, a trial to determine guilt. In some circumstances, businesses have included the cost of a citation as “the cost of doing business”. Thus, the ordinances are written so that each instance of a violation could result in a citation, thereby encouraging compliance with a health order.

Depending on the circumstances or requirements of an order, either a business or an individual could receive a citation. For example, the current State mask order is a requirement placed on an individual, not a business, so a business cannot be fined for allowing customers in without a mask. An occupancy requirement is an obligation on the business, not on an individual.

Businesses with an alcohol license in the City of Eau Claire have been put on notice that the City expects a good-faith effort at compliance, so compliance expectations are not a new requirement for those businesses.

**Q: The scientific reasoning required to be presented sounds subjective. How would this be implemented?**

A: The ordinances establish meaningful, adequate, and reviewable standards, as required by law and are more robust than current state standards, by requiring that current scientific understanding form the basis of any order, in addition to all the other substantive and procedural safeguards. In the City ordinance, section F.5., the health officer is required to provide all the assumptions made about the disease. This requirement acknowledges that scientific understanding develops as research progresses and new understanding emerges, particularly when dealing with a novel disease, and requires that any updated orders continue to be based on current scientific understanding. If anyone questions the foundation of the scientific understanding, the legislative oversight process allows for public input and review or revocation of any order.

**Q: How much of the reasonable application of this ordinance depends upon the trust level towards the people in key positions like City Manager, County Administrator and Health Officer?**

Certainly, having trust in the people holding those key positions is always important, but the ordinances are drafted in such a way that the checks and balances on authority that are required by our democratic form of government are integrated in the ordinances. The safeguards, both procedural and substantive serve part of that role, as does the necessary legislative oversight that allows elected officials to determine the validity of any orders. In addition, should any citations be issued for order violations, independent review by prosecutors is performed to determine the ability to prosecute a citation, as well as ultimately a judge if a citation is taken to trial.

**Q: We are getting a lot of people contacting us and citing the WCA guidance documents. What are these and how do they interact with what is happening here?**

The WCA (Wisconsin Counties Association) convened a state-wide taskforce in conjunction with the League of Wisconsin Municipalities, Local Health Officers, the Restaurant Association, a Chamber of Commerce member, among others, over the summer to address local health officer authority after the *Palm* decision in May. The work product of that group is the guidance being referenced and discusses, among other things, how local governments might approach the issuance of general orders of general application, that collectively it was understood needed direction as all previous responses had been and were expected to be a state response. One of the options discussed is an authorizing ordinance such as the ones before the City Council and County Board, as well as advisory orders and direct legislation.

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