

Notice of Public Meeting  
**Friday, May 22, 2020**  
**8:00 a.m.**

**ADMINISTRATIVE  
 COMMITTEE**

**Door County Government Center**  
 County Board Room/Chambers Room, 1st floor  
 421 Nebraska Street, Sturgeon Bay, WI

*Oversight for Child Support, Clerk of Court, Circuit Court, Corporation Counsel, County Administrator, County Clerk, District Attorney, Human Resources, Register in Probate, Transportation, and Veteran's Service.*

**AGENDA**

1. **Call Meeting to Order**
2. **Establish a Quorum ~ Roll Call**
3. **Adopt Agenda / Properly Noticed**
4. **New Business (Review / Action)**
  - a.) Ordinance No 2020-\_\_ Creation of Chapter 38 Door County Code "Emergency Declaration by County Board and Authority & Duties of Local Health Officer
5. **Matters to be Placed on a Future Agenda or Referred to a Committee, Official, or Employee**
6. **Next Meeting Date(s)**
  - Regular Meeting – June 16, 2020 – 9:00 a.m.
7. **Meeting Per Diem Code**
8. **Adjourn**

In light of WDHS 03-24-2020 'Safer-at-Home Order' and to mitigate the impact of COVID-19 this meeting will be conducted by teleconference or video conference. Members of the public may join the meeting remotely or in-person in the Peninsula Room (C121) 1<sup>st</sup> Floor Government Center (*please note public in-person has limited capacity and is on a first come, first served basis*).

To attend the meeting via computer:

Go to:

<https://doorcounty.webex.com/doorcounty/onstage/g.php?MTID=e9dfbc7fc385c0a7a80adb8cc3ab7cd16>

Password: **May2220admin**

To connect via phone:

Call 1-408-418-9388

Access Code: **968 724 123**

*Deviation from order shown may occur*



**Chapter 38 Door County Code**  
**Emergency Declaration by County Board and**  
**Authority & Duties of Local Health Officer**

The Door County Board of Supervisors does hereby create Chapter 38 Door County Code as follows:

**I. Declared State of Emergency [Ch. 323, Wis. Stats.]**

**A. Declaration by County Board of Supervisors**

1. Sec. 323.11, Wis. Stats. (as it currently exists or is hereafter revised) is incorporated herein by reference as if fully set forth.

a. The Door County Board of Supervisors ("County Board") may declare, by ordinance or resolution, an emergency (including a public health emergency per Sec. 323.02(16), Wis. Stats.) existing within Door County whenever conditions arise by reason of a riot or civil commotion, a disaster, or an imminent threat of a disaster, that impairs transportation, food or fuel supplies, medical care, fire, health or police protection, or other critical systems of the local unit of government.

b. The period of the emergency shall be limited by the ordinance or resolution to the time during which the emergency conditions exist or are likely to exist.

2. If, because of the emergency conditions, the County Board is unable to meet promptly, the County Administrator or the County Board Chairperson will exercise by proclamation all of the powers conferred upon the County Board under § A. above that appear necessary and expedient.

a. The proclamation shall be subject to ratification, alteration, modification, or repeal by the County Board as soon as that body can meet.

b. The subsequent action taken by the County Board shall not affect the prior validity of the proclamation.

B. Sec. 323.14 (4), Wis. Stats. (as it currently exists or is hereafter revised) is incorporated herein by reference as if fully set forth.

1. The emergency power of the County Board conferred under § I.A. 1. above includes the general authority to order, by ordinance or resolution, whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property within the local unit of government in the emergency.

2. This includes the power to bar, restrict, or remove all unnecessary traffic, both vehicular and pedestrian, from the highways, notwithstanding any provision of Ch.'s 341 to 349, Wis. Stats.

C. The County Board may review and acknowledge an order from the local health officer, issued under § II.A.2. or 4. below, and affirm application of this ordinance to that order.

**II. Local Health Officer's Duties and Authority [Sec. 252.03, Wis. Stats.]**

A. Sec. 252.03, Wis. Stats. and § DHS 145.06, Wis. Adm. Code (as each currently exists or is hereafter revised) are incorporated herein by reference as if fully set forth.



## Ordinance No. 2020-\_\_\_\_

Page 2 of 3

**Chapter 38 Door County Code**  
**Emergency Declaration by County Board and**  
**Authority & Duties of Local Health Officer**

1. The Door County health officer, upon the appearance of any communicable disease in Door County, will immediately investigate all the circumstances and make a full report to the County Board and Wisconsin Department of Health Services.
2. The Door County health officer will promptly take all measures necessary to prevent, suppress and control communicable diseases, and will 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 Department of Health Services Secretary may direct.
3. The Door County health officer may inspect schools and other public buildings within his or her jurisdiction as needed to determine whether the buildings are kept in a sanitary condition.
4. The Door County 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.
5. No person may interfere with the investigation under this ordinance of any place or its occupants by the Door County health officer or her or his assistants.

**III. Violation, Penalty and Enforcement Procedures**

- A. Any person who violates or obstructs this ordinance, an order of the County Board under § I.B. above, or an order of the Door County Health Officer under § II.A.2 or 4. above is subject to:
  1. The issuance of a citation pursuant to Ch. 35 Door County Code and Sec. 66.0113, Wis. Stats. A citation hereunder may be issued by the local health officer or county law enforcement officers.
  2. A minimum forfeiture of \$100 to a maximum forfeiture of \$500 for each violation.
  3. The issuance of a summons and complaint, and entry of a civil judgment for a forfeiture and (temporary or permanent) injunctive relief.
- B. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.
- C. Proceeding under any other ordinance or law relating to the same or any other matter shall not preclude enforcement under this ordinance.

**IV. Severability.**

- A. Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.



**DOOR COUNTY**

**Ordinance No. 2020-\_\_\_\_**

**Chapter 38 Door County Code  
Emergency Declaration by County Board and  
Authority & Duties of Local Health Officer**

ROLL CALL Board Members	Aye	Nay	Exc.
AUSTAD			
BULTMAN			
CHOMEAU			
COUNARD			
D. ENGLEBERT			
R. ENGLEBERT			
ENIGL			
FISHER			
GAUGER			
GUNNLAUGSSON			
HEIM PETER			
KOHOUT			
LIENAU			
LUNDAHL			
NORTON			
ROBILLARD			
TAUSCHER			
THAYSE			
VIRLEE			
VLIES WOTACHEK			
VOGEL			

- 1 **V. Purpose.**
- 2 A. The dominant aim of this ordinance is to promote the
- 3 public health, safety, convenience, and general welfare.
- 4
- 5 **VI. Effective Date:**
- 6 A. This ordinance shall take effect after enactment and on
- 7 the day following the date of publication
- 8
- 9

**BOARD ACTION**

Vote Required: Majority Vote of a Quorum

Motion to Approve      Adopted

1st \_\_\_\_\_ Defeated

2nd \_\_\_\_\_

Yes: \_\_\_\_\_ No: \_\_\_\_\_ Exc: \_\_\_\_\_

Reviewed by: \_\_\_\_\_, Corp. Counsel

Reviewed by: \_\_\_\_\_, Administrator

**SUBMITTED BY:  
Administrative Committee**

\_\_\_\_\_  
David Lienau, Chairperson

\_\_\_\_\_  
Joel Gunnlaugsson

\_\_\_\_\_  
Susan Kohout

\_\_\_\_\_  
Nancy Robillard

\_\_\_\_\_  
Daniel Austad

\_\_\_\_\_  
Richard Virlee

\_\_\_\_\_  
Ken Fisher

**Certification:**

I, Jill M. Lau, Clerk of Door County, hereby certify that the above is a true and correct copy of an ordinance that was enacted on the 26 day of May, 2020 by the Door County Board of Supervisors.

\_\_\_\_\_  
Jill M. Lau  
County Clerk, Door County

**COUNTERSIGNED**

\_\_\_\_\_  
Chairman, David Lienau  
Door County Board of Supervisors

**DHS 145.06, Wis. Adm. Code - General statement of powers for control of communicable disease.**

- (1) APPLICABILITY.** The general powers under this section apply to all communicable diseases listed in Appendix A of this chapter and any other infectious disease which the chief medical officer deems poses a threat to the citizens of the state.
- (2) PERSONS WHOSE SUBSTANTIATED CONDITION POSES A THREAT TO OTHERS.** A person may be considered to have a contagious medical condition which poses a threat to others if that person has been medically diagnosed as having any communicable disease and exhibits any of the following:
- (a)** A behavior which has been demonstrated epidemiologically to transmit the disease to others or which evidences a careless disregard for the transmission of the disease to others.
  - (b)** Past behavior that evidences a substantial likelihood that the person will transmit the disease to others or statements of the person that are credible indicators of the person's intent to transmit the disease to others.
  - (c)** Refusal to complete a medically directed regimen of examination and treatment necessary to render the disease noncontagious.
  - (d)** A demonstrated inability to complete a medically directed regimen of examination and treatment necessary to render the disease noncontagious, as evidenced by any of the following:
    - 1. A diminished capacity by reason of use of mood-altering chemicals, including alcohol.
    - 2. A diagnosis as having significantly below average intellectual functioning.
    - 3. An organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation or memory.
    - 4. Being a minor, or having a guardian appointed under ch. [54](#), Stats., following documentation by a court that the person is incompetent.
  - (e)** Misrepresentation by the person of substantial facts regarding the person's medical history or behavior, which can be demonstrated epidemiologically to increase the threat of transmission of disease.
  - (f)** Any other willful act or pattern of acts or omission or course of conduct by the person which can be demonstrated epidemiologically to increase the threat of transmission of disease to others.
- (3) PERSONS WHOSE SUSPECTED CONDITION POSES A THREAT TO OTHERS.** A person may be suspected of harboring a contagious medical condition which poses a threat to others if that person exhibits any of the factors noted in sub. [\(2\)](#) and, in addition, demonstrates any of the following without medical evidence which refutes it:
- (a)** Has been linked epidemiologically to exposure to a known case of communicable disease.
  - (b)** Has clinical laboratory findings indicative of a communicable disease.
  - (c)** Exhibits symptoms that are medically consistent with the presence of a communicable disease.
- (4) AUTHORITY TO CONTROL COMMUNICABLE DISEASES.** When it comes to the attention of an official empowered under s. [250.02 \(1\)](#), [250.04 \(1\)](#) or [252.02 \(4\)](#) and [\(6\)](#), Stats., or under s. [252.03 \(1\)](#) and [\(2\)](#), Stats., that a person is known to have or is suspected of having a contagious medical condition which poses a threat to others, the official may direct that person to comply with any of the following, singly 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.
- (5) FAILURE TO COMPLY WITH DIRECTIVE. When a person fails to comply with a directive under sub. (4), the official who issued the directive may petition a court of record to order the person to comply. In petitioning a court under this subsection, the petitioner shall ensure all of the following:
  - (a) That the petition is supported by clear and convincing evidence of the allegation.
  - (b) That 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.
  - (c) That the remedy proposed is the least restrictive on the respondent which would serve to correct the situation and to protect the public's health.
- (6) HAZARDS TO HEALTH. Officials empowered under ss. [250.02 \(1\)](#), [250.04 \(1\)](#) and [252.02 \(4\)](#) and [\(6\)](#), Stats., or under s. [252.03 \(1\)](#) and [\(2\)](#), Stats., may 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 under sub. [\(1\)](#), to do what is reasonable and necessary to abate the threat of transmission. Persons failing or refusing to comply with a directive shall come under the provisions of sub. [\(5\)](#) and this subsection.

**History:** Cr. [Register, March, 2000, No. 531](#), eff. 4-1-00; correction in (2) (d) 4. made under s. [13.92 \(4\) \(b\) 7.](#), Stats., [Register February 2008 No. 626](#).



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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Attorney General

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May 15, 2020

OAG-03-20

Mr. Thomas Nelson  
Outagamie County Executive  
410 South Walnut Street  
Appleton, Wisconsin 54911

Dear County Executive Nelson:

¶ 1. You have asked for an emergency Attorney General opinion to address the immediate need for clarity about the effect of the Wisconsin Supreme Court's decision in *Wisconsin Legislature v. Palm*, 2020 WI 42, on local powers to combat COVID-19. The May 12 supreme court decision struck down, in most respects, the Wisconsin Department of Health Services' (DHS) statewide Safer-at-Home order issued to combat COVID-19.

¶ 2. The Wisconsin Legislature's lawsuit that led to the invalidation earlier this week of most of the Safer-at-Home order has resulted in substantial uncertainty as counties and municipalities rapidly adopt measures to fight a virus that does not respect national borders, much less municipal or county lines. In an update posted Wednesday, for instance, the Wisconsin Counties Association wrote that "it is unclear whether a local health order would, in the Court's view, suffer from the same deficiencies that caused the Court to invalidate the Safer at Home Order." Wis. Ctys. Ass'n, *COVID-19 Updates for County Officials* (May 13, 2020), <https://covid19.wicounties.org/covid-19-daily-update-5-13-2020/>. Kenosha and Brown Counties, two of the state's counties that have been most impacted by the coronavirus outbreak, withdrew their public health orders in light of confusion regarding their authority in the wake of the supreme court's decision.

¶ 3. This Attorney General opinion addresses the following questions: whether the Wisconsin Supreme Court's decision in *Wisconsin Legislature v. Palm* controls local powers; whether that decision's discussion of criminal penalties should be considered by local authorities; whether that decision's specific focus on certain DHS powers related to staying at home, travel, and closing businesses should be

County Executive Nelson  
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considered by local authorities; and whether there are any other substantive limits on local powers implied by the *Palm* decision.

¶ 4. *First*, the supreme court’s decision addressed only DHS’s authority found in Wis. Stat. § 252.02. That statute does not govern the authority of local health officers, which is separately set out in Wis. Stat. § 252.03. That separate grant of local authority provides, among other things, powers to “prevent, suppress and control communicable diseases” and “forbid public gatherings when deemed necessary to control outbreaks or epidemics.” Wis. Stat. § 252.03(1)–(2).<sup>1</sup> Because the court decision addressed a different statute applicable to a state agency, and not the statute applicable to local authorities, the *Palm* decision is not directly controlling on powers under the latter statute.

¶ 5. *Second*, although the court did not directly address Wis. Stat. § 252.03, there are statements about criminal sanctions in the *Palm* decision that local authorities should consider. The court concluded that Safer at Home “does not rely on a statute within ch. 252 defining the elements of the crime” and that “in order to constitute criminal conduct proscribed by statute, the conduct must be set out with specificity in the statute to give fair notice.” *Palm*, 2020 WI 42, ¶¶ 37, 40.<sup>2</sup> It is advisable to limit enforcement under Wis. Stat. § 252.03 to ordinances or administrative enforcement.

¶ 6. *Third*, the *Palm* decision highlighted three particular exercises of DHS’s powers as outside the scope of its statutory authority under Wis. Stat. § 252.02: directing people to stay at home, forbidding certain travel, and closing certain businesses. Even as to those three measures, the analysis may not apply to local powers under Wis. Stat. § 252.03. The court’s reasoning emphasized the availability of criminal sanctions for violations, and applied an interpretative analysis using provisions of 2011 Wis. Act 21 and Wis. Stat. ch. 227 that apply only to state agencies. *Palm*, 2020 WI 42, ¶¶ 45–47, 51, 52. A local order issued under Wis. Stat. § 252.03 that does not threaten criminal penalties, as recommended above, cannot run afoul of the court’s first concern, and 2011 Wis. Act 21 and chapter 227 would not apply to a local authority. Nevertheless, the local authority should ensure that any measures that direct people to stay at home, forbid certain travel, or close certain businesses speak specifically to the local authority’s statutory power to “prevent, suppress and

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<sup>1</sup> Local authorities also have emergency powers under Wis. Stat. §§ 323.11 and 323.14. This opinion does not address measures taken pursuant to those powers.

<sup>2</sup> This reasoning may not extend to subsections like Wis. Stat. § 252.02(3). For example, the *Palm* decision does not apply to Section 4.a. of Safer at Home, which closes schools pursuant to Wis. Stat. § 252.02(3). *Wis. Legislature v. Palm*, 2020 WI 42, ¶ 58 n.21.



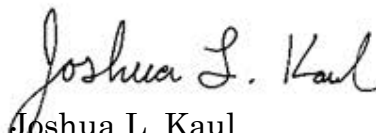
County Executive Nelson  
Page 3

control communicable diseases” and “forbid public gatherings when deemed necessary to control outbreaks or epidemics.” Wis. Stat. § 252.03(1)–(2).

¶ 7. *Fourth*, nothing in the supreme court’s decision even arguably limits other measures directed by a local authority under Wis. Stat. § 252.03. The court rested its rejection of Safer at Home’s provisions other than staying at home, travel, and business closure solely on its conclusion that DHS had to engage in emergency rulemaking under Wis. Stat. § 227.24. *Palm*, 2020 WI 42, ¶¶ 2–4, 58–59. Local authorities are not subject to chapter 227, and so that reasoning has no application to an order issued by a local authority.

¶ 8. The foregoing observations provide immediate guidance in light of the pandemic. Because of the emergency circumstances, this opinion is not being released according to this office’s ordinary process, in which we have voluntarily instituted an opportunity for public comment. However, this opinion will be posted on the AG Opinion Requests page of the Department of Justice’s website, where the public may comment on it. In turn, this opinion may be supplemented at a later date.

Sincerely,



Joshua L. Kaul  
Attorney General

JLK:ADR:jrs





