

MAINE MUNICIPAL ASSOCIATION LEGAL SERVICES

MUNICIPAL FUNCTIONS: ESSENTIAL OR NON-ESSENTIAL?

Note that this guidance reflects our understanding of current restrictions. If additional information becomes available, we will update this guidance document.

On March 24, 2020, Governor Janet Mills issued [Executive Order \(No. 19\)](#) directing all “non-essential” businesses and operations to cease operations at sites that are: (1) public-facing (allow customer, vendor or other in-person contact) or (2) at sites that require more than 10 workers to convene in a space where social distancing is not possible. Executive Order No. 19 applies to all for-profit, non-profit or other entities regardless of the nature of services performed, including municipalities.

On March 31, 2020, Governor Mills issued [Executive Order \(No. 28\)](#) requiring individuals to shelter in place effective 12:01 a.m. on April 2, 2020 until at least April 30, 2020. The Order allows employees to travel to “essential businesses” not required to close under the March 24th Order No. 19 and to “non-essential” businesses defined under that Order for the purpose of engaging in minimal operations.

The Governor’s March 31st Order also applies new restrictions to businesses identified as [Essential Businesses and Operations](#) by the Department of Economic and Community Development. All Non-Essential Businesses and Operations must continue to limit their activities consistent with the March 24th and March 31, 2020 Orders.

It appears municipalities are primarily governed by the Governor’s March 24th Order, which incorporated a list of essential functions and programs, developed by the Cybersecurity & Infrastructure Security Agency (CISA).

The CISA list focuses on programs and functions. Some municipal functions and staff are specifically listed in the CISA guidance and in the Governor’s March 24th Order. For example, law enforcement, emergency management, fire, emergency medical technicians, and 911 call center staff. Also listed are certain staff in wastewater programs, water systems, mass transit, transportation support and maintenance staff, staff supporting essential public works facilities and operations, road cleaning, solid waste removal, elections personnel and other programs. In addition, the list includes as essential those local government employees who support “mission essential” functions.

What does this mean for municipalities?

- Most municipalities conduct both essential and non-essential operations as defined in the Governor’s March 24th Order. In addition to the functions and staff specifically listed, municipalities are required by law (and possibly local ordinance) to perform certain duties

such as administering general assistance programs, processing tax payments, dealing with code enforcement and animal control issues, paying bills, issuing permits and licenses, dealing with personnel matters, processing payroll, etc.

- Each municipality should review its programs and staff and determine which are “essential” as listed in the Governor’s March 24th Order or required by law or ordinance. Municipalities should continue to provide these services but take all necessary social distancing measures, including allowing staff to work remotely wherever possible and postponing activities where possible. The Governor’s March 24th Order requires essential businesses and operations to “the maximum extent possible have their employees work remotely and comply with social distancing requirements” listed in that Order.
- Maintaining a publicly accessible municipal office is probably not an essential business operation in general, but because municipal officials are still required by state law to provide certain services (i.e. tax collection, issuing/receiving nomination papers, absentee ballots, payroll, general assistance), municipalities will need to maintain some staff for these purposes. Generally, the municipality has discretion to determine if it needs to have minimal staff in the office (within guidelines for social distancing) or whether necessary services can be delivered remotely by staff working off-site. Consistent with the Governor’s March 24th Order, all non-essential services should be delivered using all applicable social distancing limitations, including taking orders by phone, email or other remote means.

Where can MMA members receive more information?

Additional guidance is located on MMA’s “Coronavirus Updates and Resources” page at www.memun.org. Municipal members are also invited to contact MMA Legal Services for specific advice on these topics at 800-452-8786 or legal@memun.org.

Maine Municipal Association

Legal Services Department

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