

The Department of Health Services for the State of Wisconsin issued “Emergency Order #12 – Safer at Home Order” (“Order”) on Tuesday, March 24, 2020. The Order becomes effective on Wednesday, March 24, 2020 at 8:00 a.m. and will remain in effect until 8:00 a.m. on Friday, April 24, 2020, or until a superseding order is issued.

The Order requires the City of Milwaukee Department of Neighborhood Services to ensure that “building inspectors” continue to perform required inspections at construction projects within the City. And the Order at section 19 entitled “Supremacy” expressly states: “This Order supersedes any local order that is in conflict with this order.”

Section 1 of the Order states: “All individuals present within the State of Wisconsin are ordered to stay at home or at their place of residence, with exceptions outlined below.” Section 1 further provides, in relevant part: “All persons may leave their homes or residences for the following functions as described in this Order: a. **Essential Activities** (defined in section 11); b. **Essential Government Functions** (defined in section 12); c. To operate **Essential Businesses and Operations** (defined in section 13). . . .” (emphasis in original).

Section 13 states: “For purposes of this Order, Essential Businesses and Operations means . . . Essential Infrastructure. . . .” The definition of “Essential Infrastructure” in section 10, in turn, expressly includes “construction.”

“Essential Businesses and Operations” also expressly includes “Critical trades” at section 13(n) which means “Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, carpenters, laborers, sheet metal, iron workers, masonry, pipe trades, fabricators, finishers. . . .”

“Certain types of work,” including “work at Essential Businesses or Operations” is also an “Essential Activity” under section 11(d) of the Order.

The Order makes clear that construction in the City of Milwaukee is an “Essential Business and Operation” and an “Essential Activity” that supports “Essential Infrastructure.” The Order further makes clear that: “Essential Infrastructure **shall** be construed broadly **to avoid any impacts to essential infrastructure, broadly defined.**” (emphasis added).

At section 12, the Order provides: “Essential Governmental Functions means all services provided by the State, tribal, or local governments needed **to ensure the continuing operation of the government body** and provide and support the health, safety, and welfare of the public.” The Order expressly directs: “Each government body **shall** determine its Essential Government Function, if any, and identify employees and contractors necessary to the performance of those functions.”

Section 12 “categorically exempt[s],” among others, “first responders,” “law enforcement,” “emergency management personnel,” **and** “building inspectors” from the restrictions in the Order. The services that these government personnel provide are necessarily “Essential Governmental Functions” that local governments have been ordered to continue to provide.

The City of Milwaukee Department of Neighborhood Services employs “building inspectors” who perform the “Essential Governmental Functions” of inspecting “Essential Infrastructure.” The City of Milwaukee is to “ensure the continuing operation” of these “Essential Governmental Functions.” The Department of Neighborhood Services’ offices, however, have been closed until further notice and “building inspectors” are no longer performing their required “Essential Governmental Functions” in contravention of the Order and the State of Wisconsin’s stated objective of “avoid[ing] any impacts to essential infrastructure.” The closure of DNS also undermines the ability of construction contractors to conduct their “Essential Businesses and Operations” and effectively prevents tradesmen and tradeswomen from performing their “Essential Activities.”