WHAT ARE “ESSENTIAL LOCAL GOVERNMENT SERVICES AND FUNCTIONS?”
Vermont League of Cities and Towns Municipal Assistance Center

On Tuesday March 24, Governor Phil Scott issued the 6th addendum to his Declaration of State of Emergency (“Order”) to reduce the spread of COVID-19, available at https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%206%20TO%20EXECUTIVE%20ORDER%2001-20.pdf. While the functions in Section 6 of the March 24th Order are not specifically tied to municipal positions or titles, but rather to all businesses in general, the Governor’s Office has confirmed that they apply to all municipalities.

Note that the Governor has amended the Order with further Executive Orders and will likely continue to do so. See a list of all Orders at https://governor.vermont.gov/document-types/executive-orders.

The Agency of Commerce and Community Development (ACCD) is the State agency tasked with providing guidance on the Governor’s Orders. ACCD has created a “Recovery Resource Center” webpage on COVID-19 at https://accd.vermont.gov/covid-19. Particularly relevant to municipalities is the ACCD’s “Stay Home Stay Safe Sector Specific Guidance,” which provides more detailed guidance about what constitutes essential municipal functions and services. This document is available at https://accd.vermont.gov/content/stay-home-stay-safe-sector-specific-guidance (scroll down to “Municipalities” section header).

It is worth highlighting that, just because a service or function is not deemed critical or essential to the public health and safety or economic and national security, it does not mean that it cannot be performed. The Governor’s Stay at Home order only means that it cannot be performed in person. If the service or function can be performed remotely or without contact with the public, it is allowed to continue.

For those with further questions, ACCD has created an online form, accessible at https://bit.ly/covid-vt-business-operations. You can also ask the ACCD a question at https://accd.vermont.gov/covid-19/ask-a-question or email commerce.covid19@vermont.gov.

The Orders regulating essential functions and services do not address staffing levels or hours of operations for these services or functions. The analysis of who has the authority to make this determination in your community is multi-faceted. For employees and most appointed officials, this decision will be made by the legislative body; for those municipalities operating in a municipal manager form of government, this decision will be made by the municipal manager. Elected officials are independent from the control of other municipal officials, which means that they are empowered to make these decisions. Town of Bennington v. Booth, 101 Vt. 24 (1928). These continued operations and practices must also be conducted in strict adherence to CDC and VDH guidance to ensure recommended social distancing noted above and described in Section 4 of the Order.
As with any difficult decision that greatly impacts the local community and crosses multiple lines of authority, VLCT recommends that all local government stakeholders [managers, administrators, legislative bodies, elected officials] coordinate with the local emergency management director in consultation with the Local Emergency Management Plan (“LEMP”) and cooperate to ensure the provision of these essential services and functions while protecting public health.