

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>.

The Order directs most Vermonters to stay at home or in their place of residence, leaving only for “essential reasons.” These reasons include personal safety; groceries or medicine; curbside pick-up of goods, meals or beverages; medical care; exercise; care of others; and work.

Particularly relevant to municipalities, the Order, under Section 6, states that certain “services or functions” are deemed “essential.” Essential services or functions listed by the Order most applicable to municipalities include:

- law enforcement, public safety and first responders, including fire, ambulance services, emergency medical technicians and emergency management personnel;
- critical infrastructure including utilities, telecommunication, airports and transportation infrastructure;
- trash collection and disposal, recycling and operations and maintenance of drinking water and wastewater/drainage infrastructure; and
- health care operations, hospital personnel and other healthcare providers, public health workers and other healthcare service providers.

Furthermore, Sections 4 and 5 of the Order state that “[b]usinesses and entities providing services or functions deemed critical to public health and safety, as well as economic and national security shall remain in operation.” These critical businesses and entities, although exempt from the Order’s “in-person” restrictions, must “develop strategies, procedures and practices designed for strict adherence to Center for Disease Control (“CDC”) and Vermont Department of Health (“VDH”) guidance to ensure recommended social distancing, including, to the extent possible:

- a. maintaining a distance of 6 feet between persons;
- b. requiring employees to practice appropriate hygiene measures, including regular, thorough handwashing;
- c. requiring employees who are sick remain home; and
- d. regularly cleaning and disinfecting frequently touched objects and surfaces.”

Additionally, Section 8 states that, “(e)ssential state and local government functions will also remain open, including offices that provide essential government services.” It is important to

highlight that this order applies only to essential government functions and services, not to “essential workers” as that term has been utilized elsewhere. The Order also does not define what constitutes “essential government functions and services” beyond those explicitly enumerated in Section 6. The Agency of Commerce and Community Development (ACCD) has provided a chart of these functions online at <https://accd.vermont.gov/sites/accdnew/files/documents/NAICS-Code-Guidance-for-Vermont-Businesses.pdf>. (This chart is based on the Department of Homeland Security’s guidance here: https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_508C_0.pdf.) While the functions on the chart 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. Therefore, a municipality will have to determine if it performs any additional functions or services beyond those listed in Section 6 (and as detailed on the chart) that are to be continued, and by whom. For assistance in making these determinations, visit <https://accd.vermont.gov/covid-19-guidance> and request ACCD assistance.

The Order does 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.

Note that the Governor’s Office has provided the following information regarding the Order:

“Commercial entities, non-profits, employers and others with questions about acceptable continuation of business operations should contact the Agency of Commerce and Community Development via this online form: <https://bit.ly/covid-vt-business-operations>.” (Source: <https://governor.vermont.gov/press-release/governor-phil-scott-issues-%E2%80%9Cstay-home-stay-safe%E2%80%9D-order-directs-additional-closures>).