

# STAFF REPORT

DATE: June 2, 2020

REGULAR

**AGENDA ITEM**: Resolution Supporting Businesses

**TO**: Mayor and City Council

SUBMITTED BY: Kristina Handt, City Administrator

## **ISSUE BEFORE COUNCIL:**

Should the Council pass a resolution regarding Governor Walz's stay at home and stay safe MN orders and their impact on businesses? If so, what statements should be included?

# **PROPOSAL:**

Mayor Pearson has requested the Council consider a resolution regarding Governor Walz's orders. A copy of the resolution is included in your packet. The resolution would have the city take the position that:

- 1) Supports the choice of all residents and visitors to continue to stay at home or to move about freely within the county and to support the economy of Lake Elmo, while conducting themselves in a way that preserves the health and safety of all residents; and,
- 2) Encourages all citizens to follow Minnesota Department of Health and CDC guidelines for social distancing and general conduct while out in public; and,
- 3) Advises long-term care facilities restrict visitors and limit activities within the facility to keep

The mayor has also provided information from the MN Dept of Health and other sources which he requested be included. They are attached at the end of the report.

A number of cities and counties across the state have passed resolutions about the stay at home order and the contents vary. In response the League of Minnesota Cities provided the attached comments to cities..

# **FISCAL IMPACT:**

NA

## **OPTIONS:**

- 1) Approve Resolution No 2020-057
- 2) Amend and then Approve Resolution No 2020-057
- 3) Do not adopt a resolution relating to the stay at home order

#### **RECOMMENDATION:**

Motion to approve Resolution No 2020-057

### **ATTACHMENTS:**

- Resolution No 2020-057
- LMC Comments
- Mayor's submittals

# CITY OF LAKE ELMO COUNTY OF WASHINGTON STATE OF MINNESOTA

### **RESOLUTION NO. 2020-057**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE ELMO TO ADVISE AND ENCOURAGE SUPPORT FOR REOPENING OF BUSINESSES AND CHURCHES WHO WILL FOLLOW REQUIREMENTS ON SOCIAL DISTANCING, SAFETY AND FOLLOW STATE, LOCAL, AND CDC GUIDANCE

**WHEREAS**, Governor Tim Walz issued Executive Order 20-01 on March 13, 2020, declaring a peacetime emergency because of COVID 19 pandemic; and,

WHEREAS, on March 16, 2020, Governor Tim Walz issued Executive Order 20-04 ordering the closure of bars, restaurants, churches, local non-profits, and places of public accommodations. This order required Minnesota to take additional proactive measures to slow the spread of this pandemic; and,

WHEREAS, Lake Elmo has allowed for these Executive Orders and recommendations of the "Stay at Home" order that was issued on March 27, 2020, and was to expire on April 10, 2020, and further extended to May 4, 2020, and further extended to May 17, 2020, at 11:59 pm; and,

**WHEREAS**, the primary reason for the Shutdown and Stay at Home order was to flatten the curve so that Minnesota's excellent healthcare industry could increase capacity to manage any surge. Those objectives have now been accomplished; and

WHEREAS, some businesses in Lake Elmo that are practicing social distancing and following state, local, and Centers for Disease Control and Prevention (CDC) guidelines have been allowed to stay open since the first order on March 27, 2020; but even after the expiration of the "Stay at Home" order, churches and some businesses continue to be prohibited from re-opening despite having plans in place to re-open safely following social distancing and CDC safety guidelines; and,

WHEREAS, Lake Elmo businesses, churches and local non-profits have followed the Executive Orders; and,

WHEREAS, this order has caused undue hardship and financial loss to many businesses, churches, and local non-profits, both large and small, many of whom may never recover from this financial catastrophe. Businesses, churches, and local non-profits continue to have financial strain due to insurance, taxes, rent, electrical, heating, cooling, and other costs; and,

WHEREAS, this continued order has affected their base of employees, many of them cannot withstand the loss of wages and will be seeking other employment. This will cause undue hardship and financial impact to owners and operators as they try to hire and train new staff; and,

WHEREAS, Minnesota and Lake Elmo have followed the CDC Guidelines, under Federal Regional Gating requirements we have met the three phases that where recommended; and,

WHEREAS, if businesses, churches, and local non-profits in Lake Elmo follow safety requirements on social distancing and follow state, local, and CDC guidelines; the Lake Elmo City Council supports and encourages the Washington County Sheriff's Office to help support and protect these places of work and worship by not interfering with their right to operate; and,

WHEREAS, we the City Council of the City of Lake Elmo declares that we support and will uphold and defend all Constitutional rights of our citizens and the rights that the citizens of Lake Elmo are granted under the United States Bill of Rights:

**NOW, THEREFORE BE IT RESOLVED**, that the Lake Elmo City Council encourages Governor Tim Walz to recall the order of March 27, 2020, and any subsequent or future Orders, requiring the closure of bars, restaurants, churches, and other places of public accommodations, allowing the opening of the establishments who will follow requirements on social distancing, safety and follow state, local, and CDC Guidance.

# **BE IT FURTHER RESOLVED** that the City Council of the City of Lake Elmo:

- 1. Supports the choice of all residents and visitors to continue to stay at home or to move about freely within the county and to support the economy of Lake Elmo, while conducting themselves in a way that preserves the health and safety of all residents; and,
- 2. Encourages all citizens to follow Minnesota Department of Health and CDC guidelines for social distancing and general conduct while out in public; and,
- 3. Advises long-term care facilities restrict visitors and limit activities within the facility to keep

By: \_\_\_\_\_ Mike Pearson Mayor

APPROVED by the Lake Elmo City Council on this 2<sup>nd</sup> day of June, 2020.

ATTEST:		
Julie Johnson City Clerk		

#### Good afternoon,

The extension of the Governor's Stay at Home has created some questions on the ability of local jurisdictions to make affirmative decisions not to enforce the orders.

Although we understand the challenges and difficulties communities and businesses are facing during the pandemic, the League urges cities to exercise restraint against adoption of resolutions or other actions which may expose the city and its officials to civil and criminal liability. Rather, we encourage you to reach out to your state and federal elected officials and provide information and examples of the specific negative impacts happening in your communities now and in the future due to COVID-19 rules, guidelines and restrictions.

Q: Does a city have the ability to be less restrictive than state law?

A: No, a city does not have authority to change a state law or be less restrictive than state law, unless the law specifically allows for it. Local units of government, including counties and their officers, have only those powers that are granted by the legislature either expressly or by reasonable implication. See, e.g., Cleveland v. Rice Co., 238 Minn. 180, 56 N.W.2d, 641 (1952)

Q: What is the role of cities when citizens and businesses question the constitutionality of Governor Walz's Orders?

A: Minnesota House Research has an outline of the overall relationship between the different levels of government and constitutional protections that is important for this conversation. "All local governmental units are "creatures of the state" and subject to state law. The U.S. Constitution is silent on local government. Control of local government is not one of the enumerated federal powers of the Constitution, nor is it expressly prohibited to the states. It is, therefore, a residual power left to the states and people by the Tenth Amendment. Furthermore, local units of government do not have recourse to the federal constitution in order to resist state legislative interference or control. Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 40, 53 S.Ct. 431, 432 (1933) ("A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the Federal Constitution which it may invoke in opposition to the will of its creator.")." Full document is available here: <a href="https://www.house.leg.state.mn.us/hrd/pubs/ss/sslcstrel.pdf">https://www.house.leg.state.mn.us/hrd/pubs/ss/sslcstrel.pdf</a>

## Q: Are there ramifications for not enforcing the executive order?

A: Maybe. The city will want to consider all implications, including potential liability for damages and civil penalties, for its decisions. First, if the state brings legal action it's very unlikely there would be any LMCIT coverage for this type of litigation. In other words, the city will be paying the costs of defense out of its own pocket. Second, while immunity defenses are available, and the risk may be reduced because of previous court decisions and the difficulty of proving causation, there is some possibility a city is exposing itself to claims for damages if there is a wave of illnesses or deaths in the community. Third, there's potentially criminal liability for individual city officials if the Attorney General or county attorney seek enforcement. Again, the defense costs would not be covered by LMCIT. Here is one statute potentially available to state prosecutors:

# 609.43 MISCONDUCT OF PUBLIC OFFICER OR EMPLOYEE.

A public officer or employee who does any of the following, for which no other sentence is specifically provided by law, may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both:

(1) intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the office or employment within the time or in the manner required by law

Q: If the city does not enforce the stay at home order, will the state?

A: Maybe. The Minnesota Attorney General has communicated that he will enforce executive orders, if necessary, but the state has not provided any other specific insights on how it will enforce the order if a local government makes an affirmative decision to not enforce. However, Minnesota Statute, section 12.28 requires all emergency management organization to execute and enforce orders and rules made by the governor under a declared state emergency. The penalties listed in EO 20-48 associated with a conviction for violating the stay at home executive order are:

"Any business owner, manager, or supervisor who requires or encourages any of their employees, contractors, vendors, volunteers, or interns to violate this Executive Order is guilty of a gross misdemeanor and upon conviction must be punished by a fine not to exceed \$3,000 or by imprisonment for not more than a year. In addition to those criminal penalties, the Attorney General, as well as city and county attorneys, may seek any civil relief available pursuant to Minnesota Statutes 2019, section 8.31, for violations of this Executive Order, including civil penalties up to \$25,000 per occurrence from businesses and injunctive relief." See Executive Order 20-48 (pages 21-22).

Q: If the city does not enforce the executive orders, are business "safe" from penalties?

A: Not necessarily. While city action refusing to enforce the governor's order may also give local businesses the idea that they are free to open without risk of penalties, that is not necessarily the case. Businesses owners and employees who act in violation of the order could still face criminal charges or administrative penalties (such as license revocation) if they open their businesses in violation of the order. Such penalties could be brought by brought by the state, county, or local board of health without action by the city.

Q: Can the city do anything to show support for local businesses?

A: Yes. One way some cities are considering is by passing a resolutions that acknowledge their support for local businesses and encouraging the Governor to relax restrictions. This is a permissible action for a city council to consider doing if they believe that is what is best for their community. The League does not have any samples of this type of resolution.

We hope this information is helpful. Please let me know if there are additional questions we can assist with.

Kind regards,

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This response is intended to convey general information and should not be taken as legal advice or as a substitute for competent legal guidance. Consult your city attorney for advice regarding specific situations.

# Comorbidities

Table 4 shows the types of health conditions and contributing causes mentioned in conjunction with deaths involving coronavirus disease 2019 (COVID-19). For 7% of the deaths, COVID-19 was the only cause mentioned. For deaths with conditions or causes in addition to COVID-19, on average, there were 2.5 additional conditions or causes per death. The number of deaths with each condition or cause is shown for all deaths and by age groups. For data on comorbidity,



> Table 4. Conditions contributing to deaths involving coronavirus disease 2019 (COVID-19), by age group, United States. Week ending 2/1/2020 to 5/16/2020.\*









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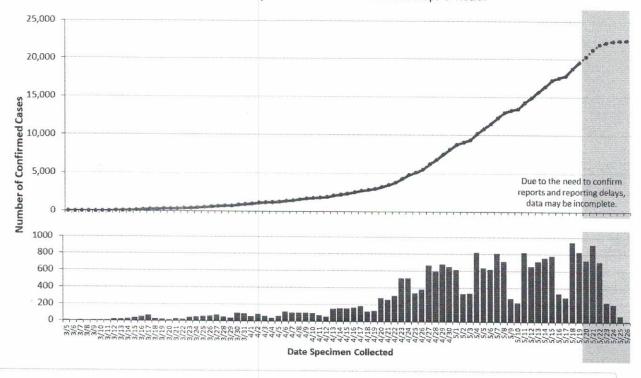
> Table 4. Conditions contributing to deaths involving coronavirus disease 2019 (COVID-19), by age group, United States. Week ending 2/1/2020 to 5/16/2020.\*











Positive cases by date specimen collected data table

More about positive cases

# Patients no longer needing isolation

Patients no longer needing isolation: 16,314

More about patients no longer needing isolation

V

# Deaths

Deaths: 932

Deaths among cases that resided in long-term care or assisted living facilities: 759

Probable COVID-19 Deaths\*: 10

\* COVID-19 listed on death certificate but a positive test not documented for the person.

Dear Honorable Governor Walz,

I am a small business owners in Minnesota. We are the sole owners and operators of Farrell's extreme bodyshaping and are requesting the State of Minnesota allow us to open our doors on June 1, 2020, at 50% capacity, along with the twenty-two (22) Farrell's locations in the great state of Minnesota.

As a small business owner, we acknowledge that we have experienced a substantial loss in income, but this is not the reason for our request. The health of our members – both their mental and physical health has also been and is greatly affected.

Us, along with all Farrell's locations, have implemented even more strict safety procedures recommended by the CDC to protect our members and employees, including distancing and sanitization measures. We also have the technology to track every member that attends a class and limit capacity. Farrell's locations in bordering states have been allowed to open and have had no issues following these strict guidelines. Below are some of the initiatives Farrell's will implement to operate safely at this time:

- Farrell's can limit the number of members in each class, adhering to social distancing and separation to altogether avoid physical contact.
- Farrell's can schedule class times to allow for both the facility and all equipment to be thoroughly disinfected before and after every class.
- Farrell's members have assigned personal equipment. No sharing of equipment is allowed.
- Farrell's members are trained (and have been since 2007 to sanitize their equipment after every use, which is now mandatory. Equipment is not shared during classes.
- Farrell's prides itself in cleanliness *before* the pandemic and continues to enhance sanitization protocols today.
- Farrell's has one dedicated entry door for entering, and one exit door for leaving the facility.
- Farrell's has implemented a strict policy that any individual with a known underlying health issue, or an individual living with someone with a known underlying health issue, is *not* to enter the facility.
- Farrell's has displayed all CDC-provided safety, cleanliness, and social distancing signage throughout the facility and strictly adheres to all CDC guidelines.
- Farrell's has formally announced all individuals with COVID-19 symptoms to stay home and seek medical attention. All individuals, including members and staff, are instructed *not* to enter the facility if they have any symptoms. Signage with these instructions is on the front doors.
- Farrell's provides a safe, essential outlet for stress, anxiety, and other emotions that contribute to poor mental health. Physical exercise is proven by experts to support and improve mental and emotional heath. If we take away an individual's safe outlet, we are potentially opening them up to long-term mental health problems.

- Farrell's members must reserve their spot in class online. This is to track every individual
  that comes through the Farrell's facility. If, in the future, an individual that tests
  positive for COVID-19 attended a Farrell's class, we can provide a list of every person
  who potentially came into contact with the positive person, keeps containment
  controlled. This enhanced tracking system can NOT be said for all Big Box Retailers or
  Restaurants (even with the proposed Reservations Only model).
- All transactions at Farrell's are contactless through our computer system. Again, something most retailers and restaurants does not provide.
- The Farrell's fitness program helps build lung capacity through HIIT (high-intensity interval training) and cardio kickboxing workouts. If an individual has strong, healthy lungs and comes into contact with COVID-19, they have a far better chance of full recovery than someone who does not have healthy lungs.
- The CDC has stated that staying physically active is one way to combat contracting COVID-19. With many people's lives changing due to the closures, a higher percentage of the population is *not* staying active. Farrell's keeps members active and healthy with their workout program.
- The CDC has stated that a healthy, nutritious diet is another way to combat contracting COVID-19. With many people's lives changing due to the closures, their diet has changed and has fallen to the unhealthy side of the spectrum. Farrell's provides meal planning and nutrition guidance to our members, promoting fresh produce, lean proteins, healthy fats, and a balanced diet.

These are not all, but many of the ways Farrell's, and the other twenty-two (22) Farrell's in the great state of Minnesota can slow the spread. Our CDC-recommended sanitization and safety protocols allow members the ability to workout, in a safe space allowing them to stay both physically and mentally healthy. By keeping these facilities closed, we are putting our members at a GREATER risk. *Farrell's can be part of the solution*.

We implore you assist us in our mission to contribute to the safety of our community and allow us to open our doors at 50% capacity on June 1, 2020. Should you need any written affidavit, petition or other communication please advise. Thank you for your time, in advance.

Thank you,

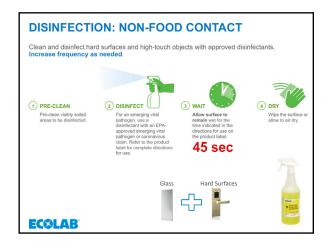


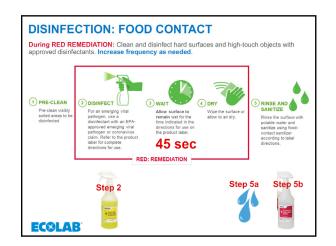
Disinfecting & Sanitizing Procedures
With Ecolab

EC@LAB











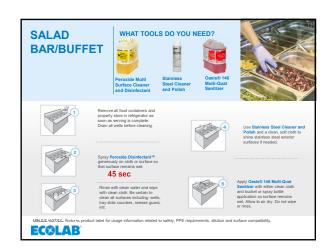


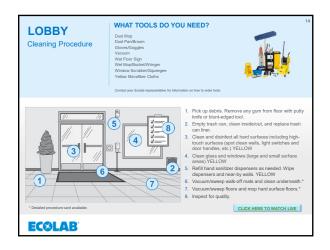












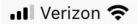












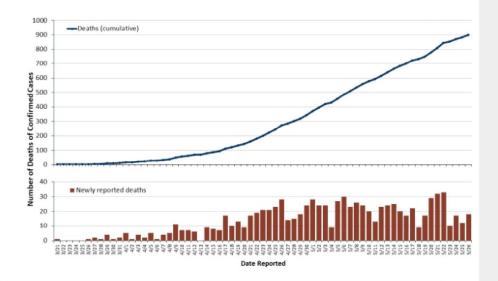
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# **Deaths**

- Deaths: 899
  - Deaths among cases that resided in long-term care or assisted living facilities: 732
- Probable COVID-19 Deaths\*: 9
   \* COVID-19 listed on death certificate but a positive test not documented for the person.





### Scenario 2:

- Lower-bound values for virus transmissibility and disease severity
- Higher percentage of transmission prior to onset of symptoms
- Higher percentage of infections that never have symptoms and higher contribution of those cases to transmission

## Scenario 3:

- Upper-bound values for virus transmissibility and disease severity
- Lower percentage of transmission prior to onset of symptoms
- Lower percentage of infections that never have symptoms and lower contribution of those cases to transmission

## Scenario 4:

- Upper-bound values for virus transmissibility and disease severity
- Higher percentage of transmission prior to onset of symptoms
- Higher percentage of infections that never have symptoms and higher contribution of those cases to transmission

#### Scenario 5:

Parameter values for disease severity, viral transmissibility, and pre-symptomatic and asymptomatic
disease transmission that represent the best estimate, based on the latest surveillance data and
scientific knowledge. Parameter values are based on data received by CDC prior to 4/29/2020.

Table 1. Parameter Values that vary among the five COVID-19 Pandemic Planning Scenarios. The scenarios are intended to advance public health preparedness and planning. They are <u>not</u> predictions or estimates of the expected impact of COVID-19. The parameter values in each scenario will be updated and augmented over time, as we learn more about the epidemiology of COVID-19. Additional parameter values might be added in the future (e.g., population density, household transmission, and/or race and ethnicity).

Parameter values are based on data received by CDC prior to 4/29/2020



Parameter R <sub>0</sub>	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5: Current Best Estimate
Source: Preliminary COVID-19 estimates, ASPR and CDC	2	2	3	3	2.5
Symptomatic Case Fatality Ratio, stratified by age Source: Preliminary COVID-19 estimates, CDC	0-49 years: 0.0002 50-64 years: 0.001 65+ years: 0.006 Overall: 0.002	0-49 years: 0.0002 50-64 years: 0.001 65+ years: 0.006 Overall: 0.002	0-49 years: 0.001 50-64 years: 0.006 65+ years: 0.032 Overall: 0.010	0-49 years: 0.001 50-64 years: 0.006 65+ years: 0.032 Overall: 0.010	0-49 years: 0.000 50-64 years: 0.00 65+ years: 0.013 Overall: 0.004

Symptomatic Case Hospitalization Ratio, stratified by age Source: Preliminary COVID-19 estimates, CDC	0–49 years: 0.013 50–64 years: 0.036 65+ years: 0.052 Overall: 0.028	50–64 year	ars: 0.013 ars: 0.036 rs: 0.052 l: 0.028	0–49 years: 0.026 50–64 years: 0.057 65+ years: 0.10 Overall: 0.041	0–49 years: 0.026 50–64 years: 0.057 65+ years: 0.10 Overall: 0.041	0–49 years: 0.017 50–64 years: 0.045 65+ years: 0.074 Overall: 0.034
Percent of infections that are asymptomatic Source: Preliminary COVID-19 estimates, ASPR and CDC	20%	50	)%	20%	50%	35%
Infectiousness of asymptomatic individuals relative to symptomatic individuals Source: Assumption, ASPR and CDC	50%	100	0%	50%	100%	100%



Table 2. Parameter Values Common to the Five COVID-19 Pandemic Planning Scenarios. The parameter values are likely to change as we obtain additional data about disease severity and viral transmissibility of COVID-19.



Parameter values are based on data received by CDC prior to 4/29/2020

Pre-existing immunity Source: Assumption, ASPR and CDC	No pre-existing immunity before the pandemic began in 2019. It assumed that all members of the U.S. population were susceptible infection prior to the pandemic.	
Percentage of transmission occurring prior to symptom onset: Source: Preliminary COVID-19 estimates, ASPR and CDC	40%	
Time from exposure to symptom onset Source: Pre-publication COVID-19 estimates*	~6 days (mean)	
Time between symptom onset in an individual and symptom onset of a second person infected by that individual Source: Pre-publication COVID-19 estimates	~6 days (mean)	