



## NEWS RELEASE

FOR IMMEDIATE RELEASE

April 1, 2021

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### **Walworth County Response to Wisconsin Supreme Court Decision** *County Will Not Issue Local Mask Mandate*

(ELKHORN, WI): Walworth County understands its public health responsibilities and takes these duties very seriously. Public Health has worked tirelessly to attempt to address and respond to public, business, and governmental concerns related to the pandemic.

On March 31, 2021, the Wisconsin Supreme Court issued a decision concluding that the recent state of emergency declared by Governor Evers exceeded the Governor's powers and is therefore unlawful. Consequently, the Executive Order relating to a mask requirement was also declared unlawful. There is no longer a statewide mask mandate.

The Supreme Court decision noted that, "The question in this case is not whether the Governor acted wisely; it is whether he acted lawfully." The Wisconsin Legislature could now adopt a mask requirement, but they are unlikely to do so. During the pandemic, Walworth County has frequently been asked if the county will impose its own mask mandate. The County is not in a position to issue a countywide mask mandate. In short, Wisconsin Statutes in conjunction with our local ordinances do not clearly give the County the authority to issue and enforce such an order. In very brief summary, Walworth County's local health officer can issue specific orders but not broad general orders as issued by the Governor. It might be helpful to explain this distinction in greater detail.

State statutes allow local public health officers to issue isolation or quarantine orders that apply to a specific individual and orders that apply to a specific person, group of persons, or gathering spot, including a business, that are deemed necessary to immediately control the potential spread of a communicable disease. Those are specific – not broad – orders, and Walworth County Public Health has a clear understanding of its responsibility and authority in this regard. Under this authority, for example, Public Health might issue an order against a single, specific restaurant suffering an outbreak but could not issue one to all restaurants to avoid future outbreaks. If specific orders were issued, the state administrative code provides a clear legal remedy – the local health officer may petition a court seeking a court order to enforce. Within these topical areas, the County's Public Health Office will remain vigilant, issue orders as deemed appropriate, and pursue enforcement through court orders where compliance with

orders is not voluntary. Related Public Health complaints are addressed or investigated as they are received.

Relative to general orders that impact the public at large, the authority is not as precisely defined in statutes or the administrative code. Statutes do provide authority to take action to prevent or suppress the spread of a communicable disease, but such authority must be exercised in a manner that is “reasonable” and “necessary.” This authority is, arguably, constrained in interpretation in the light of the Wisconsin Supreme Court’s decision in *Legislature v. Palm*, which overturned the Governor’s “Safer at Home.” Additionally, pursuant to Wisconsin Statute 252.25, if a local government wants to impose a penalty for violation of such orders, the local government must have an ordinance authorizing the imposition of the penalty. A separate penalty provision has historically not been set forth within the County’s code of ordinances. The intersection of the Supreme Court decision, State statutes, and County code on this matter results in the County Public Health Office issuing “guidance” relative to general orders that impact the public at large. In fact, Walworth County Public Health issued such detailed guidance early on in the pandemic and has continued to update and promote it regularly.

Walworth County will continue to promote guidance and information on best practices during the pandemic but, given the legal constraints, has no plans to issue a local mask mandate.

It is important to note that the Wisconsin Supreme Court did not conclude or address whether wearing a mask is beneficial or in the interest of public health. Furthermore, the decision by the Supreme Court does not affect local mask orders by municipalities that may have adopted them and does not affect mandatory mask policies authorized by employers. In fact, multiple private businesses and national retailers operating in Wisconsin and Walworth County will likely continue to keep mask requirements in place for their facilities. Such determinations are within the purview of the entity to manage their operations.

The same consideration exists for Walworth County in relation to its own buildings. In order to make sound recommendations, Walworth County Public Health looks to the CDC, the Wisconsin Department of Health Services, and science. Public Health recommends that we continue taking precautions to prevent the spread of the virus, including mask wearing and physical distancing. Those same conclusions are what led the County to issue an administrative procedure on masks and physical distancing within Walworth County government buildings.

On February 5, 2021, County Administrator Mark Luberdia issued an administrative procedure titled, “Masks and Physical Distancing in Walworth County Facilities During the Pandemic.” With the Governor’s mandate now declared unlawful, the administrative procedure now becomes immediately effective. Its purpose “is to provide for the continuity of Walworth County governmental services and the public health and safety of Walworth County employees and patrons of, and visitors to, Walworth County facilities.” It only applies to certain governmental buildings of Walworth County. It does not apply to other businesses or locations. If you plan to conduct business with Walworth County, please wear your mask. If you are unable to do so, you are encouraged to call the county office you need to address your service remotely.

For more information about Walworth County Department of Health and Human Services’ public health guidance, visit [www.wi-walworthcounty.civicplus.com/304/Health-Human-Services](http://www.wi-walworthcounty.civicplus.com/304/Health-Human-Services).

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