UP North EO Q&A, 5/20/20

Can individuals from other regions leave home to travel to Region 6 or Region 8 to shop and dine?
No, this would be a violation of the order.

Can you repeat who specifically are "workers" in Section 11, item O in EO 2020-92 refer to? Is this staff of any municipality and business? Does this mean for the entire state, or just region 6 and 8?
This part is ambiguous. It is trying to allow workers who are necessary to be in the workplace to prepare it to operate in compliance with other EO are permitted to be in the workplace at this time. Management team/executives to mark the establishment. Those workers who come in to help prepare for the re-opening. For other parts of the state there is no re-opening order – so no need to come in to prepare business or office space.

Does the MML have a COVID-19 Preparedness and Response Plan for municipalities?
We have sample plans from communities here: http://blogs.mml.org/wp/coronavirus/messaging/

Can you provide the link for OSHA/CDC cleaning and disinfecting?

EO 92 requires face masks in bars/restaurant except for identification, how do you eat or drink with a facemask?
Patrons are not required to wear a mask when seated at a restaurant or bar.

How do restaurants work with customers that refuse to wear face masks, but agree to social distancing?
The order provides that individuals who can medically tolerate a face mask must do so when in an enclosed public space. We’ve been reminding many clients that they do not have to like the restrictions set forth by the orders but that unless a court indicates the orders are unenforceable, they are law and need to be followed. Ultimately, a restaurant needs to ask itself two questions: 1) How does it weigh the political, social, public relations, and enterprise risk of serving a patron who refuses to wear a mask as required by law? 2) What is its legal exposure. There are numerous considerations related to this second question and a complete answer would require a conversation with the questioner. A restaurant needs to consider that it has a legal obligation to provide its employees a safe workplace and that it may want to limit exposure for patrons. While it is generally difficult for plaintiffs to find success on suits related to illnesses because it is tough to determine where the illness was contracted, because so many people are limited by the stay-at-home orders the risk that contraction of an illness can be traced to a specific location. A restaurant which follows the law will face a lower risk of potential claims. The counter-consideration to the foregoing is that restaurants are places of public accommodation and therefore cannot discriminate against individuals on the basis of disability. Thus, if a patron cannot wear a mask for a medical reason, the restaurant cannot discriminate against that patron.
They need to use their business judgment, but patrons don’t need to wear masks while eating. Having patrons wait outside until their table is ready is required by the order anyway. Ultimately, a patron who refuses to comply should be asked to leave, and ultimately could be arrested and removed by law enforcement for trespass or misdemeanor violation of the EO.

**PROBLEM! An employee refuses to wear a face mask and states there is nothing you can do about it. What can be done about it?**

Employees with medical conditions may be protected. However, the order is clear – restaurant workers are required to wear face coverings. Other workers must wear face coverings when 6 feet of social distancing cannot be maintained. Subject to applicable disability laws, an employer can also have a policy requiring the use of a face covering. Any time you fire an employee, you should consult your employment attorney, but employees who refuse to wear a mask probably can be fired for cause and will not be eligible for unemployment.

**Will you be discussing marinas and park usage?**

Public parks have been allowed to operate as an exception to the Order from the beginning, and employees needed to maintain them considered critical workers.

We assume you are asking about recreational marinas. While boating is allowed, the State has issued the following contradictory guidance on marinas. Upon the issuance of executive order 2020-59 (which is no longer in effect), the government answered an FAQ regarding boating which addressed marinas. Obviously, FAQs indicate only an intention regarding how the law should be enforced, although the Public Health Order takes the questionable position that a violation of the FAQ’s is subject to penalties. An FAQ is not binding legal authority. The FAQ states as follows:

*Yes. Boating, including motorized boating, kayaking, canoeing, and sailing, fall within the outdoor recreational activities permitted under the order. Any outdoor recreational activity, including boating, must be done in a manner consistent with social distancing. Individuals are strongly encouraged to use only their own equipment to prevent the transmission of the virus through the touching of shared surfaces, and to follow all other mitigation measures recommended by the CDC.*

*While boating is permitted under the order, the provision of boating services does not itself constitute critical infrastructure work or a resumed activity as defined under the order. Accordingly, marinas, canoe liveries, and other similar businesses and operations may not designate workers to come to work for that purpose. Consistent with section 10(e) of the order, however, if a facility offers private storage for a boat, the facility may designate workers whose in-person presence is necessary to enable the boat owner to access that storage. No other boating-related services may be provided. Any such necessary in-person work must adhere to the mitigation measures required under section 11 of the order, including the enhanced social-distancing rules required under section 11(h).*

*The provision of boating supplies also does not constitute critical infrastructure work. Consistent with section 12(c) of the order, however, stores that sell necessary supplies may continue to offer for in-store sale any boating supplies the store sells in its ordinary course of business. And consistent with sections 5(d) and 10(a) of the order, all other stores may sell boating supplies remotely, for curbside pick-up or delivery. Any in-person work necessary to enable these permitted sales must adhere to the mitigation measures required under section 11 and, as applicable, section 12 of the order.*
What about fueling up boats?

See above. Gas sales appear to be a sale of “necessary supplies.”

Do individuals not wearing face masks in public places and giving the reason as being a medical reason be asked what the medical reason is?

The ADA requires “reasonable accommodations” for those with a disability, although the ADA allows restrictions when an individual poses a direct threat to the health or safety of others. The best understanding at this point is that an individual can be asked if he or she is unable to wear a mask because of a disability. No further question should be asked. If the answer is yes, a reasonable accommodation may be to ask the individual to wait in a designated area that is separated from other individuals while an employee obtains whatever good or service the individual has requested.

Some hotels in Traverse City are accepting reservations for overnight accommodations, is this allowed under the EO?

As a general rule, it is anticipated hotels will remain open and operating – hotel and motel workers are critical infrastructure workers in Michigan. However, the scope of their permitted operations are limited. Hotels still need to comply with other rules and need to close gyms, pools, spas, etc.

Executive order 2020-42 is no longer in effect. However, there was an FAQ regarding hotels as part of that executive order (as indicated above, FAQ’s are not legally binding):

Hotels and motels may remain open, but they may only engage in activities providing shelter and basic needs (such as carry-out/delivery/room-service food). In engaging in those activities, they must limit guest-to-guest, guest-to-staff, and staff-to-staff interactions as much as possible and must adopt all other mitigation measures required by section 10 of the order. They may not provide additional in-house amenities such as gyms, pools, spas, entertainment facilities, meetings rooms or like facilities, or provide in-house dining. Hotels and motels may also remain open to the extent they are used for COVID-19 mitigation and containment efforts and to serve critical infrastructure workers.

What if a restaurant owner claims that he cannot wear a mask because of health reasons? He works in the kitchen and waits tables.

Individuals have to wear face covering in public (provided no health restrictions). This isn’t part of EO 91. The language is pretty unambiguous. May be ADA protections or other areas of law. Workers in restaurants must wear face covering.
Will restaurants need bathroom monitors?
Good question. Restaurant has responsibility to keep restrooms clean. Post signage for bathroom procedures. Rely on good faith of customers. In high traffic areas, maybe a restaurant would assign someone to monitor the restrooms.

Could volunteers or staff other than police be deputized somehow to enforce social distancing in the parks and on our already overcrowded trails?
To issue appearance tickets? Probably not without being trained law enforcement. They could encourage social distancing and report to local law enforcement if there is non-compliance with EO.

How do general municipal buildings fit in, taking water payments, tax bills, permits? Are they "retail" uses and limit capacity? If they are "office" uses, are patrons "essential visitors" or are in-person payments prohibited?
Don’t know answer. Think there was separate EO on government operations but would have to verify. Going to pay your water bill is not permitted activity to leave your home.

Can you remove someone from a public building if they don't want to wear a mask? Thinking of a public meeting for example.
Generally speaking, people shouldn’t be at public meetings. EO says everyone must wear face covering when in enclosed public space. Failure to do that is a misdemeanor. Could be asked to leave or arrested. If board is meeting in person door should be locked, and mandatory public participation should be offered electronically.