

IHRIE O'BRIEN
ATTORNEYS AND COUNSELORS

24055 JEFFERSON AVENUE, SUITE 2000
ST. CLAIR SHORES, MICHIGAN 48080

ROBERT D. IHRIE, P.C.
DEBORAH F. O'BRIEN
RICHARD S. ALBRIGHT
HAROLD A. PERAKIS
ERIC D. SHEPHERD

TELEPHONE (586) 778-7778
FACSIMILE (586) 778-5990
OFFICE@IHRIEOBRIENLAW.COM
WWW.IHRIEOBRIENLAW.COM

WILLIAM W. KILLEBREW
RETIRED

April 8, 2020

Honorable Mayor and City Council
City of St. Clair Shores
27600 Jefferson Circle Drive
St. Clair Shores, MI 48081

**Re: Lawn Care and Landscape Services/Governor Whitmer's Executive
Order No. 2020-21**

Honorable Mayor and Council:

Questions have arisen with respect to what services landscapers or landscape service companies may provide in light of Governor Whitmer's Executive Order 2020-21 issued by the governor on March 24, 2020. This order is the primary "shelter in place" order issued by the governor. The order states that:

"No person or entity shall operate a business or conduct operations that require workers to leave their homes or place of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations." *Section 4, Executive Order 2020-21*

The order goes on to indicate that workers who are necessary to sustain or protect life are defined as "critical infrastructure workers" as described in Sections 8 and 9. Section 8 reads as follows:

"For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 Response..." *Section 8, Executive Order 2020-21*

In reviewing the definition of "critical infrastructure workers" described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020, attention should be drawn to the heading **Identifying Essential Critical Infrastructure Workers**. Under said headings are numerous categories within which "critical infrastructure workers" are defined. The section entitled **Public Works** defines such workers, in part, as follows:

"Workers such as plumbers, electricians, exterminators **and other service providers** who

provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences”. *Emphasis added*

In the accompanying letter from CISA of the U.S. Department of Homeland Security, is a “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response”. The Director of CISA, Christopher C. Krebs, in his cover letter indicates as follows:

“In addition, these identified sectors and workers are not intended to be the authoritative or exhaustive list of critical infrastructure sectors and functions that should continue during the COVID-19 response. Instead, State and Local officials should **use their own judgment** in using their authorities and issuing implementation directives and guidance.”
Emphasis added

It is my opinion, based upon Governor Whitmer’s Executive Order 2020-21 and the cited language referenced above from the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020, that commercial and non-commercial landscapers are permitted to perform services “that are necessary to maintain the safety, sanitation, and essential operation of residences”. Such services may only be provided with the following conditions:

1. Social distancing policies and procedures must be strictly adhered to.
2. It is recommended that only one landscaper work at one residence at a time. If more than one landscaper is required, they should arrive at the residence in separate vehicles.
3. Only those landscaping services necessary to maintain the safety and/or sanitation of the residence should be accomplished.
4. The cutting of grass in excess of 8-10 inches in height is considered necessary to maintain the safety, sanitation, and essential operation of a residence. Of course, other work necessary to maintain the safety, sanitation, and essential operation of residences may also be accomplished. Each landscaper must assure that their work falls within this standard.
5. Each worker must have received, in writing, a designation by their employer that they are a person whose work is necessary to enable, support, or facilitate the work of the critical infrastructure worker.
6. Such landscape services may not be provided to commercial properties or properties that are other than “residential”.

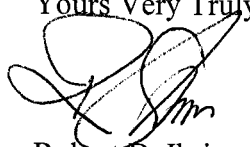
It should be recognized that this correspondence details the opinion of the City Attorney of the City of St. Clair Shores and that other enforcement agencies having jurisdiction within the City of St. Clair Shores, such as the Macomb County Sheriff or the Michigan State Police, may

IHRIE O'BRIEN
ATTORNEYS AND COUNSELORS

differ in their opinions. Further, it should be carefully noted that a violation of Governor Whitmer's Executive Order 2020-21 is a misdemeanor punishable by up to 93 days in jail along with other potential sanctions.

Thank you for your consideration.

Yours Very Truly,

A handwritten signature in black ink, appearing to read 'RDI', with a large, stylized flourish extending upwards and to the right.

Robert D. Ihrie
City Attorney

RDI/dmm

CC: Matthew Coppler, William Gambill, Mary Kotowski