

**BEFORE THE
OHIO STAY AT HOME ORDER DISPUTE RESOLUTION COMMISSION**

In the Matter of Dispute Resolution

Request Number OH010

**DISPUTE RESOLUTION COMMISSION
ADVISORY OPINION AND RECOMMENDATION**

Summary

1. The Dispute Resolution Commission recommends that the Warren and Clermont County health departments were partially correct in determining that businesses providing mulching services are essential based on the information provided. Further, mulching services may be provided as a stand-alone since mulching services fall within the scope of landscaping services, which are essential.

Background

2. On or about April 7, 2020, Aaron Reininger submitted a dispute resolution request on behalf of GroundsPRO, LLC to the Dispute Resolution Commission (“Commission”) pursuant to paragraph 23 of the Amended Stay at Home Order (“Order”) issued on April 2, 2020, by the Director of the Ohio Department of Health.¹ The dispute resolution request was assigned number OH010.

3. Paragraph 23 of the Order authorized the Director to appoint the members of the Commission and delegated authority to the Commission to facilitate the resolution of disputes regarding what is or is not an essential business in circumstances where a conflict between decisions or actions by local health authorities is demonstrated.

4. On April 6, 2020, the Director of the Ohio Department of Health appointed Lydia Mihalik, Director of the Ohio Development Services Agency, Sheryl Maxfield, Director of the Ohio Department of Commerce and Sam Randazzo, Chair of the Public Utilities Commission of Ohio to the Commission.

5. On April 16, 2020, the Commission met to consider and address the verified dispute resolution request referenced above along with information provided by the local health authorities with conflicting positions regarding what similar businesses are or are not

¹ The Amended Stay at Home Order can be found at:
https://content.govdelivery.com/attachments/OHOOD/2020/04/02/file_attachments/1418062/Signed%20Amended%20Director%27s%20Stay%20At%20Home%20Order.pdf

essential businesses and the relief requested by the person or entity submitting the request referenced above.

6. Based on the information provided by the local health authorities with conflicting positions regarding what similar businesses are or are not essential businesses and the relief requested by the person or entity submitting the request referenced above, the Commission hereby issues its opinion as follows. Pursuant to paragraph 23 of the Order, the decision of the Commission shall be final.

Advisory Opinion and Recommendation

7. The Warren County and Clermont County health departments found that the Order permitted mulching services as a part of other landscaping or construction performed at a given premises. It is the opinion of the Commission that this interpretation is correct in that mulching service is essential under the Order, but this work need not be coupled with other landscaping or construction work in order to be deemed essential. Paragraph 12.a. of the Order adopts the list of essential workers provided by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency's (CISA) updated Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response ("CISA Memo"). The CISA Memo lists landscaping as an essential business. The Commissioners find that mulching service falls within the scope of landscaping and therefore GroundsPRO's mulching services are essential pursuant to the Order.

8. It is the recommendation of the Commission that the Ohio Department of Health take such action as may be necessary to advise city and county health departments whose interpretation of the Order conflicts with the opinion set forth above in paragraph 7 to conform their enforcement of the Order to such above opinion.

9. It is the recommendation of the Commission that this advisory opinion and recommendation be promptly provided to the local health authorities with conflicting positions regarding what similar businesses are or are not essential businesses, provided to the person or entity submitting the request referenced above and published through a public posting at the Ohio Department of Health's website.

COMMISSIONERS:

Approving:

Lydia Mihalik

Sheryl Maxfield

Sam Randazzo

Issuance Date and Time April 16, 2020 at 4:00PM

Effective Date and Time² April 18, 2020 at 4:00PM

² Assumes that the Advisory Opinion and Recommendation is not suspended, altered or modified by the Director of the Ohio Department of Health or the Director's designee.