

## Phase 3 Business Compliance Plan

### Contacts

Michelle Fossum

- Spokane Regional Health District

Christopher Anderson

- Spokane County Prosecuting Attorney's Office
- [canderson@SpokaneCounty.org](mailto:canderson@SpokaneCounty.org)

### Process

Each Agency will determine when it becomes necessary to move to phase 3 of the process. Each Agency has the authority to determine when it is necessary to move from one phase to the next.

The RCW's that we are using, RCW 43.70.190 and RCW 70.05.070 are attached to the document at the bottom.

The Injunctive order is attached to this document.

Legal procedure that has been developed by various legal representatives from the various jurisdictions involved for addressing the businesses operating in violation of the Governor's Order:

- A complaint of a violation is received via dedicated line monitored by SCSO;
  - Email address and voice message box
- SCSO forwards the complaint to the appropriate agency.
- The complaint is investigated by the Law Enforcement Agency with primary jurisdiction where the business is located.
  - The Law Enforcement person will talk to the manager/ owner or person in charge of the business to either advise them that the business is not an essential business or review the reason the business believes it is an essential business, The law enforcement person will make a decision if the business is essential or non-essential. (based on the essential business information on the Governors website.)
    - If the decision is that the business is not an essential business the business will be advised they cannot remain open and must cease operation immediately.
- If after the initial contact is completed and an additional complaint is received, the Law Enforcement agency with primary jurisdiction will make a second contact with the manager/owner or person in charge.

- The person contacted will be put on notice that the business is in violation of the Governor's order and that if they remain open a civil injunction will be requested.
- If the business refuses to voluntarily comply, the assigned deputy will verify that the business is still operating in violation of the Governor's order.
  - If the business is still operating in violation of the Governor's order the assigned Deputy will complete the attached injunctive relief document.
  - For cases occurring in the County and the Valley the declarations should be returned to the Spokane County Prosecutor's Office (Chris Anderson).
- The Prosecutor's Office will prepare the legal case and forward the case to SRHD legal counsel for review;
- SRHD legal counsel will take the case to court and seek a Temporary Restraining Order (TRO) closing the business;
- Any TROs granted by the court will be returned to the designated Deputy via the Prosecutor's Office;
- The Deputy will then serve the TRO on the business;
- If the business does not wish to contest the order they will be given the option to sign an agreed order;
- If the business wishes to contest the order, then an expedited hearing would be set. Ideally, the Court will decide these cases based upon the declaration, however it is possible that testimony will be required.



4. (INSERT DESCRIPTION OF DUTIES, TRAINING, AND EXPERIENCE)

5. I have reviewed and am familiar with the ‘Stay Home – Stay Healthy’ Executive Order issued by Washington State Governor Jay Inslee on March 23, 2020. I have also reviewed the ‘Essential Critical Infrastructure Workers’ list published by the Governor’s Office, describing which businesses are permitted to remain in operation during the pendency of the ‘Stay Home – Stay Healthy’ Order.

6. On (INSERT DATE) the (INSERT AGENCY NAME) received a report that (INSERT BUSINESS NAME), located at (INSERT ADDRESS) was still operating in violation of the Governor’s ‘Stay Home – Stay Healthy’ Order.

7. On (INSERT DATE) I contacted (INSERT NAME), an (employee, manager, owner, etc.) of (INSERT BUSINESS NAME). *Provide description of contact with the business, include: observations regarding how business is non-compliant; description of notice/education provided to business; any information regarding intent of business to comply or refusal to comply.*

8. *Describe subsequent contacts; continued non-compliance observed and attempts to obtain voluntary compliance.*

9. On (INSERT DATE), I visited (INSERT BUSINESS NAME) and determined it was still in operation. (*Describe specific continued non-compliance observed*).

10. This declaration is made in support of plaintiff's motion for the issuance of an order enjoining the respondent in accordance with the prayer contained in petitioner's complaint in the above-entitled cause.

DATE: \_\_\_\_\_

LOCATION (City, State): \_\_\_\_\_

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(INSERT NAME AND TITLE)

## **RCW 70.05.070**

### **Local health officer—Powers and duties.**

\*\*\* CHANGE IN 2020 \*\*\* (SEE 2246-S.SL) \*\*\*

The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and 70.118.130, the confidentiality provisions in RCW 70.02.220 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) **Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;**

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

## **RCW 43.70.190**

### **Violations—Injunctions and legal proceedings authorized.**

The secretary of health or local health officer may bring an action to enjoin a violation or the threatened violation of any of the provisions of the public health laws of this state or any rules or regulation made by the state board of health or the department of health pursuant to said laws, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. Upon the filing of any action, the court may, upon a showing of an immediate and serious danger to residents constituting an emergency, issue a temporary injunctive order ex parte.

Non-Essential Business that Continue to Operate  
INSTRUCTIONS FOR OFFICERS

Complaints from members of the public about non-compliance with the Governors "Stay Home Stay Healthy" order will go to [InlandBizCompliance@spokanecounty.org](mailto:InlandBizCompliance@spokanecounty.org) or to a voicemail at 509-477-2684.

That voicemail will be checked each day and reports of violations will be forwarded to the appropriate law enforcement agency based on where the business is located. For those forwarded to the Spokane Police Department, SPD officers will make the determination of whether the report meets the criteria for investigation and follow up.

It's first very important that the officer check with the list of Non-Essential Business posted on the Governor's website. <https://www.coronavirus.wa.gov/whats-open-and-closed/essential-business>.

The officer should then go out to the business, speak to that business owner and determine whether they are on the list of non-essential businesses. Officers should make a careful decision and confer with their chain of command. If indeed the business is in violation, the SPD officer should fill out the "Notice to Business Owner" (similar to the "chronic nuisance notice"), make a copy of it, and hand it to the owner or operator of the business. The Notice to Business Owner should indicate whether this is a first or second notice, and the officer should sign it and indicate to whom it was served.

The officer should also verbally explain to the business owner that immediate compliance is essential to public health and safety, and that continued operation may result in a court order obtained by the Spokane Regional Health District to temporarily close the business. In addition keeping a copy of the Notice to Business Owner, the officer should prepare a police report detailing his or her conversation with the business owner. This should always accompany a Notice to Business Owner. (It is very important that we document the notice we are giving to the business owner with a police report.)

Note: The business may be served with as many as two Notices to Business Owner, but the third time, the officer should complete a declaration on the form provided, and forward that, along with all Notices to Business Owner and police reports, to City Legal (Matt or Mary).

Only those that SPD believes have merit will be forwarded to City Legal for the initial preparation of legal paperwork. Legal will then forward the paperwork to Michelle Fossum to review and to file for injunctive relief on behalf of the SRHD. (Ms. Fossum will equip our legal departments with the forms she will use and, with each reported violation that LE believes have merit, our respective staffs will complete those forms and forward them to Michelle.)

Those temporary restraining orders that are granted would be based on the officer's declaration, and the signed order would be routed back to City Legal, who will then forward them to the appropriate precinct captain or lieutenant to have a designated officer serve the order on the offending business. In all likelihood, Judge Price will order the business closed (temporarily) immediately. The order and accompanying paperwork will also likely include an "Agreed Order" to allow the business to cooperate entirely with the SRHD without having to go back to court for subsequent proceedings. **City Legal will stand by to assist and answer questions.**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE**

SPOKANE REGIONAL HEALTH DISTRICT,	)	
	)	
Petitioner,	)	<b>No.</b>
	)	
v.	)	MEMORANDUM OF
	)	AUTHORITIES IN SUPPORT OF
*	)	EX PARTE MOTION FOR
	)	TEMPORARY RESTRAINING
Respondent.	)	ORDER AND INJUNCTIVE
	)	RELIEF
	)	

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Petitioner Spokane Regional Health District (“SRHD”), by and through its undersigned counsel of record, Michelle K. Fossum of Sayre Sayre & Fossum, P.S., submits the following Memorandum of Authorities in Support of its Ex Parte Motion for a Temporary Restraining Order.

The health officer for Spokane County is charged with the responsibility of enforcing the public health statutes of the state, the rules of the Department of Health and all local health rules, regulations and ordinances within the health officer’s jurisdiction. RCW § 70.05.070(1)

and RCW 43.70.190. The health officer also has the duty to control and prevent the spread of any dangerous, contagious, or infectious disease that may occur within the health officer's jurisdiction. RCW § 70.05.070(3).

The health officer may petition the superior court ex parte to enjoin a violation or the threatened violation of the public health laws of this State. RCW 43.70.190. Dr. Bob Lutz, Health Officer for SRHD, the Washington State Department of Health, and the Governor for the State of Washington have determined that novel coronavirus (COVID-19) constitutes a pandemic and is a dangerous, contagious and/or infectious disease that poses a significant risk to the public health. The court may, upon a showing of an immediate and serious danger to residents constituting an emergency, issue a temporary injunctive order ex parte. RCW § 43.70.190.

Procedurally, the local health officer, or his designee, is directed to make reasonable efforts to obtain voluntary compliance with requests for closure of facilities, unless the health officer has determined that such efforts would create a risk of serious harm. WAC 246-100-040(1)(a). The local health officer is further mandated to "conduct investigations and institute disease control and contamination measures, including . . . closure of facilities." WAC 246-100-036. A temporary restraining order may be issued without written or oral notice to the opposing party if it appears by affidavit that immediate and irreparable damage will occur before the adverse party can be heard in opposition and plaintiff's attorney certifies to the notice and the reasons supporting this claim that notice should not be required. CR 65(b).

On March 23, 2020, Washington Governor Jay Inslee issued Executive Order 20-25, which states in relevant part:

Effective midnight on March 25, 2020, all non-essential businesses shall cease operations except for performing basic minimum operations.

Respondent has failed and refused to comply with the directions of the Health Officer and the Governor's Proclamation 20-25 to cease business operations, as more fully set forth in the Declarations filed herein.

Respondent's noncompliance will cause immediate and irreparable damage as the continued noncompliance (1) places the citizens of Spokane County at risk of contracting coronavirus, (2) constitutes conduct contrary to public health efforts to slow the spread of COVID-19 and (3) increases the risk that the capacities of local medical facilities will be exceeded. Given the nature of the public health emergency from COVID-19, issuance of a Temporary Restraining Order without Notice is proper.

Nor is SRHD required to post a bond prior to the issuance of a Temporary Restraining Order. Under Washington Court Rules, no bond is required of governmental municipal corporations.

Except as otherwise provided by statute, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. . . . **No such security shall be required of . . . municipal corporations of the State of Washington.**

CR 65(c). (Emphasis added). Because SRHD is a municipal corporation of the State of Washington, not bond is required.

Based on the foregoing, SRHD respectfully requests that the Court issue an immediate ex parte order prohibiting Respondent from engaging in any business operations other than

basic minimum operations for the protection of the health of the citizens of Spokane County.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2020.

**SAYRE SAYRE & FOSSUM, P.S.**

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Michelle K. Fossum, WSBA # 20249  
Attorneys for Spokane Regional Health  
District



\* filed herewith and the records and files herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**SAYRE SAYRE & FOSSUM, P.S.**

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Michelle K. Fossum, WSBA 20249  
Attorneys for Spokane Regional Health  
District



3. SRHD shall not be required to post a bond.

4. This Preliminary Injunction shall remain in place so long as Executive Order 20-25 is in effect or until further order of the Court, which ever should occur first.

5. By signing below, Respondent's representative warrants that he or she is authorized to enter into this Stipulation and Order and can properly bind the Respondent.

6. Violation of this Order is punishable as contempt of court and may result in the imposition of fines and/or other consequences as determined appropriate by the Court.

So Stipulated this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Michelle K. Fossum, WSBA 20249  
Sayre Sayre & Fossum, PS  
Attorney for SRHD

\_\_\_\_\_  
Print: \_\_\_\_\_  
\_\_\_\_\_  
Attorney for \_\_\_\_\_

## II. ORDER

Having reviewed the above Stipulation and the records and files herein, it is hereby:

ORDERED, ADJUDGED AND DECREED that Petitioner Spokane Regional Health District's motion for a preliminary injunction against Respondent \* is hereby granted as follows:

1. Respondent shall cease all business operations other than the designation of one person to process accounts payable, log accounts receivable, make deposits, and process payroll and related benefits.

2. Respondent is prohibited from being open to the public or allowing access by the public.

3. SRHD shall not be required to post a bond.

4. This Preliminary Injunction shall remain in effect so long as Executive Order 20-25 is in effect or until further order of this Court, whichever should occur first.

5. Violation of this Order is punishable as contempt of court and may result in the imposition of fines and/or other consequences as determined appropriate by the Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020 at \_\_\_\_\_ o'clock am/pm.

\_\_\_\_\_  
Judge/Court Commissioner

Presented By:

**SAYRE SAYRE & FOSSUM, P.S.**

\_\_\_\_\_  
Michelle K. Fossum, WSBA 20249  
Attorneys for Spokane Regional Health District

Copy Received, Approved as to Form,  
Notice of Presentment Waived:

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



capacities of local medical facilities will be exceeded. The Court finds that the damage from these actions is irreparable and given the nature of this public health emergency, issuance of a Preliminary Injunction is proper.

Having reviewed Petitioner's motion and the supporting documents, it is hereby:

ORDERED, ADJUDGED AND DECREED that Petitioner Spokane Regional Health District's motion for a preliminary injunction against Respondent \* is hereby granted as follows:

1. Respondent \* shall cease all business operations other than the designation of one person to process accounts payable, log accounts receivable, make deposits, and process payroll and related benefits.

2. Respondent is prohibited from being open to the public or allowing access by the public.

3. SRHD shall not be required to post a bond.

4. This Preliminary Injunction shall remain in effect so long as Executive Order 20-25 is in effect or until further order of this Court, which ever should occur first.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020 at \_\_\_\_\_ o'clock am/pm.

\_\_\_\_\_  
Judge/Court Commissioner

Presented By:

**SAYRE SAYRE & FOSSUM, P.S.**

By \_\_\_\_\_  
Michelle K. Fossum, WSBA 20249  
Attorneys for Spokane Regional Health District