

**Post Falls City Attorney
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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	CASE NO. CR 28-20-5861
Plaintiff,)	
)	MEMORANDUM OF POINTS AND
vs.)	AUTHORITIES.
)	
CHRISTA M. THOMPSON)	
)	
<u>Defendant.</u>)	

1. Does the Governor have the authority to issue a Stay at Home order?

Yes. The Governor is the Commander of the Militia under Article IV, § 4 and Supreme Executive Power is vested within the Governor under Article IV, § 5 of the Idaho Constitution.

§ 4. GOVERNOR IS COMMANDER OF MILITIA The governor shall be commander-in-chief of the military forces of the state, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion. Idaho Const. art. IV § 4

§ 5. SUPREME EXECUTIVE POWER VESTED IN GOVERNOR The supreme executive power of the state is vested in the governor, who shall see that the laws are faithfully executed. Idaho Const. art. IV § 5

§ 46-1008. THE GOVERNOR AND DISASTER EMERGENCIES

(1) Under this act, the governor may issue executive orders, proclamations and amend or rescind them. Executive orders and proclamations have the force and effect of law.

.....

5) In addition to any other powers conferred upon the governor by law, he may:

(g) *Control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises therein;*

(emphasis added).

- 2. Pursuant to I.C. 46-1008 the Governor declared a state of emergency and issued an executive order dated March 13, 2020 and was followed by an order of extreme emergency dated March 20, 2020**

There exists a condition of extreme peril to the safety of persons and property within the State of Idaho caused by the increasing presence of the 2019 novel coronavirus (COVID-19), which, by reason of its magnitude, is beyond the control of the services, personnel, equipment and facilities of any city or county. Accordingly, I find that there exists an extreme emergency within the State of Idaho.

The potential spread of COVID 19 included the entire state.

- 3. On March 25, 2020 the Idaho Department of Health and Welfare, pursuant to the Governor’s proclamation, through its Director ordered “ALL INDIVIDUALS LIVING IN THE STATE OF IDAHO TO SELF-ISOLATE AT THEIR PLACE OF RESIDENCE.”**

.....

This order was to “(PROHIBIT) ALL NON-ESSENTIAL GATHERINGS OF ANY NUMBER OF INDIVIDUALS, and:

All people in Idaho shall immediately cease hosting or participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved, except as specifically identified in Section 8. Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events; parades; concerts; festivals; conventions; fundraisers; and similar activities.

IDAHO DEPARTMENT OF HEALTH AND WELFARE ORDER OF THE DIRECTOR
ORDER TO SELF-ISOLATE; DATE OF ORDER MARCH 25, 2020.

Under the Governor’s authorization, the Department of Health and Welfare had sufficient authority to regulate all public and private gatherings for any nonessential reason.

4. The threat of infection was declared by the Governor as an “imminent threat to public health and safety. The nature of the emergency is the occurrence and imminent threat to public health and safety arising from the effects of the 2019 novel coronavirus (COVID-19). The area threatened by the emergency includes the State of Idaho. “

The I.C. 56-1001 Definition of “isolation’ includes “persons suspected to be Infected”. Since the area threatened by the emergency includes the entire state of Idaho, the suspected, potential scope of infection was the entire state including all individuals. Accordingly, limiting personal contact was within the purview of the Governor’s executive powers as delegated to the Idaho Department of Health and Welfare.

“This authority is codified throughout Idaho Law. The authority to issue orders such as the Stay at Home Order is found within Chapter 6, Title 46 of the Idaho Code. Additional authority is found within Chapter 10, Title 46. The specific statutes granting the Governor authority to issue such an order are Idaho Code § 46-601 and Idaho Code § 46-1008. It is important to note that both the Director of the Department of Health and Welfare and local public health districts have authority to issue orders of quarantine and isolation. Idaho Code §§ 56-1003(7) (Director) & 39-415 (Public Health Districts). The current order is an exercise of the combined authority of the Governor and the Director of the Department of Health Welfare.”

Stay at Home Order Frequently Asked Questions

<https://www.ag.idaho.gov/content/uploads/2020/03/FAQs-Idahos-Stay-at-Home-Order.pdf>

DATED this 18 day of September, 2020.

April R. Ryan #4239
PROSECUTING ATTORNEY

ATTACHMENTS:

1. Governor's Proclamation dated March 13, 2020.
2. Governor's Proclamation dated March 25, 2020.
3. Copy of Idaho Attorney General's webpage "Stay at Home Order Frequently Asked Questions"



The Office of the Governor

Executive Department
State of Idaho

Proclamation

State Capitol
Boise

WHEREAS, the health and safety of all Idahoans is the greatest priority of our state and its leaders; and

WHEREAS, Idaho is committed to being as prepared as possible to respond to the 2019 novel coronavirus (COVID-19); and

WHEREAS, the worldwide detection of the 2019 novel coronavirus (COVID-19), including in the United States, has progressed to a pandemic declared by the World Health Organization on March 11, 2020; and

WHEREAS, the Acting Secretary of Health and Human Services declared a public health emergency exists to address the 2019 novel coronavirus (COVID-19), which affects or has significant potential to affect national security; and

WHEREAS, there is risk to life and the continued operation of public infrastructure as a result of the potential for cases of 2019 novel coronavirus (COVID-19) throughout the State of Idaho; and

WHEREAS, the Idaho Department of Health and Welfare, other state agencies, and the local public health districts are expending resources to prepare for and treat cases of the 2019 novel coronavirus (COVID-19), supporting healthcare system response, and addressing resource shortages through the use of supplies and equipment from the Strategic National Stockpile (SNS) throughout the State of Idaho to reduce transmission and illness severity. The costs associated with facilitating the 2019 novel coronavirus (COVID-19) preparedness and response effort are expected to increase commensurate with the severity of the outbreak; and

WHEREAS, the State of Idaho has established a Coronavirus Working Group to aid in the many public health aspects of the incident; and

WHEREAS, the Idaho Office of Emergency Management Emergency Operations Center is coordinating resources across state government to support the Idaho Department of Health and Welfare and local officials in alleviating the impacts to people, property, and infrastructure, and is assessing the magnitude and long-term effects of the incident with the Idaho Department of Health and Welfare;

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by Section 46-1008 of the Idaho Code do hereby find and therefore proclaim and declare:

- 1. That a state of emergency described in Section 46-1008, Idaho Code, exists in the State of Idaho.*
 - a. The plans and procedures of the State of Idaho Emergency Operations Plan are to be implemented.*
 - b. The nature of the emergency is the occurrence and imminent threat to public health and safety arising from the effects of the 2019 novel coronavirus (COVID-19).*

- c. *The area threatened by the emergency includes the State of Idaho.*
- d. *The area subject to this proclamation shall include the State of Idaho.*
2. *The state of public health emergency herein described shall exist for a period of thirty days unless terminated, modified or unless extended for thirty-day increments.*
 3. *State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the 2019 novel coronavirus (COVID-19).*
 4. *This proclamation serves pursuant to Section 46-1008, Idaho Code, as authorization for the resources of state government to assist in efforts to deal with the public health emergency of the 2019 novel coronavirus (COVID-19) in Idaho.*
 5. *State licensing agencies and departments are authorized to temporarily exercise enforcement discretion, implement temporary rules, and waive licensing and related requirements to maximize access to health care services and provider support in response to COVID-19.*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 13th day of March in the year of our Lord two thousand and twenty and of the Independence of the United States of America the two hundred forty-fourth and of the Statehood of Idaho the one hundred thirtieth.

A handwritten signature in black ink, appearing to read "Brad Little".

Brad Little
GOVERNOR

A handwritten signature in black ink, appearing to read "Lawrence Denney".

Lawrence Denney
SECRETARY OF STATE



The Office of the Governor

*Executive Department
State of Idaho*

Proclamation

*State Capitol
Boise*

WHEREAS, the health and safety of all Idahoans is the greatest priority of our state and its leaders; and

WHEREAS, the State of Idaho has been studying and preparing for the 2019 novel coronavirus (COVID-19) since it first appeared in the United States in January 2020;

WHEREAS, the State of Idaho is committed to responding rapidly and effectively to the spread of COVID-19 to protect the health and safety of its citizens; and

WHEREAS, I established a Coronavirus Working Group to aid in the many public health aspects of the incident, and that Working Group has been working diligently and communicating daily to provide me and the State of Idaho with the best available science, data, methods, and advice on responding to COVID-19; and

WHEREAS, the State of Idaho has and continues to prepare for and respond to the presence of COVID-19 in Idaho, including increasing the capacity of the health care system, securing medical supplies and personal protective equipment, ensuring supply lines of food and non-medical supplies will remain open and reliable, providing extensive information to the citizens of Idaho on the prevention and spread of COVID-19, being one of the first states to have a lab for testing and increasing the capacity of testing at the lab by many times in a matter of weeks, and securing millions of dollars in funds to support the emergency response; and

WHEREAS, the worldwide detection of COVID-19, including in the United States, has progressed to a pandemic declared by the World Health Organization on March 11, 2020; and

WHEREAS, on March 13, 2020, when the first case of COVID-19 was confirmed in Idaho, I issued a proclamation declaring a state of emergency in the State of Idaho due to the occurrence and imminent threat to public health and safety arising from the effects of COVID-19; and

WHEREAS, President Trump issued a proclamation on March 13, 2020 declaring a national emergency due to the outbreak of COVID-19 in the United States and in order to implement additional measures to successfully contain and combat the virus in the United States; and

WHEREAS, each of those proclamations remain in effect today; and

WHEREAS, on March 20, 2020, immediately upon the confirmation of community spread in Blaine County, the Idaho Department of Health and Welfare put in place an isolation order requiring all residents in Blaine County to remain at home except to obtain or provide essential services; and

WHEREAS, there is risk to life and the continued operation of public infrastructure as a result of the potential for cases of COVID-19 throughout the State of Idaho; and

WHEREAS, cases of COVID-19 have continued to increase in Idaho, necessitating additional measures to ensure to contain and combat the virus; and

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution of the United States, the Constitution of the State of Idaho, and the laws of this State, including Sections 46-601 and 46-1008, Idaho Code, do hereby find and therefore proclaim and declare:

- 1. The proclamation I issued on March 13, 2020 is hereby amended to incorporate this proclamation.*
- 2. There exists a condition of extreme peril to the safety of persons and property within the State of Idaho caused by the increasing presence of the 2019 novel coronavirus (COVID-19), which, by reason of its magnitude, is beyond the control of the services, personnel, equipment and facilities of any city or county. Accordingly, I find that there exists an extreme emergency within the State of Idaho.*
- 3. This proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and be promptly filed with the Idaho office of emergency management, the office of the secretary of state and the office of the recorder of each county.*
- 4. This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Idaho, its departments, agencies, or entities, its officers, employees, or agents, or any other person.*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 25th day of March in the year of our Lord two thousand and twenty.

A handwritten signature in cursive script, appearing to read "Brad Little".

Brad Little
GOVERNOR

A handwritten signature in cursive script, appearing to read "Lawrence Denney".

Lawrence Denney
SECRETARY OF STATE

Stay at Home Order Frequently Asked Questions

1. Does the Governor have the authority to issue a Stay at Home order?

Yes. The Governor is the Commander of the Militia under Article IV, § 4 and Supreme Executive Power is vested within the Governor under Article IV, § 5 of the Idaho Constitution. This authority is codified throughout Idaho Law. The authority to issue orders such as the Stay at Home Order is found within Chapter 6, Title 46 of the Idaho Code. Additional authority is found within Chapter 10, Title 46. The specific statutes granting the Governor authority to issue such an order are Idaho Code § 46-601 and Idaho Code § 46-1008. It is important to note that both the Director of the Department of Health and Welfare and local public health districts have authority to issue orders of quarantine and isolation. Idaho Code §§ 56-1003(7) (Director) & 39-415 (Public Health Districts). The current order is an exercise of the combined authority of the Governor and the Director of the Department of Health Welfare. Violation of this order could be a misdemeanor. Idaho Code § 56-1003(7)(c).

2. Is my business exempt if I can make an argument that it's exempt?

The order cannot cover every single scenario and arguments for exemptions can be advanced. However, the purpose of the order is to stop the spread of a virus that will have fatal consequences for certain members of Idaho's population. As owners consider the status of their businesses, they should do so with the understanding that the goal of the order is for us to stay home and isolated to the maximum extent possible.

3. Who has the authority to enforce the order?

By statute, city police, county sheriffs, or Idaho State Police have the authority to enforce the order. The Governor, the Department of Health & Welfare, nor the Office of the Attorney General have enforcement authority under the statutes authorizing the order or under the order itself.

4. I'm out of milk and eggs. Can I leave my house to go to the store?

Yes, you may leave your house to get essentials. Your departure and return should be on as direct a route as possible to minimize the time that you may be exposed to the virus, or that you may expose others. These trips should be kept to a minimum.

5. My house is so stuffy. Can I go out for a walk, run or bike ride?

Yes. Under the Governor's order, you are allowed to leave your house to go for walks, runs, and bike rides. Please refrain from gathering in groups and remember to observe social distancing when in public. As you encounter other walkers, runners, or riders please do not come within 6-feet of others to minimize the likelihood of viral transmission. You may walk, run, or ride with your family members as well.

6. Gas prices, milk prices, and water prices appear to have gotten out of control at my local grocery store. How can I be sure that this isn't price gouging?

Concerns about price gouging should be reported to the Office of the Attorney General's Consumer Protection Division. Complaints can be filed online at <https://www.ag.idaho.gov/office-resources/online-forms/?form=File%20a%20Complaint&complaint=Consumer%20Complaint>.

Consumers may also contact the Consumer Protection Division at <https://www.ag.idaho.gov/office-resources/online-forms/> or by calling 1-800-432-3545 (statewide) or (208) 334-2424 (local) to obtain information about price gouging and other consumer matters.

Under Idaho Code § 48-603(19), price gouging investigations by the Attorney General are limited to fuel, food, pharmaceuticals and water for human consumption. If your complaint falls outside of these categories, the Attorney General lacks the legal authority to investigate.

7. Are units of government still required to follow Idaho's Open Meetings Law?

Yes. Government is still required to follow the Idaho Open Meetings Law. Notices and agendas should be posted in compliance with the law. In a recent proclamation, the Governor only suspended the "in-person" attendance requirement—but only if the governmental entity can ensure that the public has the opportunity to either listen in via teleconference, observe and listen through streaming, or attend via other online platforms. If the system for observing and listening is not functioning, government should postpone the meeting until the system is working. Additionally, there is no authorization within the law for the conduct of meetings or votes within boards by e-mail. Government should comply with the Open Meetings Law throughout the application of the Governor's orders.