

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA }
CLEVELAND COUNTY } S.S.

FILED

APR 30 2020

In the office of the
Court Clerk MARILYN WILLIAMS

Case No. CJ-2020-471

ASHLEY RUSSELL, LIORPALOMA, LLC,)
SUSAN C. BABB, DANA BRADLEY,)
POLISHED BEAUTY BAR AND SPA LLC,)
KATHRYN MORRIS and LE VISAGE SPA)
& WELLNESS,)

Plaintiffs,)

v.)

BREEA CLARK, in her official capacity)
as the Mayor of the CITY OF NORMAN,)
an Oklahoma municipality,)

Defendant.)

MOTION FOR TEMPORARY RESTRAINING
ORDER AND TEMPORARY INJUNCTION

The Plaintiffs, Ashley Russell, owner of Liorpaloma LLC, Susan C. Babb and Dana Bradley, owners of Polished Beauty Bar and Spa LLC, and Kathryn Morris, owner of Le Visage Spa & Wellness respectfully request this Court to issue a temporary restraining order and temporary injunction against the Mayor of the City of Norman preventing her from enforcing the Emergency Proclamation she issued on April 28, 2020, against them. In support of this Motion, Plaintiffs would show as follows:

I. BACKGROUND INFORMATION

The Plaintiffs, in this case, operate cosmetology shops in the City of Norman. Each of the businesses is duly licensed by the Oklahoma Board of Cosmetology and Barbering, which issues stringent sanitary requirements.

The Mayor of the City of Norman has issued several proclamations with

respect to the spread of the COVID-19 pandemic. The mantra was to “slow the spread.”

The issues, in this case, involve the proclamation that the Mayor issued on April 28, 2020. [Exhibit A, the April 28, 2020, Proclamation.] Despite allowing many other types of businesses that are similarly situated to Plaintiffs’ businesses to open on May 1, 2020, the April 28, 2020 Proclamation prohibits Plaintiffs’ businesses from opening until May 15, 2020. There is no basis identified in Mayor’s April 28, 2020 Proclamation that identifies some special condition or reason for Plaintiffs’ businesses treated differently than any other business in the City of Norman.

In addition to that, every other municipality in the State allows cosmetology businesses to open. Moreover, the Governor of the State of Oklahoma authorized cosmetology businesses to open on April 24, 2020. The Mayor’s Proclamation differs from the State’s orders only as they relate to personal care providers, massage and tattoo parlors, and movie theaters. Without more, she singles those businesses out. There is no reason or basis to single out Plaintiffs’ businesses. All other businesses are treated equally statewide. The City of Norman is the only city in the State where a person cannot get a haircut.

Moreover, the proclamation suggests that there is no reason currently to limit Plaintiffs’ businesses. The Mayor’s April 28, 2020 Proclamation identifies that the COVID-19 public health emergency in the State of Oklahoma is **improving**. Of particular note, Mayor Clark identifies:

- a. That the peak of COVID-19’s impact on the State of Oklahoma

occurred on April 21, 2020;

- b. That the Oklahoma Department of Health is conducting contact tracing across the State and is tracking the availability of ventilators, COVID-19 collection kits, hospital beds, and personal protection equipment at hospitals across the State to ensure capacity exists to address any outbreaks or surges in COVID-19; and
- c. That the State of Oklahoma allows Plaintiffs' businesses to open as of April 24, 2020.

Importantly, the Mayor's April 28, 2020 Proclamation doesn't identify any particular danger or condition faced in the City of Norman that is in any way different from the general State at large or by other communities or with other businesses in the City of Norman.

Thus, it is crucial to view the Mayor's April 28, 2020 Proclamation in context. It is clear the Mayor does not necessarily agree with the Governor of the State of Oklahoma and several of the other communities of the State. She has made that plainly known. Nonetheless, her sincere personal feelings cannot be used as the rational basis to close Plaintiffs' business. Judges often must make decisions that they may not agree with personally, but the law is the law. The Mayor, to comply with the law, must link her decision to force, under criminal penalty, the closure of Plaintiffs' business to a legitimate purpose that is an actual and real danger different from those faced by other businesses in the City of Norman and the surrounding

communities. **THUSLY, THERE IS NO BASIS IN LAW OR FACT TO TREAT COSMETOLOGY SHOPS IN NORMAN DIFFERENTLY THAN COSMETOLOGY SHOPS IN THE REST OF THE STATE.** The City of Norman must identify some particularized harm that creates some immediate risks by the operation of Plaintiffs' business that is different from all the other businesses in the City of Norman and the surrounding communities to prevent Plaintiffs from working. Specifically, the City of Norman must identify some rational basis why the City of Norman is different from the State at large and the other communities in the area and how the Plaintiffs' businesses are different.

Thus, it is important to look at the practical effects of such the Mayor's Proclamation. This Proclamation does not stop Norman residents from patronizing hair salons. It simply sends them to other communities to receive these services. The effect is that members of the City of Norman community will drive to other communities, such as Moore, Noble, Midwest City, Oklahoma City, etc., then return to the City of Norman community. The Mayor recognizes this in her April 28, 2020 address to the City on YouTube. [Exhibit B, YouTube Address.] The effect is more mixing of individuals, not less. Not only is there no rational basis for this, but it also has the opposite of the intended effect.

The Mayor's actions violate the Plaintiffs' rights established by the Equal Protection Clause of Fourteenth Amendment to the United States Constitution, Article 2, Section 2 of the Oklahoma Constitution, and Okla. Stat. tit. 11 § 14-101 and an injunction must issue to prevent its enforcement against the Plaintiffs.

II. STANDARD FOR GRANTING A RESTRAINING ORDER AND TEMPORARY INJUNCTION

In order to have a temporary injunction issued, this Court must consider the following criteria: “1) the likelihood of success on the merits; 2) irreparable harm to the party seeking injunction relief if the injunction is denied; 3) his threatened injury outweighs the injury the opposing party will suffer under the injunction; and 4) the injunction is in the public interest.” *Dowell v. Pletcher*, 2013 OK 50, ¶ 7, 304 P.3d 457. Further, a temporary restraining order is controlled by Okla. Stat. tit. 12 § 1384.1. This Court may issue a temporary restraining order if

it clearly appears from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the attorney for the adverse party can be heard in opposition.

A. LIKELIHOOD OF SUCCESS ON THE MERITS

To show the likelihood of success on the merits, “it is not necessary that moving party’s right to final decision be without doubt; rather, the burden is on party seeking relief to make **prima facie** showing of reasonable probability of prevailing on the merits.” *Id.* (emphasis added)(citing *Williams Expl. Co. v. U.S. Dept. of Energy*, 561 F.Supp. 465 (N.D.Okl.1980)). Thus, Plaintiffs do not have to win the case at this stage; they must just show that they are likely to win.

Although, there is some support that deference should be given the City of Norman with respect to the current health crisis. The law still requires some rational

relationship to the harm it seeks to protect. It is simply not a random shot in the dark or a license to treat similarly situated businesses differently.

This public health crisis has brought to light a 1905 United States Supreme Court case of *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 23, 25 S.Ct. 358, 49 L.Ed. 643 (1905). *Jacobson* involved the constitutionality of a 1902 Cambridge, Massachusetts regulation, adopted pursuant to state statute, that required the city's residents to undergo a free smallpox vaccination in an attempt to end a smallpox epidemic. 197 U.S. at 12, 25 S.Ct. 358. The Supreme Court held that the regulation did not violate the Fourteenth Amendment as applied to Mr. Jacobson—an adult who was fit for vaccination refused to be vaccinated but stayed in the community—as it was a lawful exercise of the State's police powers. *Id.* at 27, 25 S.Ct. 358. Importantly though, the *Jacobson* Court explained that not all emergency regulation passes constitutional muster. In that regard, the *Jacobson* Court explained that,

if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.

Jacobson, 197 U.S. at 31, 25 S.Ct. 358 (emphasis omitted).

This case is not the *Jacobson* case. In this case, the City of Norman is attempting to use its police power to thwart constitutionally protected rights in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in violation of Article 2, Section 2 of the Oklahoma Constitution

and in violation of Okla. Stat. tit. 11 § 14-101. Moreover, there is no real or substantial relation to closing Plaintiffs' business and slowing the spread of COVID-19 that is any different from the other businesses in the City of Norman. Importantly, it will have no effect because Plaintiffs' customers will simply go to competing businesses in other communities. The City of Norman has no basis in law or fact to restrict Plaintiff's business, even under the most lenient of constitutional standards applied to the proclamation – rational basis. There is no evidence that the operation of Plaintiffs' business puts the community at risk to any greater extent than the businesses that will be allowed to operate in the City of Norman and the cosmetology businesses that are operating in the surrounding communities.

1. EQUAL PROTECTION

“The Equal Protection Clause of the Fourteenth Amendment protects the civil and political rights of individuals so that these rights may be enjoyed equally by all without discrimination by the state.” *Brown v. Lillard*, 1991 OK 74, 814 P.2d 1040, 1042. “The Clause is a pledge and a guarantee of the protection of equal laws.” *Id.* Although not all things must be treated exactly the same, there must be real and actual differences to warrant different treatment. *Id.* “The distinction between the classifications cannot be arbitrary but must have some relevance to the purpose for which the classification is made.” *Id.* (citations omitted.) Thus, to pass constitutional muster, in this case, the classification made by the Mayor must be based on a legitimate state purpose. *Id.*

In this case, there is no rational basis for the classification of Plaintiffs' business. The businesses are no different than those that will be allowed to operate

in the City of Norman. There is no identified particularized danger in the City of Norman that makes the business more dangerous than others. The surrounding communities and the State at large allow the operation of cosmetology businesses. There is no rational community interest that supports the prevention of Plaintiffs' business within the City limits of Norman. There is no legitimate state purpose that is being protected.

2. ARTICLE 2 SECTION 2 OF THE CONSTITUTION OF OKLAHOMA

Article 2, Section 2 of the Constitution of the State of Oklahoma provides as follows:

All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry.

This is no more represented by the State motto "Labor omnia vincit" – work conquers all. It is readily evident that the Mayor's order impinges on Plaintiffs' right to the enjoyment of the gains of their own industry. The Mayor may not impinge on those rights solely on the basis that she disagrees with the Governor of Oklahoma and the surrounding community. In effect, the Mayor is preventing the lawful industry of the Plaintiffs to prove a political point. That is not a proper exercise of authority and certainly not an appropriate exercise of executive power.

3. VIOLATION OF OKLA. STAT. TIT. 11 § 14-101

Finally, the Mayor has no authority to exceed the statutory authority granted by the Oklahoma legislature. No law allows the Mayor to regulate or control the cosmetology industry. There is a specific State Board that is charged with that

regulation. The Oklahoma Board of Cosmetology and Barbering has implemented stringent requirements for the operation of these businesses. They must comply with the Board's stringent sanitary requirements, including, but not limited to,

- a. OAC 175:10-5-2. Minimum equipment; sanitation standards; rule posted;
- b. OAC 175:10-5-4. Licensure requirements for health care facilities; and
- c. OAC Subchapter 7. Sanitation and Safety Standards for Cosmetology.

Additionally, the Center for Disease Control and the State of Oklahoma have outlined stringent requirements for cosmetology businesses to operate during this national health emergency. [Exhibit C, CDC Requirements, and Exhibit D, State of Oklahoma Requirements.] Each of the businesses has implemented policies and procedures to meet and exceed these requirements. [Exhibits E and F, Policies and Procedures.]

**B. IRREPARABLE HARM TO THE PARTY
SEEKING RELIEF IF INJUNCTIVE RELIEF IS
DENIED**

“Injury is irreparable when it is incapable of being fully compensated for in damages or where the measure of damages is so speculative that it would be difficult if not impossible to correctly arrive at the amount of the damages.” *Edwards v. Bd. of Cty. Comm'rs of Canadian Cty.*, 2015 OK 58, ¶ 29, 378 P.3d 54, 63. Further, and most importantly, when an alleged constitutional right is involved, it is well-settled law with respect to the constitutional-violation-as-irreparable-injury principle. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373–74, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976); *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir.2001); and *Awad v. Ziriak*, 670 F.3d

1111, 1131 (10th Cir. 2012).

In this particular case, the Plaintiffs will continue to suffer irreparable injury in several respects. First, the Plaintiffs will lose two weeks of additional income. [Exhibit G, Affidavits.] Plaintiffs provide a service. Thus, a key to their business is time. Plaintiffs will not be able to sell their time again if this order is enforced. The lost time is lost forever. Moreover, there is no opportunity to collect such funds from the City of Norman or any other party. Further, Clients of these businesses have indicated that if the cosmetology business does not open on or around May 1, 2020, they will go to other businesses in the surrounding communities. Thus, there is no doubt that these businesses will lose customers in the long run. The Mayor of Norman recognizes this fact in her April 28, 2020 YouTube address. [Exhibit B, Mayor of Norman YouTube Address.]

Equally important is the contractors who work in these salons. Many of the salons in this community rent booths to cosmetologists. [Exhibit G, Affidavits.] These cosmetologists are picking up and moving to salons in other communities where they are allowed to work. The loss of the stylists in these salons will be permanent, irreparable harm to these businesses.

In addition to the monetary issues, the Plaintiffs face criminal prosecution for participating in a State-sanctioned activity. The State has a regulatory agency, the State Board of Cosmetology and Barbering that oversees cosmetology businesses. There is no reason for the City of Norman to scrutinize Plaintiffs' business further and threaten their liberty interests for conducting a legal activity.

The unavailability of monetary damages and the violations of Plaintiffs' constitutional rights counsel this Court to issue a temporary restraining order and issue a temporary injunction to prevent the City of Norman from enforcing the ordinance.

C. RELATIVE EFFECT ON THE OTHER INTERESTED PARTIES

The Mayor of the City of Norman has not shown that the operation of Plaintiffs' businesses will have any significant impact with respect to the COVID-19 public health crisis. In fact, in her proclamations, the Mayor has indicated that the operation of the business will have absolutely no impact. In particular, the Mayor notes as follows:

- a. That the peak of COVID-19's impact on the State of Oklahoma occurred on April 21, 2020;
- b. That the Oklahoma Department of Health is conducting contact tracing across the State and is tracking the availability of ventilators, COVID-19 collection kits, hospital beds, and personal protection equipment at hospitals across the State to ensure capacity exists to address any outbreaks or surges in COVID-19; and
- c. That the State of Oklahoma allows Plaintiffs' businesses to open as of April 24, 2020.

[Exhibit A, Mayor's April 28, 2020 Proclamation.] Thus, there is no identified basis for singling out Plaintiffs' business that would impact the City of Norman or the

community as a whole. The Mayor readily recognizes that the community will simply use these services from the surrounding communities. [Exhibit B, Mayor's April 28, 2020 YouTube Address.] Thus, there is no particular harm that will be caused to the City of Norman or the community at large.

D. PUBLIC INTEREST

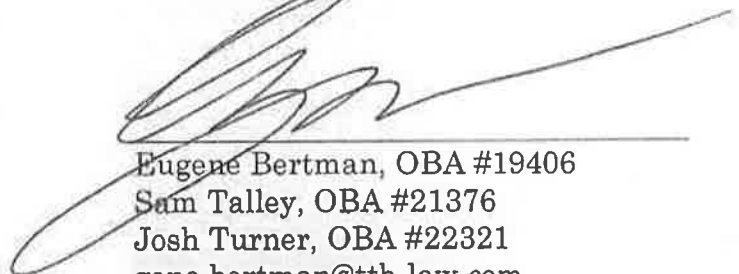
Although the Oklahoma Supreme Court has not addressed with particularity the "Public Interest" factor, the Tenth Circuit Court of Appeals has held that a party seeking a preliminary injunction is not required to show that the requested injunctive relief will serve the public interest; rather, it must show the issuance of the injunction would not be adverse to the public interest. *Heideman*, 348 F.3d at 1188; *Kikumura v. Hurley*, 242 F.3d 950, 955 (10th Cir. 2001). This is the crux of the issue in this case. The City of Norman cannot show any particularized harm that would be caused by the operation of Plaintiffs' businesses that is different from any other business that is allowed to operate on May 1, 2020, in the City of Norman and in relation to those running across the State. The threat of COVID-19 is not increased or altered, whether Plaintiffs operate their business or not. In fact, the State and all of the surrounding communities recognize this fact. Thus, there is no increased risk to the public or any rational reason to single out Plaintiffs' businesses and prevent them from operating on May 1, 2020.

CONCLUSION

COVID-19 is a serious public health threat. It has killed Americans. It has killed Oklahomans. However, the Mayor's Proclamation shuttering Plaintiffs' businesses until May 15, 2020, in light of the businesses that are opening on May 1,

2020, in the City of Norman and the cosmetology business already operating in the surrounding communities does nothing to further that interest. It simply unnecessarily hurts the Plaintiffs' businesses, nothing more. The citizens in the City of Norman are still going to use cosmetology services. They will simply use the services in the surrounding community. Moreover, there is nothing to suggest that the operation of Plaintiffs' businesses will be any different than the numerous businesses that will be operating on May 1, 2020, in the City of Norman. Thus, this Court should issue a temporary restraining order allowing Plaintiffs' to operate their businesses and, ultimately, issue a Temporary Injunction against the Mayor from enforcing her April 28, 2020 Proclamation against the Plaintiffs.

Respectfully Submitted,



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Proclamation 2020-07

A PROCLAMATION OF THE MAYOR OF THE CITY OF NORMAN DECLARING AN EMERGENCY AND IMPLEMENTING RELATED RESTRICTIONS

- § 1. WHEREAS, Section 2-111 of the Code of the City of Norman, Oklahoma allows the Mayor of the City of Norman to proclaim a civil emergency when a natural disaster, which results in the death or injury of persons to such an extent that extraordinary measures must be taken to protect the public health, safety, and welfare, exists; and
- § 2. WHEREAS, Section 2-111 of the Code of the City of Norman, Oklahoma empowers the Mayor to impose a number of restrictions or prohibitions in the interest of public safety and welfare, including, but not limited to imposition of curfews, limits of numbers of persons of assembling or gathering in public and private areas of the City, and such other activities as the Mayor reasonably believes should be prohibited to preserve and maintain life, health, property or the public peace; and
- § 3. WHEREAS, a respiratory disease caused by a novel coronavirus ("COVID-19") was first detected in China and has now been detected in 190 locations internationally, including the United States; and
- § 4. WHEREAS, the World Health Organization characterized COVID-19 as a pandemic on March 11, 2020; and
- § 5. WHEREAS, according to the Center for Disease Control and Prevention ("CDC"), the COVID-19 virus spreads between people who are in close contact with one another and through respiratory droplets produced when an infected person coughs or sneezes; and
- § 6. WHEREAS, on March 13, 2020, the President of the United States declared COVID-19 a national emergency and ordered each state to set up emergency operations centers and ordered hospitals to activate their emergency preparedness plans; and
- § 7. WHEREAS, on March 15, 2020, the Governor of Oklahoma first declared an emergency caused by the impending threat of COVID-19 to the people of Oklahoma and the public's peace, health, and safety; and
- § 8. WHEREAS, previous proclamations were issued by the Mayor of the City of Norman on March 13, 2020, limiting organized gatherings to less than 250 people, on March 16, 2020, restricting organized gatherings to less than 50 people, and closing bars, lounges, gyms and fitness facilities, entertainment venues, including private clubs, commercial amusement facilities, theaters and similar venues, as well as restaurant dining areas, on March 22, 2020, limiting organized gatherings to less than 10 people, and closing beauty parlors, barber shops, nail salons, and health clubs and spas, and encouraging retailers to implement social distancing in stores, on March 30, 2020, amending the previous proclamation related to outdoor activities, and on April 7, 2020, implementing a stay at home order and limiting activities to those deemed essential, all of which were designed



to flatten the projected curve of the COVID-19 diagnoses to preserve medical resources and prevent widespread transmission; and

- § 9. WHEREAS, during the entire duration of the Stay at Home Order to date, the number of new cases of COVID-19 in Norman has increased on average by 4.88% per day, but since April 17, 2020, the number of new cases in Norman has increased on average by 1.43% per day, with a rolling three-day average of 1.67% as of April 27, 2020;
- § 10. WHEREAS, according to the Institute for Health Metrics and Evaluation, the peak of COVID-19's impact in Oklahoma, as measured by projected daily deaths, occurred on April 21, 2020; and
- § 11. WHEREAS, the Oklahoma Department of Health is conducting contact tracing associated with positive cases, and is tracking the availability of ventilators, COVID-19 collection kits, hospital beds, and personal protective equipment ("PPE") at hospitals across the state to ensure capacity exists to address any outbreaks or surges in COVID-19 cases; and
- § 12. WHEREAS, on April 22, 2020, Governor Stitt announced the creation of the Open Up and Recover Safely Plan, which implements a three-phased approach to open Oklahoma's economy beginning with personal care businesses, like hair salons, barbershops, spas, nail salons and pet groomers, opening on April 24, 2020; and
- § 13. WHEREAS, Proclamation 2020-06, which will expire at 11:59p.m. on April 30, 2020, was enacted to flatten the projected curve of COVID-19 diagnoses to ensure care facilities were not overwhelmed with demand for beds, ventilators and PPE; and
- § 14. WHEREAS, the Center for Disease Control ("CDC") advises the following steps be implemented to protect yourself and others from COVID-19: older adults and people who have severe underlying medical conditions like heart or lung disease or diabetes should stay home if possible, frequent hand washing, particularly after having been in a public place, avoid touching your face, avoid close contact with people who are sick, put distance between yourself and other people, and cover your mouth and nose with a cloth face cover when around others; and
- § 15. WHEREAS, after consultation with State and local public health officials, epidemiologists, first responders, and hospital personnel, it appears prudent to adopt a phasing approach to restoring businesses and activities to continue to slow the spread of the virus and prevent to the maximum extent possible a surge in cases in Norman.

NOW, THEREFORE, BE IT PROCLAIMED BY THE MAYOR OF THE CITY OF NORMAN, OKLAHOMA:

- § 16. That, Proclamation 2020-06 shall expire at 11:59pm on April 30, 2020, and that Proclamation 2020-07 shall be made effective immediately upon its expiration; and

- § 17. That, the aforementioned conditions continue to constitute an ongoing threat to the safety and welfare of the city necessitating additional restrictions, and creating a civil emergency situation within the meaning of Section 2-111 of the City Code, in addition to constituting an emergency under the Emergency Management Act of 2003 (63 Okla. Stat. §683.3); and
- § 18. That, the Healthier at Home Initiative to Reboot Norman attached hereto is hereby adopted.
- § 19. That, a violation of this Proclamation constitutes a violation of Section 2-111 of the Code of the City of Norman, which could result in a maximum penalty of \$750 and 60 days in jail per violation. The Norman Police Department is empowered to enforce this ordinance but is encouraged to use an education, warning, then citation approach to enforcement.
- § 20. That, this Proclamation shall be in full force and effect unless and until it is extended, rescinded, superseded, or amended in writing.

APPROVED this 27th day of April, 2020.



Mayor Reece Clark

ATTEST:


City Clerk



Healthier at Home Initiative to Re-Boot Norman

Purpose

The initial “Stay at Home” Proclamation was designed to flatten the curve to ensure local healthcare resources would not become overwhelmed by those infected with the Coronavirus and to ensure adequate Personal Protective Equipment (PPE) remained available to equip medical personnel and first responders. It was never envisioned that such a proclamation would eliminate any and all risk to every Norman resident, but to minimize the risk to those most vulnerable in our community and preserve medical resources.

Since the initial proclamation was enacted, several positive actions and outcomes have been recognized. To date, local healthcare resources are operating with capacity available to handle any sudden surges identified in the City of Norman. The delivery of PPE has caught up to the ongoing demand. The State Department of Health has ramped up its “Contact Tracing” capabilities to be able to contact every person who encounters someone who tests positive for COVID-19. Additional testing capacity now allows for all those persons who have come in contact with a person who tests positive for COVID-19 to be tested, with results available within 6 hours.

These realities help set the stage for “Re-Boot Norman!” The Re-Boot will be rolled out in three phases, largely in line with the criteria identified in the Governor’s “Open Up and Recover Safely” directive. Ongoing monitoring of the supply of PPE’s, hospital capacity, new case number surges, and contact tracing capacity to allow for a targeted response to hot-spots and flare-ups during the rollout of each of the three phases will continue for the next several weeks. Phase progression is based on the gating criteria defined herein. If such criteria are not met, implementation of the next phase may be delayed. Additionally, if there are indicators that the plan is not working, i.e. there is a failure to substantially maintain gating criteria during any given phase, phasing may be adjusted to address current concerns.

Definitions

“Gating criteria” refers to the following conditions that must be met prior to moving from one phase to another:

- a. Downward trajectory of the three day rolling average of new confirmed positive cases of COVID-19 in Norman;
- b. Hospital bed availability in Norman of at least 50;
- c. Adequate COVID-19 test kits are available to test symptomatic residents and those who have been in contact with someone who has tested positive for COVID-19; and
- d. A system for contact tracing has been implemented by the State or County to ensure outbreaks can be readily controlled and limited.

“Sanitation protocols” refers to the guidance released by the CDC (<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility-H.pdf>) as well as any guidance specific to a particular industry on the Oklahoma Department of

Commerce website (<https://www.okcommerce.gov/covid19/ours-plan/>) Need to include this guidance on our website

“Social distancing requirements” refers to the maintenance of at least a 6-foot minimum social distancing from other individuals, washing hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, regularly cleaning high-touch surfaces, and not shaking hands.

“Protective measures for retail businesses” includes the following measures to ensure social distancing requirements are complied with and the risk of transmission of the coronavirus is reduced to the maximum extent possible:

- a. With tape or floor decals, mark 6-foot spacing in areas where customers might congregate, such as checkout lines or sales areas, and provide signage direction for one-way traffic in shopping aisles;
- b. Limit the number of persons in your store based on the square footage, as set forth more specifically in each Phase herein;
- c. Mark 6-foot spacing in areas outside of the store where customers may line up for entry;
- d. Provide face coverings, masks, scarfs, or other materials that can be worn over the nose and mouth and other protective gear for employees.

Preparation for Phase 1A

As we prepare for Phase 1A, with an anticipated activation date of May 1, 2020, preparation for the following should commence:

Employers shall:

- Develop and implement appropriate policies regarding social distancing and Personal Protective Equipment (PPE), temperature checks for employees before the start of work, sanitation, use of disinfection of common areas and business travel.
- Monitor workforce for indicative symptoms and ensure symptomatic people do NOT return to work until cleared by medical personnel.
- Develop and implement policies and procedures for workforce contact tracking following employee COVID-19 testing.

Community Members shall:

- Continue to adhere to State and local guidance as well as complementary CDC guidance.
- Continue to wear face coverings, masks, scarfs, or other materials over the nose and mouth while outside the home.
- Wash hands often, with soap and water.
- Avoid touching the face.
- Disinfect frequently used items and surfaces as much as possible.
- Stay home and contact your healthcare provider if you feel sick.

Once all of the above are satisfied, move to Phase 1A.

Phase 1A
Goal of May 1, 2020

Individuals should:

- Continue following the Governor's safer-at-home guidelines if they are over 65 or part of a vulnerable population.
- Continue to wear face coverings, masks, scarfs, or other materials that can be worn over the nose and mouth while outside the home.
- Maximize physical distance from others when in public (e.g., parks, outdoor recreation areas, shopping areas).
- Limit social gatherings to groups of 10 people or less.
- Minimize non-essential travel and adhere to CDC guidelines and Executive Orders regarding isolation following travel.

Employers should:

- Continue to encourage telework whenever possible.
- Create plans to allow employees to return to work in phases.
- Close common areas or enforce social distancing requirements in breakrooms, etc.
- Minimize non-essential travel and adhere to CDC guidelines and State Executive Orders regarding isolation following travel.
- Strongly consider special accommodations for personnel who are members of the vulnerable population.
- Provide face coverings, masks, scarfs, or other materials that can be worn over the nose and mouth and other protective gear for employees who are interacting with the public.
- Follow sanitation protocols.

Specific Employer guidance:

- **Schools and organized youth activities** that are currently closed should remain closed until further notice.
- **Visits to Senior Living Facilities and Hospitals** are prohibited
- **Dining areas of restaurants** can open by reservation only, provided the seating arrangements meet social distancing requirements between dining groups, all staff are provided face coverings, masks, scarfs, or other materials that can be worn over the nose and mouth and sanitation protocols are followed.
- **Retail stores** can open provided protective measures for retail businesses are followed and overall store capacity at any given time is limited to 35% of the store's maximum capacity that has previously been determined by the fire marshal in the store at any given time.
- **Gyms** can reopen if they adhere to social distancing requirements and sanitation protocols. (Note: this does not include childcare provided at gyms).

- **Golf courses, tennis courts, pickleball courts, baseball/softball fields, and soccer goals may open.** Organized practices for outdoor youth sports programs cannot begin in Phase 1A.
- **Music lessons, physical training, etc.** that are operated on a one-on-one basis can begin provided social distancing requirements are met and masks are worn by participants if feasible.
- **Pet grooming operation** can open for appointments only if they meet social distancing requirements.
- **Bars** should remain closed.
- **Dentists and optometrists** can remain open provided masks are worn where feasible, and sanitation protocols are followed.

Best practices for special industries:

- **Manufacturing, Utilities and Mining:** To the extent possible, promote staggered shifts of workers and flexible work hours; review leave policies and implement non-punitive sick leave that would allow sick workers to remain home if they are sick. Encourage disinfecting of work site after shifts if appropriate. Allow supplies and transportation companies to deliver supplies before/after normal business times if possible.
- **Transportation, Distribution and Wholesale Industries:** To the extent possible, promote staggered shifts of workers and flexible work hours, review leave policies and implement non-punitive sick leave that would allow sick workers to remain home if they are sick. Encourage disinfecting of work equipment after shifts. Encourage on-line interaction with customers.
- **Professional and Administrative Service Industries:** To the extent possible, allow workers to telework or provide flexible worksite locations. For companies/industries that are unable to allow workers to work remotely, review leave policies and implement non-punitive sick leave that would allow sick workers to remain home if they are sick.

Once all the above are satisfied, move to Phase 1B.

Phase 1B
Goal of May 15, 2020

If it can be shown, after 14 days, that the gating criteria have been met, Phase 1B will be implemented:

Individuals should:

- Continue following safer-at-home guidelines if they are over 65 or part of a vulnerable population.

- Continue to wear face coverings, masks, scarfs, or other materials that can be worn over the nose and mouth while outside the home.
- Maximize physical distance from others when in public.
- Avoid socializing in groups of more than 10 people.

Employers should:

- Continue to encourage telework whenever possible.
- Close common areas or enforce social distancing protocols in breakrooms, etc.
- Strongly consider special accommodations for personnel who are members of the vulnerable population.
- Provide face covering, masks, scarf, or other materials that can be worn over the nose and mouth for employees who are interacting with the public.
- Continue following sanitation protocols.

Specific Employer guidance:

- **Places of worship** may operate provided the Employer Guidance for Oklahoma's Open Up and Recover Safely Plan for places of worship are followed.
- **Personal care providers**, such as hair salons, nail salons, and tanning salons can open by appointment only, provided social distancing requirements are met, masks are provided for staff, and sanitation protocols are followed. Personal care providers do not include massage parlors or tattoo parlors.
- **Retail stores** can open provided protective measures for retail businesses are followed and overall store capacity at any given time is limited to 50% of the store's maximum capacity that has previously been determined by the fire marshal in the store at any given time.
- **Organized youth sports** that are currently closed can begin practicing.
- **Playgrounds and basketball courts** can open.
- **Visits to Senior Living Facilities and Hospitals** should be prohibited.
- **Bars** should remain closed.

Once all the above are satisfied, move to Phase 2.

Phase 2
Goal of May 29, 2020

If it can be shown, after 14 days, that the gating criteria have been met, Phase 2 will be implemented:

Individuals should:

- Continue following safer-at-home guidelines if they are over 65 or part of a vulnerable population.

- Continue to wear face coverings, masks, scarfs, or other materials that can be worn over the nose and mouth while outside the home. .
- Maximize physical distance from others when in public.
- Avoid socializing in groups of more than 25 people.

Employers should:

- Continue to encourage telework whenever possible.
- Close common areas or enforce social distancing requirements in breakrooms, etc.
- Provide face coverings, masks, scarfs, or other materials that can be worn over the nose and mouth for employees who are interacting with the public.
- Strongly consider special accommodations for personnel who are members of the vulnerable population.
- Continue following sanitation protocols.

Specific Employer guidance:

- **Entertainment venues** (e.g., movie theaters, bowling alleys, sporting venues, etc.) can operate provided social distancing requirements are met and protective measures for retail businesses are followed, and overall venue capacity at any given time is limited to 50% of the venue's maximum capacity that has previously been determined by the fire marshal.
- **Community pools** can open provided sanitation protocols are followed and overall capacity at any given time is limited to 50% of the maximum capacity that has previously been determined by the appropriate regulatory authority.
- **Retail stores** can open provided protective measures for retail businesses are followed and overall store capacity at any given time is limited to 75% of the store's maximum capacity that has previously been determined by the fire marshal in the store at any given time.
- **Massage parlors and tattoo parlors** can open by appointment only provided protective measures for retail businesses and sanitation protocols are followed.
- **Gyms** that under normal operations are unable to comply with social distancing requirements may open provided employees wear face coverings, masks, scarfs, or other materials that can be worn over the nose and mouth and group size is limited to the maximum extent possible.
- **Summer camps** can open provided sanitation protocols are followed and employees wear masks.
- **Bars** can open provided sanitation protocols are met, standing room only areas are limited by 50%, and employees are provided masks.

Phase 3
Goal of June 12, 2020

If it can be shown, after 14 days, that the gating criteria have been met, Phase 3 will be implemented:

Individuals should:

- Vulnerable individuals can resume public interactions, but should practice physical distancing, minimizing exposure to social settings where distancing may not be practical, unless precautionary measures are observed.
- Avoid socializing in groups of more than 50 people.
- Consider wearing face coverings, masks, scarfs or other materials that can be worn over the nose and mouth when practicable, especially in areas with people in close quarters.

Employers should:

- Resume unrestricted staffing of worksites.
- Close common areas or enforce social distancing requirements in breakrooms, etc.
- Provide face coverings, masks, scarfs or other materials that can be worn over the nose and mouth for employees who are interacting with the public.
- Continue following sanitation protocols and provide masks for employees who interact with the public.

Specific Employer guidance:

- **Dining areas of restaurants** can open without reservations, provided all staff are provided masks to wear and sanitation protocols are followed.
- **Visits to Senior Living Facilities and Hospitals** can resume. Those who interact with residents and patients must be diligent regarding hygiene, practice social distancing, submit to their temperature to be taken upon entry and wear masks, as requested.
- **Entertainment venues** (e.g., movie theaters, bowling alleys, sporting venues, etc.) can operate provided social distancing requirements are met to the maximum extent practicable, protective measures for retail businesses are followed, and overall venue capacity at any given time is limited to 75% of the venue's maximum capacity that has previously been determined by the fire marshal.
- **Organized youth sports** can begin playing games provided family spectator groups follow social distancing requirements.
- **Bars** can open provided sanitation protocols are met, standing room only areas are limited by 35%, and employees are provided masks.
- **Retail stores** can open at full capacity provided protective measures for retail businesses are followed.

Additional phases or guidance may be implemented if gating criteria are met after at least 14 days in Phase 3 depending on local data and public health information available at the time.

Plaintiff's Exhibit B



Guidance on Preparing Workplaces for COVID-19

OSHA 3990-03 2020

PLAINTIFF'S
EXHIBIT

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Occupational Safety and Health Act of 1970

“To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health.”

This guidance is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The Occupational Safety and Health Act requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

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Guidance on Preparing Workplaces for COVID-19

U.S. Department of Labor
Occupational Safety and Health Administration

OSHA 3990-03 2020



U.S. Department of Labor

Contents

Introduction	3
About COVID-19	4
How a COVID-19 Outbreak Could Affect Workplaces	6
Steps All Employers Can Take to Reduce Workers' Risk of Exposure to SARS-CoV-2	7
Classifying Worker Exposure to SARS-CoV-2	18
Jobs Classified at Lower Exposure Risk (Caution): What to Do to Protect Workers	20
Jobs Classified at Medium Exposure Risk: What to Do to Protect Workers	21
Jobs Classified at High or Very High Exposure Risk: What to Do to Protect Workers	23
Workers Living Abroad or Travelling Internationally	25
For More Information	26
OSHA Assistance, Services, and Programs	27
OSHA Regional Offices	29
How to Contact OSHA	32

Introduction

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the SARS-CoV-2 virus. It has spread from China to many other countries around the world, including the United States. Depending on the severity of COVID-19's international impacts, outbreak conditions—including those rising to the level of a pandemic—can affect all aspects of daily life, including travel, trade, tourism, food supplies, and financial markets.

To reduce the impact of COVID-19 outbreak conditions on businesses, workers, customers, and the public, it is important for all employers to plan now for COVID-19. For employers who have already planned for influenza pandemics, planning for COVID-19 may involve updating plans to address the specific exposure risks, sources of exposure, routes of transmission, and other unique characteristics of SARS-CoV-2 (i.e., compared to pandemic influenza viruses). Employers who have not prepared for pandemic events should prepare themselves and their workers as far in advance as possible of potentially worsening outbreak conditions. Lack of continuity planning can result in a cascade of failures as employers attempt to address challenges of COVID-19 with insufficient resources and workers who might not be adequately trained for jobs they may have to perform under pandemic conditions.

The Occupational Safety and Health Administration (OSHA) developed this COVID-19 planning guidance based on traditional infection prevention and industrial hygiene practices. It focuses on the need for employers to implement engineering, administrative, and work practice controls and personal protective equipment (PPE), as well as considerations for doing so.

This guidance is intended for planning purposes. Employers and workers should use this planning guidance to help identify risk levels in workplace settings and to determine any appropriate control measures to implement. Additional guidance may be needed as COVID-19 outbreak conditions change, including as new information about the virus, its transmission, and impacts, becomes available.

The U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) provides the latest information about COVID-19 and the global outbreak: www.cdc.gov/coronavirus/2019-ncov.

The OSHA COVID-19 webpage offers information specifically for workers and employers: www.osha.gov/covid-19.

This guidance is advisory in nature and informational in content. It is not a standard or a regulation, and it neither creates new legal obligations nor alters existing obligations created by OSHA standards or the *Occupational Safety and Health Act* (OSH Act). Pursuant to the OSH Act, employers must comply with safety and health standards and regulations issued and enforced either by OSHA or by an OSHA-approved State Plan. In addition, the OSH Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. OSHA-approved State Plans may have standards, regulations and enforcement policies that are different from, but at least as effective as, OSHA's. Check with your State Plan, as applicable, for more information.

About COVID-19

Symptoms of COVID-19

Infection with SARS-CoV-2, the virus that causes COVID-19, can cause illness ranging from mild to severe and, in some cases, can be fatal. Symptoms typically include fever, cough, and shortness of breath. Some people infected with the virus have reported experiencing other non-respiratory symptoms. Other people, referred to as *asymptomatic cases*, have experienced no symptoms at all.

According to the CDC, symptoms of COVID-19 may appear in as few as 2 days or as long as 14 days after exposure.

How COVID-19 Spreads

Although the first human cases of COVID-19 likely resulted from exposure to infected animals, infected people can spread SARS-CoV-2 to other people.

The virus is thought to spread mainly from person-to-person, including:

- Between people who are in close contact with one another (within about 6 feet).
- Through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs.

Medium exposure risk jobs include those that require frequent and/or close contact with (i.e., within 6 feet of) other people who may be infected with SARS-CoV-2.

It may be possible that a person can get COVID-19 by touching a surface or object that has SARS-CoV-2 on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the primary way the virus spreads.

People are thought to be most contagious when they are most symptomatic (i.e., experiencing fever, cough, and/or shortness of breath). Some spread might be possible before people show symptoms; there have been reports of this type of asymptomatic transmission with this new coronavirus, but this is also not thought to be the main way the virus spreads.

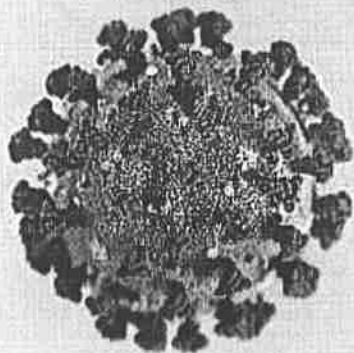
Although the United States has implemented public health measures to limit the spread of the virus, it is likely that some person-to-person transmission will continue to occur.

The CDC website provides the latest information about COVID-19 transmission: www.cdc.gov/coronavirus/2019-ncov/about/transmission.html.

How a COVID-19 Outbreak Could Affect Workplaces

Similar to influenza viruses, SARS-CoV-2, the virus that causes COVID-19, has the potential to cause extensive outbreaks. Under conditions associated with widespread person-to-person spread, multiple areas of the United States and other countries may see impacts at the same time. In the absence of a vaccine, an outbreak may also be an extended event. As a result, workplaces may experience:

- **Absenteeism.** Workers could be absent because they are sick; are caregivers for sick family members; are caregivers for children if schools or day care centers are closed; have at-risk people at home, such as immunocompromised family members; or are afraid to come to work because of fear of possible exposure.
- **Change in patterns of commerce.** Consumer demand for items related to infection prevention (e.g., respirators) is likely to increase significantly, while consumer interest in other goods may decline. Consumers may also change shopping patterns because of a COVID-19 outbreak. Consumers may try to shop at off-peak hours to reduce contact with other people, show increased interest in home delivery services, or prefer other options, such as drive-through service, to reduce person-to-person contact.
- **Interrupted supply/delivery.** Shipments of items from geographic areas severely affected by COVID-19 may be delayed or cancelled with or without notification.



This illustration, created at the Centers for Disease Control and Prevention (CDC), reveals ultrastructural morphology exhibited by the 2019 Novel Coronavirus (2019-nCoV). Note the spikes that adorn the outer surface of the virus, which impart the look of a corona surrounding the virion, when viewed electron microscopically. This virus was identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China.

Photo: CDC / Alissa Eckert & Dan Higgins

Steps All Employers Can Take to Reduce Workers' Risk of Exposure to SARS-CoV-2

This section describes basic steps that every employer can take to reduce the risk of worker exposure to SARS-CoV-2, the virus that causes COVID-19, in their workplace. Later sections of this guidance—including those focusing on jobs classified as having low, medium, high, and very high exposure risks—provide specific recommendations for employers and workers within specific risk categories.

Develop an Infectious Disease Preparedness and Response Plan

If one does not already exist, develop an infectious disease preparedness and response plan that can help guide protective actions against COVID-19.

Stay abreast of guidance from federal, state, local, tribal, and/or territorial health agencies, and consider how to incorporate those recommendations and resources into workplace-specific plans.

Plans should consider and address the level(s) of risk associated with various worksites and job tasks workers perform at those sites. Such considerations may include:

- Where, how, and to what sources of SARS-CoV-2 might workers be exposed, including:
 - The general public, customers, and coworkers; and
 - Sick individuals or those at particularly high risk of infection (e.g., international travelers who have visited locations with widespread sustained (ongoing) COVID-19 transmission, healthcare workers who have had unprotected exposures to people known to have, or suspected of having, COVID-19).
- Non-occupational risk factors at home and in community settings.

- Workers' individual risk factors (e.g., older age; presence of chronic medical conditions, including immunocompromising conditions; pregnancy).
- Controls necessary to address those risks.

Follow federal and state, local, tribal, and/or territorial (SLTT) recommendations regarding development of contingency plans for situations that may arise as a result of outbreaks, such as:

- Increased rates of worker absenteeism.
- The need for social distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing measures.
- Options for conducting essential operations with a reduced workforce, including cross-training workers across different jobs in order to continue operations or deliver surge services.
- Interrupted supply chains or delayed deliveries.

Plans should also consider and address the other steps that employers can take to reduce the risk of worker exposure to SARS-CoV-2 in their workplace, described in the sections below.

Prepare to Implement Basic Infection Prevention Measures

For most employers, protecting workers will depend on emphasizing basic infection prevention measures. As appropriate, all employers should implement good hygiene and infection control practices, including:

- Promote frequent and thorough hand washing, including by providing workers, customers, and worksite visitors with a place to wash their hands. If soap and running water are not immediately available, provide alcohol-based hand rubs containing at least 60% alcohol.
- Encourage workers to stay home if they are sick.
- Encourage respiratory etiquette, including covering coughs and sneezes.