

Guide to Legal and Administrative Remedies to Enforce State or Local Public Health Orders

Inform and Seek Voluntary Compliance

Any person or entity violating a Public Health Order(s) (PHO) issued by either the Colorado Department of Public Health and Environment (CDPHE) or the local health department should be informed of the specifics of the Order(s) and how they are violating the rule. They should be given a reasonable amount of time under the circumstances to comply with the rule. (Attachment A: Sample Warning)

Any person or entity that has previously been warned or fails to comply with a request to comply with a PHO may be subject to one or more of the legal or administrative remedies discussed herein.

Enforcement Authority

- Attorney General

C.R.S. § 25-1-112 provides authority for the attorney general to defend actions brought against CDPHE (not related to PHO) and to enforce rules, including PHO, if the district attorney fails to act.¹

- District Attorney

C.R.S. § 25-1-112 provides authority for the district attorney, at the request of the CDPHE or the local health department to bring civil or criminal actions.²

C.R.S. § 25-1-514 provides authority for the district attorney to bring civil and criminal actions at the request of the county or district public health director.³

¹ C.R.S. § 25-1-112 “The attorney general is the legal adviser for the department and shall defend it in all actions and proceedings brought against it. The district attorney of the judicial district in which a cause of action arises shall bring any civil or criminal action requested by the executive director of the department to abate a condition that exists in violation of, or to restrain or enjoin any action that is in violation of, or to prosecute for the violation of or for the enforcement of, the public health laws and the standards, orders, and rules of the department established by or issued under the provisions of this part 1. If the district attorney fails to act, the executive director may bring any such action and shall be represented by the attorney general or by special counsel.”

² Id.

³ C.R.S. § 25-1-514 “The county attorney for the county or the district attorney of the judicial district in which a cause of action arises shall bring any civil or criminal action requested by a county or district public health director to abate a condition that exists in violation of, or to restrain or enjoin any action that is in violation of, or to prosecute for the violation of or for the enforcement of, the public health laws and the standards, orders, and rules of

- **County Attorney**

C.R.S. § 25-1-514 provides authority for the county attorney to bring civil and criminal actions at the request of the county or district public health director.⁴

- **Private Attorney**

C.R.S. § 25-1-514 allows a local health department such as San Juan Basin Public Health to hire an attorney if the district attorney or county attorney refuse to act on behalf of the department.⁵

Investigation of Violations

Even though law enforcement (LE) may not be issuing criminal citations in most enforcement actions, LE plays a primary role in educating about the need to comply with PHO and continues to play the primary role in the investigation of a violation and enforcement of PHO through civil or administrative actions.

LE officers' training and experience is best suited for investigation of criminal violations, however, a carefully conducted investigation can provide the necessary information for administrative, civil and when necessary criminal actions. Failure to properly investigate and document violations, even if no criminal action can be taken, will frustrate other legitimate and valid enforcement efforts.

Any LE officer asked to enforce or investigate the violation of a PHO should complete a full and detailed written report, even if the subject of the investigation complies with the Order upon notification that they are in non-compliance. Since legal and administrative actions may require the proof of knowledge or notice, written LE reports, even of compliance after a request to comply, are vital pieces of evidence if the person or entity is found to be in violation of a PHO at a later

the state board or a county or district board of health. If the county attorney or the district attorney fails to act, the public health director may bring an action and be represented by special counsel employed by him or her with the approval of the county or district board. An agency, through its county or district board of health or through its public health director, may employ or retain and compensate an attorney to be the legal adviser of the agency and to defend the agency and the officers and employees of the agency against all actions and proceedings brought against them.”

⁴ Id.

⁵ Id.

date. (Attachment B: Guide for LE Relating to Enforcement of Public Health Orders; LE Checklist; and LE FAQs)

Additional investigation may be conducted by others involved when applying legal and administrative remedies. Careful documentation of information gathered is just as important as the written report of LE officers.

Some orders may be more difficult to investigate or may rely more heavily on non-law enforcement or other professional's performing the investigations. Efforts should be taken to secure statements and information from the general public in some recorded form, preferably in writing, so the information can be reviewed.

Administrative Remedies

These are remedies associated with licensing procedures. Potential remedies include taking actions to revoke a license or fail to renew a license based on violation of Public Health Orders.

Local Boards and governing bodies that issue licenses would determine the enforcement action to be taken.

Evidence that can be presented to a Board or governing body can come from LE investigation or other sources.

Legal authority to act on license revocation or failure to renew would come from the codes or statutes that govern the issuance of the license.

Key licenses that may be affected by failure to comply include:

Business Licenses⁶;
Retail Food Licenses⁷;

⁶ Durango City Code Section 13-8 provides that the City Manager may suspend or revoke a business license issued to any person based on (among others) the following violation: "Conduct of business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public." Durango City would treat evidence from an officer that a business has failed to abide by a lawful health order issued by any entity with jurisdiction as being prima facia proof of a violation of the cited section.

⁷ San Juan Basin Public Health Department may seek a revocation of a retail food license. Typically, this has been done for Health Code violations relating to sanitary or proper food storage and handling issues, but the process can also be used for failure to comply with other Orders issued by the Health Department. It is a slower process and includes standard due process rights. Evidence of failure to comply with Public Health Department Orders can also be considered during any license renewal process.

Liquor Licenses⁸; and
Marijuana Licenses.

Criminal Remedies

It is a Class 1 misdemeanor to violation PHO.⁹

The District Attorney's Office (DA) has the general obligation to prosecute the violation of criminal laws, both misdemeanors and felonies.

The DA's office may accept cases filed by summons, for egregious cases of failure to comply with other efforts¹⁰.

Since it is a non-arrestable misdemeanor offense, LE can issue a citation and summons the violator into court, but the first appearance will not occur for several weeks.

If necessary, the County Attorney could also prosecute a criminal charge.¹¹

Civil Actions

The County Attorney or a private attorney hired by SJBH has the authority to represent SJBH in enforcing rules and orders.¹²

The County Attorney can seek an ex-parte temporary restraining order to close a business that is violating a PHO.¹³

Since it is an ex-parte order, it can be issued quickly, without notifying and waiting for a response from the offending entity or party.

⁸ Pursuant to C.R.S. § 12-47-601, the state or any local licensing authority has the power, on its own motion or on complaint, after investigation and public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke, in whole or in part, any license or permit issued by such authority for any violation by the licensee or by any of the agents, servants, or employees of the licensee of the Colorado Liquor Code; any rules authorized by the Colorado Liquor Code; or any of the terms, conditions, or provisions of the license or permit issued by such authority. Any suspension cannot be longer than six (6) months. Any license or permit may be summarily suspended by the issuing licensing authority without notice pending the results of any prosecution, investigation, or public hearing. Any summary suspension of such license or permit cannot exceed fifteen (15) days.

⁹ C.R.S. § 25-1-114.

¹⁰ See letter from the Attorney General, Executive Director of Public Safety, and the Director of Colorado POST, to All Law Enforcement Executives, dated March 20, 2020. Attachment C.

¹¹ C.R.S. § 25-1-514.

¹² Id.

¹³ C.R.C.P. Rule 65(b).

To obtain injunctive relief, we will need to demonstrate to the court the following: (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief; (3) that there is no plain, speedy, and adequate remedy at law; (4) that granting a preliminary injunction will not disserve the public interest; (5) that the balance of equities favors the injunction; and (6) that the injunction will preserve the status quo pending a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 653-654 (Colo. 1982).

Since this action would be in the name of a governmental entity in the exercise of police powers, we may not need to demonstrate immediate and irreparable harm.¹⁴ However, based on the highly contagious and deadly nature of COVID-19, it may be wise to include a claim of immediate and irreparable harm in the petition anyway.

The petition must allege specific conduct that is in violation of a specific PHO.

The petition must also request specific action that the petitioner is asking the Court to grant. The proposed Court Order should detail the exact remedy sought, such as authority for the Sheriff to physically lock down the establishment.¹⁵

Information from law enforcement about any effort to educate the entity or individual(s), the actions of non-compliance, and/or a history of non-compliance will be vital in being able to draft the motion and proposed order.

Information can come from other sources in addition to LE.

A temporary order can be sought for up to 14 days.¹⁶

After the order is issued, a hearing will be set in court, and the offending party will be noticed and have a chance to appear and respond to the order.

¹⁴ *Lloyd A. Fry Roofing Co. v. State Dep't of Health Air Pollution Variance Bd.*, 553 P.2d 800, 808 (Colo. 1976); see also *Bd. of Cnty. Comm'rs of Cnty. of Logan v. Vandemoer*, 205 P.3d 423, 431 (Colo. App. 2008) (recognizing ability to forgo proof of irreparable injury when issue is “imbued with great public importance.”).

¹⁵ “every restraining order must ‘set forth the reasons for its issuance; be specific in terms; describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained’” 1B COPRAC § 35:1

¹⁶ C.R.C.P. Rule 65(b).

Attachment A

WARNING

YOU ARE HEREBY INFORMED OF POTENTIAL LEGAL ACTIONS WHICH MAY BE TAKEN AGAINST YOU FOR FAILURE TO COMPLY WITH ORDERS ISSUED BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH & ENVIRONMENT OR SAN JUAN BASIN PUBLIC HEALTH

The State of Colorado and local jurisdictions have declared emergencies due to the rapid spread and grave health risk of the COVID-19 virus, otherwise known as Coronavirus.

To slow the spread of this highly contagious disease, the Colorado Department of Public Health & Environment and/or San Juan Basin Public Health have issued orders which are enforceable under the law.

PLEASE VOLUNTARILY AND WILLFULLY COMPLY WITH ALL HEALTH DEPARTMENT ORDERS FOR YOUR OWN HEALTH AND SAFETY AND FOR THE HEALTH AND SAFETY OF OTHERS

If this is your first notification of the importance of complying with Public Health Orders, *and* you respond to this request to voluntarily comply, no legal action will be taken against you

IF YOU DO NOT COMPLY, OR YOU HAVE PREVIOUSLY BEEN NOTIFIED OF YOUR OBLIGATIONS TO COMPLY, YOU MAY FACE ONE OR MORE OF THE FOLLOWING LEGAL ACTIONS

- 1) Given a citation or summons to appear in court on criminal violations
- 2) Become subject to an immediate court order granting Law Enforcement authority to close your business
- 3) Be subject to an immediate revocation of your business or short term rental permit
- 4) Be subject to a revocation of food handling and licensing permits
- 5) Information of non-compliance may be used against you during the renewal process of any special licenses or permits you hold, including liquor licenses

Specific information about Colorado Department of Public Health and Environment Orders can be found at: <https://covid19.colorado.gov/schools-workplaces-community>

Specific information about San Juan Basin Public Health Orders can be found at: <https://sjbpublichealth.org/coronavirus/>

Attachment B

Guidelines for LE Relating to Enforcement of Public Health Orders

These instructions apply to public health orders **restricting public gatherings, and restrictions on the operation of certain business activities**, not individual isolation or quarantine orders.

If you are called upon to investigate persons violating state or local Public Health Orders relating to the operation of certain businesses, or public gatherings, *do the following*:

- 1) Educate and inform
 - a. Talk to the business owner/manager in charge of the establishment that is on duty at the time of contact. Provide them with the handout titled WARNING concerning potential methods of enforcement
 - b. Talk to those present and ask that they leave the establishment. Provide each person with the WARNING handout concerning potential methods of enforcement
- 2) Always leave a copy of the WARNING handout at the location
- 3) Prepare a report on your involvement, **even if they comply with your request to disperse or close down**, as the Attorney General, District Attorney or County Attorney may need to take legal action, if they are found to be non-compliant in the future (legal action could include criminal, civil or administrative actions, and may include all three).

LE Investigation Checklist

Your report should include:

- Name and contact information of the person who made the report.
- Name and contact information of the business owner or manager on duty at the time of investigation.
 - Did you give them a copy of the WARNING handout identifying potential methods to enforce the Public Health Orders.
 - If not, detail how you informed them of the requirements of the Public Health Orders.
- Names and contact information of those present who do not comply with your request to leave.
 - Did you give them a copy of the WARNING handout identifying potential methods to enforce the Public Health Orders.
 - If not, detail how you informed them of the requirements of the Public Health Orders.
- How many people were present?
- What were the people doing? (Eating, drinking, working out, watching a movie, etc.)
- What efforts, if any, were being made to distance people at the location?
- Document any statements or actions demonstrating non-compliance with your request
- Names and contact information of any witnesses

LE Frequently Asked Questions

Can I arrest or cite them for a violation of a public health order?

- 1) Do **not** arrest anyone IF the only violation is failure to comply with a public health order
- 2) A citation *may* be given pursuant to C.R.S. § 25-1-114(1)(a) but should **not be given on the first offense**. (This is another reason you should be documenting and preparing reports even if they comply with your request to close, or disperse)
- 3) If there is another valid reason to arrest the person, then you may arrest them, but follow all COVID-19 protocols

When should I issue a citation?

- 1) If they have previously been warned of the requirements, and there is a report documenting the prior event, and
- 2) If they refuse to respond to your request to close or disperse

Who do I write a citation to?

- 1) The business owner or manager or other individual in charge
- 2) Any person in the business that refuses to comply with the request to disperse
- 3) Any person in the business who has previously been informed of the Public Health Orders and there is a report that documents the prior contact

What evidence do I need?

1. Proof of the prior warning
2. Proof of any notices regarding the Public Health Order (generally acquired for SJBH)
3. Reporting party and 3rd party witness contact info. Video evidence is extremely helpful.

What are the current Public Health Orders? What activity is restricted?

- 1) The orders will change, sometimes there will be changes in the same day. Below are links to websites with specific information about the orders:

- a. Specific information about Colorado Department of Public Health and Environment Orders can be found at: <https://covid19.colorado.gov/schools-workplaces-community>
- b. Specific information about San Juan Basin Public Health Department Orders can be found at: <https://sjbpublichealth.org/coronavirus/>

Potential legal actions for those violating Public Health Orders are outlined in the attached handout.