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April 24, 2020

SENT VIA REGULAR MAIL AND E-MAIL: dholladay@orcify.org

Mayor Dan Holladay
City Hall
625 Center Street
Oregon City, OR 97045

RE: Compliance with Executive Order 20-12
DOJ file No.: 137048-GA0030-20

Dear Mayor Holladay,

I understand that you plan to issue a declaration that allows all businesses in Oregon City to re-open, even though this would contravene Governor Kate Brown's "Stay at Home, Save Lives" Executive Order (20-12). I further understand that your declaration would be based on a mistaken belief that the governor lacked the legal authority to issue this executive order. I send this letter in the hope that you will reconsider your approach without the need for more formal action. I remind you that there are significant legal repercussions for violating the governor's order.

The governor has authority under ORS 401.165(1) to declare a state of emergency when she determines either that an emergency has occurred or is imminent. The type of emergencies covered under this authority expressly include diseases.¹ The governor declared a state of emergency on March 7, 2020, through Executive Order 20-03, in response to the threat to public health and safety caused by the spread of COVID-19. The governor has not terminated that state of emergency. Nor has the Legislative Assembly.

¹ ORS 401.025(1)(a).

Once the governor declares a state of emergency, she assumes various powers to mitigate the emergency and to manage resources. In particular, she has powers under ORS 433.441 that are designed to protect the public health.² These specifically include the power to “[c]ontrol or limit entry into, exit from, movement within and the occupancy of premises in any public area subject to or threatened by a public health emergency if such actions are reasonable and necessary to respond to the public health emergency.”³ The governor is broadly empowered to “[t]ake any other action that may be necessary * * * to protect the public during a public health emergency.”⁴ In addition, the governor has the right, under ORS 401.168(1), to exercise *all police powers* vested in the state by the Oregon Constitution in order to effectuate the purposes of ORS chapter 401. Police powers generally refer to the state’s power to enact laws that protect “the public’s health, safety, and general welfare,”⁵ which is precisely the effect of the governor’s orders.

Closing certain businesses to stem the spread of COVID-19 clearly protects the public’s health and safety during the ongoing global pandemic. The governor’s order is lawful, and that order remains in full force and effect. You do not have the authority to override the governor’s executive order. Violating this or any executive order issued under the governor’s emergency powers can lead to criminal penalties under ORS 401.990, and civil penalties under ORS 431A.010. So, in addition to putting your residents’ health at risk, you may be placing them in legal jeopardy.

My hope is that this letter will persuade you to abandon this approach. Please be advised I will take legal action, civil or criminal, as appropriate, in order to protect the public.

Sincerely,



ELLEN F. ROSENBLUM
ATTORNEY GENERAL

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c via email only: Governor Kate Brown

Commissioner Rachel Lyles Smith, President of the Oregon City Commission (rlsmith@orc.org)

² See ORS 433.441(4) (“If a state of emergency is declared as authorized under ORS 401.165, the Governor may implement any action authorized by ORS 433.441 to 433.452.”).

³ ORS 433.441(3)(d).

⁴ ORS 433.441(3)(f).

⁵ *Black’s Law Dictionary* (11th ed 2019) (online).