

From: asmee@kalama.com
Sent: Wednesday, April 22, 2020 6:12 PM
To: jstanfill01@scattercreek.com; 'smhughes02'; wconradi03@kalama.com; 'Steve Kallio'; 'Matthew Merz'
Cc: kalamamayor@kalama.com; Coni McMaster; rherrera@kalamapolice.com; krasnussen@kalama.com;
Subject: FW: Opening Kalama

Hello Kalama City Council,

Mayor Reuter asked that I forward this information (below) from City Attorney Sam Satterfield related to some questions of liability and consequence for defying Governor Inslee's Stay Home Stay Healthy Order and the associated amendments.

While I personally believe that Councilman Merz makes some legitimate points. There are significant risks associated with defying the Order.

If the Council wants to discuss a dissenting viewpoint with the state leadership that is well within your authority. If you choose to draft correspondence or pass resolution expressing your frustration or the frustration of your constituents that is within your authority. However, if the Council chooses to discuss defying Stay Home - Stay Healthy, then I think it is important that we all understand the potential consequences before any action is passed by the Council.

At this point I have heard back directly from all Council Members except Jon Stanfill regarding the special meeting proposed for April 24th at 7:30pm.

Jon ?

Sandra No

Wendy No

Steve Yes have the conversation but not Friday because we can't get notice out to enough of the citizens in time.

Matt Yes (obviously as he asked for the meeting)

There is some dissent coming from other counties within the state Franklin County and Sheriff Adam Fortney from Snohomish County. I will try to do some research on how Governor Inslee is responding and get back to you tomorrow.

Respectfully,
Adam

Adam Smee
City Administrator
City of Kalama, WA

asmee@kalama.com

From: Samuel *Satterfield*
Sent: Wednesday, April 22, 2020 4:50 PM
To: asmee@kalama.com
Cc: kalamamayor@kalama.com; Stephanie Johnson <
Subject: RE: Opening Kalama

Hello Adam,

Our office, the City of Kalama, and most of Washington are definitely feeling the crush this stay home - stay safe order is putting on the economy, our state, and our professional and personal lives. I can understand Councilman Merz's frustration with the order and especially the uncertainty of when it will really end. I also understand his strong desire to get the City of Kalama and it's citizens back to work and a sense of normalcy. That is what I wish as well. But as legal counsel to the City of Kalama, I do need to make you, the Mayor, and the City Council aware of the potential legal issues of issuing any city proclamation, order, statement, or other action that directly states or suggests the City of Kalama, or its citizens actively disobey PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATIONS 20-05 AND 20-25 20-25.1 EXTENDING STAY HOME - STAY HEALTHY TO MAY 4, 2020.

We have discussed these same concerns with MRSC, other city attorneys, the Washington State Attorney General's office, and with other city officials. Our biggest legal concerns with any city or governing body issuing a city proclamation, order, or statement suggesting or ordering items that are contradictory to the Governor's Stay Home - Stay Safe Order are as follows:

First, it would potentially leave the City (as a business and government entity), individuals, mayor and council members, and local businesses open to state monetary or governmental sanctions, or criminal prosecution under RCW 43.06.220 as stated in the most recent proclamation: PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATIONS 20-05 AND 20-25 20-25.1 EXTENDING STAY HOME - STAY HEALTHY TO MAY 4, 2020. There may not be any sanctions or prosecutions, but there is a possibility and legal authority by the state to do so. I do know the Attorney General's office has been very active about enforcing eviction prohibitions, garnishment prohibitions, and following up on business openings mentioned through the reporting website set up by the Governor's office. I have already had to field

several phone calls and emails with the A.G.'s office on behalf of clients in the past three weeks. We have worked them all out, but there is a lot of activity in ensuring compliance by the state government.

Second, your proposed worse case scenario, or other less dramatic scenarios in which a business or individual is sued and in turn joins the City as a defendant in a lawsuit because the business or person was told by the City they could open, etc. are all possible scenarios where a city may be involved in a suit. Actively instructing the City or citizens to go against the Stay Home - Stay Safe order is going to open the City up to possible litigation, and there is no way to phrase an order that would protect the City of Kalama against it. There is a reason you have not seen several cities in Washington issue any of these types of orders to date. I do want to clarify that this does not mean the City may not have legal remedies to fight any suits brought against it, especially on Constitutional grounds, but know that kind of a fight will cost money and tie the City up in litigation for quite some time.

Third, given that an order boycotting the governor's order, or simply suggesting or ordering it be ignored or suggesting that the people of Kalama not abide by the order would almost definitely be grounds for AWC RMSA to deny covering the City in any lawsuits should they so choose. I doubt it would be enough for the insurance company to stop covering the City all together, but I would be very surprised if they agreed to cover any lawsuits arising from it, as it is a clear and direct violation of RCW 43.06.220 stated earlier. I would suggest that if the City does wish to put out any proclamation, order, or statement suggesting the City not follow the terms of PROCLAMATION BY THE GOVERNOR AMENDING PROCLAMATIONS 20-05 AND 20-25 20-25.1 EXTENDING STAY HOME - STAY HEALTHY TO MAY 4, 2020, that a draft of the City's proclamation, order, or statement be sent to AWC before it is voted on or sent out to the public to get in writing an answer from them about potential coverage in the future.

There are other issues that may arise as well, dealing with cost, actions blamed on the city for failure to comply with state rules, loss of state funding options, or other potential consequences that while may sound unjust, are still potential issues for the City Council to consider before issuing any proclamation, statement, or order. Please keep us involved in this hearing, any drafts being considered, or any other

statements being made by council or the mayor. I would also be happy to speak directly with any council member, the mayor, you or Coni to ensure we are all aware of the potential legal hurdles, concerns, helps I can offer, and any other issues that may arise.

Best Regards,
Sam

Samuel D. Satterfield

Hillier, Scheibmeir, Kelly & Satterfield P.S.
299 N.W. Center Street
P.O. Box 939
Chehalis, Washington 98532

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From: asmee@kalama.com <asmee@kalama.com>
Sent: Wednesday, April 22, 2020 12:47 PM
To: Samuel Satterfield
Cc: kalamamayor@kalama.com
Subject: FW: Opening Kalama

Hello Sam,

I am working to clarify my understanding Councilman Merz's frustration with the Governor's order. During a discussion with Mayor Reuter this morning about the subject the question of liability was raised.

Here is the worst case hypothetical situation:
The Council chooses to boycott the Gov. Order.
One of the restaurant opens.
We have a cluster outbreak.

Someone who is infected through the restaurant dies.
The surviving heirs file a civil suit against the city for defying the Gov. Order and creating a dangerous situation.

Does the City of Kalama have legitimate liability in this scenario?
Do you think our AWC RMSA coverage would be denied?

Thanks,
Adam

Adam Smee
City Administrator
City of Kalama, WA
asmee@kalama.com

From: Matthew Merz <mmerz05@kalama.com>
Sent: Tuesday, April 21, 2020 9:25 PM
To: Coni McMaster <cityclerk@kalama.com>; Adam Smee <asmee@kalama.com>;
'Kelly Rasmussen'
<kasmussen@kalama.com>; Mayor Mike Reuter <kalamamayor@kalama.com>;
Samuel Satterfield

Steve Kallio <skalllio04@kalama.com>; Sandra
Macias-Hughes
<smhughes02@kalama.com>; Wendy Conradi <wconradi03@kalama.com>; Jon
Stanfill
<Jstanfill01@kalama.com>
Subject: Opening Kalama

Mayor, Staff & Fellow Councilmembers,

Following Gov. Inslee's incredibly vague statement this afternoon regarding his 'Stay Home-Stay Healthy' Proclamation that provided no assurances, security, or path forward for citizens, businesses, cities and counties throughout Washington State; and prayerfully considering that Governor Inslee's proclamation violates his oath of office to protect the religious rights enshrined to all citizens within Amendment I of the U.S. Constitution; and seeing as the effects of the Wuhan coronavirus have been minimal on Cowlitz County and nearly non-existent in Kalama; and seeing that our citizenry has socially distanced and quarantined themselves for a month now, despite those afflicted with the virus only being instructed to stay at home for 14 days; and seeing as Governor Inslee has repeatedly failed to provide specific actions he will take to implement his "plan forward"; I hereby request that two other Councilmembers or the Mayor of Kalama join me in agreeing to hold a special meeting of the Kalama City Council on Friday

evening, April 24th, at 7:30pm, as allowed by RCW 35A.12.110, so that we may vote to affirm our citizens and business owners' rights to conduct their business as they see fit, while still encouraging social distancing in public and private facilities. The adults in our community are capable of safeguarding their own health and ensuring their own economic vitality. It is time for government to get out of their way.

Per MRSC guidelines, I have sent this email to all elected officials, staff and the city attorney, as making the decision to hold a special meeting does not violate OPMA laws.

Thank you for your time,

Councilmen Merz
Position 05