

YOUR BUSINESS'S LEGAL RIGHTS

Guidelines to the COVID Pandemic and Non-Compliant Customers

Businesses in Boise should abide by all state and local health orders and protocols, including those issued by the Governor, the City of Boise, and Central District Health. The Boise Metro Chamber published our “Back in Business Guide” in May to help our local businesses stay open.

- Health orders currently require businesses to: (1) develop measures to implement 6 ft. distancing between individuals whenever possible, (2) provide adequate sanitation for employees and customers, and (3) frequently disinfect commonly touched surfaces and high-traffic areas. Business-specific protocols for opening vary by type of business and are available at rebound.idaho.gov/business-specific-protocols-for-opening/.
- City of Boise will respond to reports of non-compliant businesses and may investigate such complaints. Penalties for non-compliance include fines and suspension or revocation of business licenses.

Businesses:

- Are not responsible for customer compliance with health orders, but can encourage compliance and create a safer environment by adopting store policies that align with health orders such as requiring customers to wear a mask while in the store
- Should post signs that are clear and visible at store entrance and throughout the store that masks are required and those without masks will be asked to leave. Businesses should consider making disposable masks available to customers at the store entrance or upon request
- That own or lease store property have property rights, including the right to exclude unwelcome visitors from the property. Trespassers do not have any constitutionally-protected right to free speech on the private property of others. The Constitution only protects free speech against unreasonable interference by governments and their agents
- Are permitted, in a non-discriminatory manner, to refuse to admit or serve customers that do not comply with reasonable store safety policies, create a nuisance such as disrupting your business, or pose a safety risk to other customers. “Non-discriminatory” means that enforcement of policies must be done consistently with all customers, regardless of a customer’s race, color, religion, sex, national origin, or disability. A “zero exceptions rule” is the best way for a business to demonstrate that it acted in a non-discriminatory manner. On this issue, basically treat everyone the same

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Businesses Continued;

- May consider providing a 'no contact shopping' alternative for customers that are unable to wear a mask for medical or disability-related reasons. However, during the COVID-19 pandemic, businesses have a legal basis to refuse service of unmasked customers because these customers pose a threat to the health and safety of employees and other customers. Such exclusions must be done in good faith and not for discriminatory purposes
- Should be aware that fraudulent "ADA Cards" that appear to be from the U.S. Department of Justice and claim that individuals are exempt from face mask requirements. These cards and claims should be ignored and reported to the proper authorities

Additional Considerations

- When refusing to admit or serve to customers without masks: (1) be as respectful as possible and make efforts to avoid embarrassing the customer or causing a scene, (2) politely inform the customer that masks are required, (3) provide the customer with an opportunity to resolve the situation by putting on a mask, and (4) if the customer refuses to wear a mask and does not claim a disability as the reason then politely ask the customer to leave the premises.
- Customers who have been told to leave the premises but do not comply become trespassers. Mayor McLean has announced that Boise Police will be available to issue a citation or arrest an individual who won't comply with a business's protocols once the individual has been asked to leave the business. Businesses should call the Boise Police Department non-emergency dispatch at 208-377-6790. The police will ask you to sign a trespass complaint against the trespasser.
- Businesses should avoid using physical force to remove trespassers from the premises. Using reasonable force to remove a trespasser is permissible under Idaho law but is inherently dangerous and should be avoided. Removing a customer by force endangers employees and other customers and may result in additional liability to the business.
- Businesses should be aware that some disruptive customers are very skilled at using social media to publicize the message and cause. There is a risk of backlash or reputational harm to the business on certain media channels depending on store policies, signage, trespass enforcement, and communication style with customers. You should be prepared to address any backlash or pushback on social media.

** This guidance covers general principles and may or may not be applicable to your current situation. It also does not establish an attorney-client relationship between your business and Hawley Troxell. Please seek counsel from an attorney if you have any questions. **