

DAVID H. LEROY
Attorney at Law
802 West Bannock Street, Ste 201
Boise, Idaho 83702
Telephone: (208) 342-0000
Facsimile: (208) 342-4200
email: dave@dleroy.com
Idaho State Bar No. 1359

BEFORE THE DIRECTOR OF THE BOARD OF HEALTH, CENTRAL DISTRICT HEALTH,

STATE OF IDAHO

JASON KOVAC, RYAN STEINBRONER)	
TODD ASIN, MANS AND JOANNA)	PETITION FOR PERMISSION OF THE
MONTGOMERY, BRAD SELVIG,)	DISTRICT DIRECTOR TO REOPEN
KACI FURNESS, DAN ROCKROHR,)	CERTAIN BARS IN BOISE, ADA
LISA FREEMAN, AND STEVE)	COUNTY, IDAHO SUBJECT TO
MASONHEIMER,)	COVID PREVENTION CONDITIONS
)	
Collectively known as "BOISE BAR)	
OWNERS")	
)	
Petitioners,)	
_____)	

COME Now the above named Petitioners, by and through their attorney or record David H. Leroy, and hereby request of Russell A. Duke, District Director, Idaho Central District Health Department, as follows:

1. WHEREAS the July 14, 2020 Order of the Central District Health Department provides in paragraph 4 thereof, in pertinent part, as follows:

“all bars and nightclubs in the place of quarantine are closed to the public for on-site consumption of beverages and to non-essential employees, except with specific permission of the Board of Health or its authorized representative, Russell A. Duke, District Director,”

2. AND WHEREAS the Order contains no criteria, standards or tests whereby such permission is to be exercised,

3. AND WHEREAS the Director has granted such permission in certain cases to other Ada County area bars and nightclubs pursuant to said authority,

4. AND WHEREAS the blanket and absolute, indefinite closure of “all bars and nightclubs” invokes an undue unnecessary, inappropriate and overreaching hardship upon owners, employees and others with an economic interest in said enterprises, including these Petitioners, and is tantamount to a governmental taking of property interests, without compensation, to the continuing economic damage and detriment of said persons without legal justification therefor,

5. AND WHEREAS said bars and nightclubs on a selective basis can be reopened under terms conditions and procedures which do not represent an undue or atypical health risk to their patrons or the general public.

6. NOW THEREFORE, THE PETITIONERS HEREIN, HEREBY INDIVIDUALLY AND COLLECTIVELY, REQUEST THE “SPECIFIC PERMISSION” OF THE DIRECTOR TO REOPEN THEIR PREMISES AS FOLLOWS:

I.

PETITIONERS AND PREMISES

Name	Address	Owner
A. Tom Grainey’s	109 South Sixth Street, Boise	Jason Kovac
B. Silly Birch	507 Main Street, Boise	Jason Kovac
C. Whiskey Bar	509 Main Street, Boise	Jason Kovac

D. The Fireside Inn	1610 North 31 st Street, Boise	Ryan Steinbroner
E. Atlas	108 South 11 th Street, Boise	Todd Asin
F. The Torch Lounge	1826 Main Street, Boise	Mans & Joanna Montgomery
G. The Torch 2	610 South Vista, Boise	Mans & Joanna Montgomery
H. Jim's Alibi	2710 South Broadway, Boise	Mans & Joanna Montgomery
I. End Zone	1010 South Broadway Ave, Boise	Brad Selvig
J. Mulligans/Olympic Bar	1009 West Main Street, Boise	Kaci Furness
K. The Cactus Bar	517 West Main Street, Boise	Dan Rockrohr/Lisa Freeman
L. 8 th Street Entertainment	800 West Idaho Street, #200, Boise	Steve Masonheimer

Collectively, said premises and individuals shall be known herein as "The Boise Bar Owners"

II.

PROPOSED COVID-PREVENTION RULES FOR EMPLOYEES OF BOISE BAR OWNERS

A. All employees shall enter for and exit from work through a single premises door where a screening station is established.

B. Prior to working any shift, all employees will:

1. Be temperature tested with a hand held device.
2. Answer the COVID related questions and provide the data required on Form "A" attached hereto.
3. Employees not passing COVID protocols will be denied entrance and work.

C. All employees will wear a compliant face covering for the entirety of their shift.

D. All employees will have access to hand sanitizers and gloves and utilize them as

frequently and for such purposes as are appropriate.

E. Each premises will utilize its bouncer and security staff persons to enforce COVID appropriate compliance and social distancing.

III.

PROPOSED COVID - PREVENTION RULES FOR PREMISES

SANITATION OF BOISE BAR OWNERS

A. All horizontal and high traffic surfaces will be sanitized immediately after patron usage is completed and at intervals of every thirty (30) minutes whether or not in use during business hours.

B. All such surfaces will be sanitized upon opening and after closing on a daily basis.

IV.

PROPOSED COVID- PREVENTION RULES FOR CUSTOMERS

AND INVITEES OF BOISE BAR OWNERS

A. Where available, patrons will be encouraged to use outside seating to the maximum extent possible.

B. No at-bar service will be permitted. All service of beverages or food will be presented to seated patrons at occupied tables, chairs, booths or other designated areas.

C. All dance floors will be closed.

D. All tables, chairs, booths or seating areas will be arranged for the social distance and disease prevention compliance of individual patrons or related groups of patrons, using spacing, screening barriers, air sanitizing devices or other accepted COVID limitations procedures.

E. All patrons seeking entrance shall be required to enter and exit through a single

premises door where a screening station is established.

F. Prior to entrance to any interior seating area or other usage, all patrons will be:

1. Temperature tested with a hand held device.
2. Afforded the opportunity to utilize hand sanitation products.
3. Asked about exposure to COVID positive individuals or the experiencing of COVID symptoms.
4. Patrons not passing COVID protocols will be denied entrance and seating.

V.

PROPOSED COVID - PREVENTION MONITORING, TRACKING AND REPORTING
PROTOCOLS OF BOISE BAR OWNERS

A. Upon notification of any patron, guest or employee or other premises-related positive testing or COVID consistent symptomology, the owner will promptly:

1. Notify all employees.
2. Prevent said person or persons from entering the premises.
3. Report the facts, as known, to Central District Health, Communicable Diseases Division, (208) 327-8625 Kimberly Link, Program Manager.
4. Promptly take such steps as are appropriate, if any, to ensure public, patron, employee and management health and safety and to prevent any COVID transmission in or from the premises.

VI.

Upon the above proposed operations, the Petitioners are prepared to present professional and expert testimony that the risk to the public of COVID spread or infection from the reopening

of bars and nightclubs would be no greater and likely less than that experienced in other businesses, enterprises, facilities and industries which are currently allowed full and otherwise unrestricted general operations and commerce under District regulations..

VII.

Upon the above proposed operations, the Petitioners are prepared to present professional and expert testimony that no compelling governmental interest exists sufficient to justify the economic destruction of the bar and nightclub industry, and that a refusal of the granting of the Director's "specific permission" to reopen upon these terms and conditions can not be justified.

WHEREFORE, THE PETITIONERS, BOISE BAR OWNERS, HEREBY REQUEST THAT:

1. The Director grant, as authorized in Paragraph 4 of the July 14th, 2020, Order of the Board, to all and each of them the specific permission to immediately reopen subject to continuing compliance to the procedures outlined herein.

2. Only if necessary to obtain the relief sought herein, that the Director immediately convene an emergency meeting of the District Board of Health, to consider and act upon this Petition.

3. If denied by either the Director of the Board, such denial shall be in writing and be deemed to constitute a final action of the Central District Health District, sufficient to entitle these Petitioners to have exhausted their administrative remedies, giving jurisdiction to a District Court appeal thereof under Idaho Code Section 67-5271 and other applicable state, federal and local statutes and case authority.

Respectfully Submitted:

