From:	Jim Nugent
To:	Dept. Mayors Office; Grp. City Council and City Web Site; Angela Simonson; Mike Brady; Donna Gaukler; Shirley Kinsey; Meg Whicher; Betsy Willett; Becky Goodrich; Dept. City Clerk
Cc:	Dept. Attorney
Subject:	FW: COVID-19 Quarantines
Date:	Wednesday, September 22, 2021 8:57:20 AM
Attachments:	image001.png

From: Jim Nugent
Sent: Wednesday, September 22, 2021 8:55 AM
To: Quentin Rhoades <qmr@montanalawyer.com>
Cc: editor@missoulacurrent.com; Peter Christian <peterc@mail.centric.net>; Keith Schubert <kschubert@dailymontanan.com>; Jordan Hansen <Jordan.Hansen@Missoulian.com>; Tyler Christensen <Tyler.Christensen@lee.net>; Cynthia Koures <Ckoures@sbgtv.com>
Subject: RE: COVID-19 Quarantines

QUENTIN:

Many, many individuals unsolicited voluntarily inform many others of their COVID positive status or COVID close contact status. Some individuals volunteer COVID information and inquire as to what they should do if they are a participant or soon to be a participant in a city parks and recreation program.

Statutorily there are several Montana state laws that clearly provide that a core purpose of the existence of municipal governments is to secure, promote and protect the public health, public safety and general welfare of those individuals within the corporate limits of their jurisdiction.

When city parks and recreation staff are informed and/or learn, without questioning an individual participant in a city parks and recreation program that an individual is currently in a COVID positive status or a COVID close contact status, city parks and recreation staff have a responsibility or duty to secure, promote and protect the public health, public safety and general welfare of both program participants as well as city parks and recreation staff. The Montana Occupational Safety and Health Act explicitly provides that an employer provide a safe workplace for its employees.

When you and your clients through your actions oppose city parks and recreation staff taking responsible action to secure, promote, and protect the public safety, public health and general welfare of city park and recreation program participants as well as city parks and recreation staff in instances when they unsolicited are informed or learn of an individual program participant's COVID positive status or COVID close contact status you and your clients are through your actions basically facilitating the spread of a communicable disease. COVID is now the most fatal communicable disease that has occurred in over 100 years.

All perceived rights have reasonable limitations or restrictions. Through opposition actions or conduct there is no right for an individual to spread or potentially spread a communicable disease. There is no evidence that city parks and recreation staff are assuming the role of deputy health officers when city parks and recreation staff unsolicited are informed or learn that parks and recreation program participants are currently in a COVID positive status or currently in a COVID

close contact status., and therefore do not allow the individual to participate in city parks and recreation programs while the person is currently in a COVID positive status or currently in a COVID close contact status.

There is no right for an individual to spread or potentially spread a communicable disease.

JIM NUGENT

From: Quentin Rhoades <qmr@montanalawyer.com>
Sent: Tuesday, September 21, 2021 5:23 PM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Cc: editor@missoulacurrent.com; Peter Christian <peterc@mail.centric.net>; Keith Schubert <kschubert@dailymontanan.com>; Jordan Hansen <Jordan.Hansen@Missoulian.com>; Tyler Christensen <Tyler.Christensen@lee.net>; Cynthia Koures <Ckoures@sbgtv.com>
Subject: RE: COVID-19 Quarantines

Jim,

Thanks for the follow-up note. I appreciate the dialogue.

Whatever the intent of your memo, you must admit it reads like a license for city parks and recreation staff to assume the role of informal deputy health officers. You should expressly warn them against such overreach, as it lies clearly beyond their authority. Finally, it is odd that you would insist, "THERE IS NO RIGHT FOR AN INDIVIDUAL TO SPREAD OR POTENTIALLY SPREAD A COMMUNICABLE DISEASE" when no one, at least to my knowledge, has suggested otherwise.

Have a good evening,

Quentin M. Rhoades, Esq.

406.721.9700 **montanalawyer.com**

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From: Jim Nugent <NugentJ@ci.missoula.mt.us>
Sent: Tuesday, September 21, 2021 5:10 PM
To: Quentin Rhoades <qmr@montanalawyer.com>
Cc: editor@missoulacurrent.com; Peter Christian <peterc@mail.centric.net>; Keith Schubert

<kschubert@dailymontanan.com>; Jordan Hansen <Jordan.Hansen@Missoulian.com>; Tyler Christensen <Tyler.Christensen@lee.net>; Cynthia Koures <Ckoures@sbgtv.com>
Subject: RE: COVID-19 Quarantines

QUENTIN:

Thank you for your email

The legal opinion is not discussing city parks and recreation staff speculation about an individual's COVID positive close contact status

The legal opinion pertains to providing some guidance to parks and recreation staff in instances when city parks and recreation staff know the COVID positive status and COVID close contact status of the individual. Many individuals voluntarily disclose their COVID status to many other individuals, including to parks and recreation staff.

THERE IS NO RIGHT FOR AN INDIVIDUAL TO SPREAD OR POTENTIALLY SPREAD A COMMUNICABLE DISEASE .

JIM NUGENT

From: Quentin Rhoades <qmr@montanalawyer.com>
Sent: Tuesday, September 21, 2021 4:42 PM
To: Jim Nugent <NugentJ@ci.missoula.mt.us>
Cc: editor@missoulacurrent.com; Peter Christian <peterc@mail.centric.net>; Keith Schubert <kschubert@dailymontanan.com>; Jordan Hansen <Jordan.Hansen@Missoulian.com>; Tyler Christensen <Tyler.Christensen@lee.net>; Cynthia Koures <Ckoures@sbgtv.com>
Subject: COVID-19 Quarantines
Importance: High

Dear Mr. Nugent,

I'm given to understand that you are advising Missoula City officials that they are free to impose quarantine restrictions on Missoulians whom they believe are infected with "current COVID positive status or a current COVID close contact status." See attached. Unfortunately, your advice fails to take into account the legal requirement of "due process." If City officials or employees suspect someone of "current COVID positive status or a current COVID close contact status," there is a set of written procedures that must be invoked before quarantines can be legally enforced. You may find a copy of it on the County website, but I attach a copy hereto for your convenience.

According to City-County Health Department policy, if a City official has probable cause to believe someone is COVID positive, the official's only recourse is to report the suspicion to the City-County health officer. See attached, ¶ 1.1. As the policy states:

> *Upon receipt of a report of a communicable disease, the local health officer shall confirm*

the diagnosis with laboratory or the physician or healthcare provider. If the case is not confirmed, but is suspect or probable, the local health officer may handle the case as communicable until medical or laboratory information rules out the presence of communicable disease.

Note that only the local health officer has this authority. Moreover, a person so targeted has express rights to due process and privacy. First, due process:

6.5 Persons subject to mandatory isolation or quarantine may request judicial review as provided in state law. The health officer may sustain the mandatory quarantine or isolation while the appeal is pending.

Second, there is the right to privacy. In other words, City officials are not allowed to disclose private information. As the policy states:

Protection of Privacy
7.1 In all instances, except as required by the courts or otherwise by law, the names and personally identifiable information of individuals subject to quarantine shall be kept confidential in accordance with Montana's'oGovemment Health Care Information Act" 50-16-601-611 MCA and the U.S. Health Insurance Portability and Accountability Act (HIPAA.)
7.2 Placards signifying isolation or quarantine shall not be used except within institutional settings or in the event that a sanitary perimeter or institutional control is established.

As you can see, your legal opinion fails to notify City officials of the substantial limitations on their enforcement powers if they have probable cause to believe someone is COVID positive or is a COVID close contact. This power falls strictly to the local health officer. In these times of uncertainty, I hope you agree that our role as lawyers is to ensure to the best of our ability that the rule of law prevails and that we give our clients sound legal advice. Indeed, it is in difficult times like these where the rule of law is the most important. I urge you to supplement your advice to City officials with the preceding in mind.

Quentin M. Rhoades, Esq.

406.721.9700 **montanalawyer.com**

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