



**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF HEALTH**

**IN THE MATTER OF:
Jalapeno's Kitchen
Violations of Executive Orders and
RI Department of Health Regulations**

IMMEDIATE COMPLIANCE ORDER

Now comes the Director of the Rhode Island Department of Health ("RIDOH"), as informed by the Chair ("Chair") of the Rhode Island COVID-19 Enforcement Task Force ("Task Force"), and pursuant to R.I. Gen. Laws §§ 23-1-20 and 23-1-21, Executive Orders 20-32 and 20-79 ("Executive Orders"), and the RIDOH rules and regulations pertaining to Safe Activities By Covered Entities During the COVID-19 Emergency (216-RICR-50-15-7) ("Safe Regulations"), determines that Jalapeno's Kitchen ("Respondent") is in violation of applicable Executive Orders and/or the Safe Regulations, which violations require immediate action to protect the health, welfare, and safety of the public.

NEED FOR IMMEDIATE ACTION

On March 9, 2020, Governor Gina M. Raimondo declared a state of emergency for the State of Rhode Island due to the dangers to health and life posed by COVID-19. The Safe Regulations were promulgated as an emergency rule, pursuant to R.I. Gen. Laws § 42-35-2.10, based on a finding that an imminent peril to the public health, safety, or welfare required immediate promulgation of the rule, specifically that "[i]n order to prevent further spread of COVID-19 as individuals begin to leave their homes more frequently and establishments begin to reopen, protective measures must be followed and

implemented for individuals and establishments to resume operations so that the public's health and welfare is protected.”

GROUNDINGS FOR DETERMINATION OF VIOLATIONS

- I. Respondent is a dining establishment located at 8 Academy Avenue in Providence.
- II. Respondent is a covered entity, as defined in the Safe Regulations. As such, Respondent is required to comply with applicable Executive Orders and the Safe Regulations.
- III. On or about September 15, 2020, a Task Force inspector conducted a Healthy Environment inspection of the Respondent. The inspector met with an employee and performed a checklist inspection based on the Safe Regulations. The inspector determined that Respondent scored a 4/11 for overall requirements. After the inspection, the inspector provided information and resources to the Respondent to help it achieve full compliance. This included a recommendation to the Respondent on how to access www.ReopeningRI.com and the relevant websites for the Executive Orders, rules, regulations, and guidance. The Respondent was also advised that an inspector would conduct a reinspection in the near future.
- IV. On or about September 19, 2020, a different Task Force inspector conducted a reinspection of the Respondent. The inspector met with an employee and performed a checklist inspection based on the Safe Regulations. The inspector determined that the Respondent again scored a 4/11 for overall requirements and had made no attempts to correct the earlier disclosed deficiencies.
- V. As a result of the second failed inspection, a Compliance Order was issued and served upon Respondent on or about, September 22, 2020. The Order stated that Respondent had ten (10) days to remedy all violations. (See “Exhibit A”)
- VI. On or about October 6, 2020, a Task Force inspector conducted a reinspection of the Respondent to determine whether or not the violations had been corrected in accordance with the Compliance Order of September 22. The inspector performed a checklist inspection based on the

Safe Regulations. The inspector determined that Respondent scored a 5/12 for overall requirements and still had made no corrective measures.

- VII. Based on the foregoing, and in the absence of any other information to rebut the allegations, the Director of RIDOH has determined that Respondent is in present violation of multiple provisions of applicable Executive Orders and/or the Safe Regulations and that immediate action is necessary to protect the health, welfare, or safety of the public.

VIOLATIONS

The following violations stem from the October 6, 2020 reinspection.

- I. Respondent is in violation of Section 7.4.1(A)(1)(f) of the Safe Regulations, which requires the designation of a point of contact who is familiar with the applicable Executive Orders and the Safe Regulations and who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow up. Upon request, Respondent still could not identify a point of contact who is familiar with the guidance and regulations.
- II. Respondent is in violation of Section 7.4.1(A)(1) of the Safe Regulations, which requires each covered entity to develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment. Upon request, Respondent still could not produce a written plan.
- III. Respondent is in violation of Section 7.4.1(A)(8) of the Safe Regulations, which requires all covered entities to maintain an employee work log that identifies the full name, phone number, and the date and time of all shifts worked by each employee. This work log must be maintained for at least thirty (30) days. Upon request, Respondent still could not produce an employee work log.
- IV. Respondent is in violation of Sections 7.4.1(A)(6) & (7) of the Safe Regulations, which require each covered entity to ensure the performance of environmental cleaning of its establishments once per day and to maintain records documenting such environmental cleaning. Upon request, the Respondent still could not produce the required records.

- V. Respondent is in violation of Section 7.4.1(A)(2) of the Safe Regulations, which requires each covered entity to implement and ensure compliance with screening of all individuals entering its establishment(s) at any time for any reason. The inspector observed that the Respondent did not conduct entry screening. In addition, there were no posters visible at or near the entrance concerning entry screening.
- VI. Respondent is in violation of Section 7.4.1(A)(4) of the Safe Regulations, which requires each covered entity to ensure the placement of posters or signs at entry to its establishments, educating any individual at the establishment concerning entry screening, required physical distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH. The inspector observed that none of the required information was posted at the entry to the establishment and concluded, therefore, that the Respondent failed to ensure the placement of required posters.
- VII. Respondent is in violation of Section 7.4.1(A)(1)(a) of the Safe Regulations, which requires establishments to ensure compliance with a plan that includes procedures relative to, among other things, physical distancing at all times, to the extent feasible, and additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible. As stated, above, Respondent admitted to not having the required plan, and the inspector observed that there were still no measures in place to ensure that physical distancing was maintained.

**ORDER
IMMEDIATE COMPLIANCE**

It is hereby **ORDERED**, that Respondent is to immediately close until such time as violations are remedied to the satisfaction of the Director of RIDOH by fulfilling the conditions as set forth below:

- I. Respondent shall designate a point of contact who is familiar with applicable Executive Orders and the Safe Regulations, and who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow up.

- II. Respondent shall develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment.
- III. Respondent shall maintain an employee work log that identifies the full name, phone number, and the date and time of all shifts worked by each employee. This work log must be maintained for at least thirty (30) days.
- IV. Respondent shall ensure the performance of environmental cleaning of its establishment once per day and maintain records documenting such environmental cleaning.
- V. Respondent shall implement and ensure compliance with screening of all individuals entering its establishment(s) at any time for any reason.
- VI. Respondent shall ensure the placement of posters or signs at entry to its establishment educating any individual at the establishment concerning entry screening, required physical distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH.
- VII. Respondent shall ensure compliance with its plan for safe operation, required pursuant to Section 7.4.1(A)(1) of the Safe Regulations, including compliance with, among other things, procedures consistent with the Safe Regulations relative to physical distancing at all times, to the extent feasible, and additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible.

Entered this 7th Day of October 2020.

A handwritten signature in black ink, appearing to read "Nicole Alexander-Scott". The signature is fluid and cursive, with a large initial "N" and "A".

Nicole Alexander-Scott, MD, MPH
Director
Rhode Island Department of Health
Cannon Building, Rm. 401
Three Capitol Hill
Providence, RI 02908

EXHIBIT A



**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF HEALTH**

**ELIZABETH M. TANNER, ESQ.
IN HER CAPACITY AS CHAIR OF THE
RHODE ISLAND COVID-19 ENFORCEMENT
TASK FORCE**

**IN THE MATTER OF:
Jalapeno's Kitchen
Violations of Executive Orders and
RI Department of Health Regulations**

NOTICE OF VIOLATION AND COMPLIANCE ORDER

Now comes the Chair ("Chair") of the Rhode Island COVID-19 Enforcement Task Force ("Task Force") and pursuant to R.I. Gen. Laws § 23-1-20, Executive Orders 20-32, 20-40, and 20-67, and Rhode Island Department of Health ("RIDOH") regulation 216-RICR-50-15-7 (the "Safe Regulations"), determines that there are reasonable grounds to believe that Jalapeno's Kitchen ("Respondent") is in violation of Executive Orders and/or the Safe Regulations, and provides notice thereof.

REASONABLE GROUNDS FOR DETERMINATION OF VIOLATION

- VIII. Respondent is a dining establishment located at 8 Academy Avenue in Providence.
- IX. Respondent is a covered entity, as defined in the Safe Regulations. As such, the Respondent is required to comply with applicable Executive Orders and the Safe Regulations.
- X. On or about September 15, 2020, a Task Force inspector conducted a Healthy Environment inspection of the Respondent. The inspector met with an employee and performed a checklist

inspection based on the Safe Regulations. The inspector determined that Respondent scored a 4/11 for overall requirements. After the inspection, the inspector provided information and resources to the Respondent to help it achieve full compliance. This included a recommendation to the Respondent on how to access www.ReopeningRI.com and the relevant websites for the Executive Orders, rules, regulations, and guidance. The Respondent was also advised that an inspector would conduct a reinspection in the near future.

- XI. On or about September 19, 2020, a different Task Force inspector conducted a reinspection of the Respondent. The inspector met with an employee and performed a checklist inspection based on the Safe Regulations. The inspector determined that the Respondent again scored a 4/11 for overall requirements and had made no attempts to correct the earlier disclosed deficiencies.
- XII. Therefore, as a result of the Respondent's continued failure to comply with applicable Executive Orders and the Safe Regulations, and in the absence of any other information to rebut the allegations above, RIDOH has drawn the conclusion that the above allegations are true, and the Respondent is not in compliance with applicable Executive Orders and/or the Safe Regulations.

ALLEGED VIOLATIONS

The following alleged violations stem from the September 19, 2020 reinspection.

- VIII. Respondent is in violation of Section 7.4.1(A)(1)(f) of the Safe Regulations, which requires the designation of a point of contact who is familiar with the applicable Executive Orders and the Safe Regulations and who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow up. Upon request, Respondent could not identify a point of contact who is familiar with the guidance and regulations. The inspector also attempted to reach the owner by phone but was unsuccessful.

- IX. Respondent is in violation of Section 7.4.1(A)(1) of the Safe Regulations, which requires each covered entity to develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment. Upon request, Respondent could not produce a written plan.
- X. Respondent is in violation of Section 7.4.1(A)(8) of the Safe Regulations, which requires all covered entities to maintain an employee work log that identifies the full name, phone number, and the date and time of all shifts worked by each employee. This work log must be maintained for at least thirty (30) days. Upon request, Respondent could not produce an employee work log.
- XI. Respondent is in violation of Sections 7.4.1(A)(6) & (7) of the Safe Regulations, which require each covered entity to ensure the performance of environmental cleaning of its establishments once per day and to maintain records documenting such environmental cleaning. Upon request, the Respondent could not produce the required records.
- XII. Respondent is in violation of Section 7.4.1(A)(6) of the Safe Regulations, which requires each covered entity to clean commonly touched surfaces, such as shared workstations, elevator buttons, door handles and railings, in accordance with CDC guidance for specific industries. The inspector observed surfaces such as countertops, cash register stations, and credit card keypads to be used by multiple customers, without cleaning between uses, and concluded, therefore, that the Respondent did not clean high touch surfaces in accordance with CDC guidelines for its industry.
- XIII. Respondent is in violation of Section 7.4.1(A)(2) of the Safe Regulations, which requires each covered entity to implement and ensure compliance with screening of all individuals entering its establishment(s) at any time for any reason. Upon inquiry, the Respondent admitted that it did not conduct entry screening. In addition, there were no posters visible at or near the entrance concerning entry screening.

- XIV. Respondent is in violation of Section 7.4.1(A)(4) of the Safe Regulations, which requires each covered entity to ensure the placement of posters or signs at entry to its establishments, educating any individual at the establishment concerning entry screening, required physical distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH. The inspector observed that none of the required information was posted at the entry to the establishment and concluded, therefore, that the Respondent failed to ensure the placement of required posters. (See "Exhibit A")
- XV. Respondent is in violation of Section 7.4.1(A)(1)(a) of the Safe Regulations, which requires establishments to ensure compliance with a plan that includes procedures relative to, among other things, physical distancing at all times, to the extent feasible, and additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible. As stated, above, Respondent admitted to not having the required plan, and the inspector observed that there were no measures in place to ensure that physical distancing was maintained. (See "Exhibit B")

ORDER

It is hereby ORDERED, that on or before the tenth (10th) day from service of this Notice of Violation and Compliance Order, Respondent shall remedy the above cited violations and come into full compliance with applicable Executive Orders and Regulations, by fulfilling the conditions as set forth below:

- VIII. Respondent shall designate a point of contact who is familiar with applicable Executive Orders and the Safe Regulations, and who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow up.
- IX. Respondent shall develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment.

- X. Respondent shall maintain an employee work log that identifies the full name, phone number, and the date and time of all shifts worked by each employee. This work log must be maintained for at least thirty (30) days.
- XI. Respondent shall ensure the performance of environmental cleaning of its establishment once per day and maintain records documenting such environmental cleaning.
- XII. Respondent shall clean all high touch surfaces in accordance with CDC guidelines, in accordance with its specific industry, and maintain records documenting such cleaning.
- XIII. Respondent shall implement and ensure compliance with screening of all individuals entering its establishment(s) at any time for any reason.
- XIV. Respondent shall ensure the placement of posters or signs at entry to its establishment educating any individual at the establishment concerning entry screening, required physical distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH.
- XV. Respondent shall ensure compliance with its plan for safe operation, required pursuant to Section 7.4.1(A)(1) of the Safe Regulations, including compliance with, among other things, procedures consistent with the Safe Regulations relative to physical distancing at all times, to the extent feasible, and additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible.

Failure to comply with this ORDER may result in the imposition of civil fines, the issuance of an immediate compliance order, and/or any other action authorized by regulation, the Act, or other applicable law.

Entered this 22nd day of September 2020.



Elizabeth M. Tanner, Esq.

Chair
Rhode Island COVID-19 Enforcement Task Force
RI Department of Health
Cannon Building, Rm. 401
Three Capitol Hill
Providence, RI 02908

A WRITTEN REQUEST FOR A HEARING MAY BE FILED IN WRITING WITHIN

TEN DAYS AFTER THIS NOTICE

EXHIBIT A



EXHIBIT B

