

OFFICE OF THE COUNTY EXECUTIVE

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SENT BY EMAIL

March 27, 2020

Dear Dr. Zucker:

As required by The County of Rockland wants to obtain local authority to enforce the mandatory telecommuting requirements found in Governor Cuomo's Executive Order 202.8.

The Governor's Executive Order No. 202.8 is predicated upon the authority granted by NYS Executive Law § 29-a. I would like to have local enforcement powers because there is some controversy over the enforceability of the order.

The local law enforcement authorities are relying upon a legal opinion from the New York State District Attorney's Association. My County Attorney has reviewed that analysis and agrees with it. As stated by the DA's Association, there is no criminal sanction for violations of Section 29-a. In this way it is unlike its counterpart NYS Executive Law § 24, which provides similar power to promulgate emergency orders to local officials.

Although Governor Cuomo has directed that NYS Public Health Law § 12 be used to enforce this particular provision of Executive Order No. 202.8, the use of section 12 also presents difficulties. That section restricts all ability to enforce to the NYS Commissioner of Health. The State Department of Health has not been enforcing Executive Order 202.8 in Rockland County and has not announced a program of enforcement. Moreover, I suspect that the State Department of Health, which I am sure has its hands full with respect to the current pandemic, may not have spare personnel to patrol and enforce this rule in Rockland County.

As indicated by the NYS District Attorney's Association, a rule without an enforcement mechanism is merely guidance, or a "helpful hint". At present, there is no enforcement mechanism for the mandatory telecommuting provisions of Executive Order 202.8.

As per the State Department of Health's *External Procedures for the Review and Approval of Local Emergency Orders in Response to COVID-19* of March 20, 2020, we provide the following,

Name and full contact information of the local chief executive:

Edwin J. Day, County Executive
11 New Hempstead Road
New City, NY 10956
845-638-5122
daye@co.rockland.ny.us

Draft written copy of the proposed executive order:

See attached

Method of enforcement:

As set forth in the order - Criminal penalty as set forth in NYS Executive Law § 24; and administratively enforced civil penalties as set forth in the order (at the limits permitted for NYS Public Health Law violations).

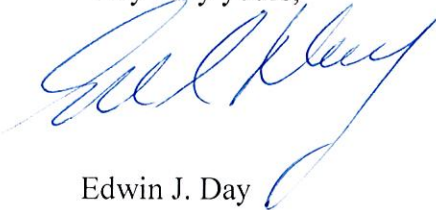
We have included a means of civil enforcement to ensure that there is a deterrent effect related to the order, but also to have the flexibility needed to abate the severity of charging violators criminally.

Date/Time the local government seeks to commence any actions contained in the emergency order

It is intended that, because this restriction should already be in place pursuant to Executive Order 202.8, it will be effective immediately.

I look forward to your response. If you have any questions or concerns, please feel free to contact me at any time.

Very truly yours,



Edwin J. Day
ROCKLAND COUNTY EXECUTIVE

Attachment

cc: Thomas E. Humbach, County Attorney

DRAFT

LOCAL STATE OF EMERGENCY ORDER NO. ___ OF 2020 (COVID-19 Pandemic)

On March 16, 2020, a State of Emergency was declared for the County of Rockland.

Pursuant to NYS Executive Law § 24, when a State of Emergency is in effect, the County Executive may promulgate local emergency orders to protect life and property or to bring the emergency situation under control. By law upon reconsideration of all the relevant facts and circumstances, such an order may be extended for additional periods not to exceed five days each during the pendency of the state of emergency

Since the outset of the COVID pandemic, Governor Cuomo has issued several orders concerning the assembly of groups in public and at places of business. In particular, under the authority granted to him by NYS Executive Law § 29-a, Governor Cuomo, in Executive Order No. 202.8 of 2020, mandating that all businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize and that each employer in what Governor Cuomo has deemed non-essential businesses, shall reduce the in-person workforce at any work locations by 100%. In addition, Governor Cuomo has mandated that any penalty for violations of this rule be enforced by civil penalties issued on NYS Health Law § 12.

As County Executive for Rockland County, I want to use County resources to aid the Governor's plan to slow the rate of spread of the COVID-19 virus in Rockland County. As such, with the approval of the New York State Department of Health, as required by Governor Cuomo's Executive Order No. 202.4 of 2020, I hereby enact this local emergency order.

Therefore, by the power vested in me as Chief Executive of Rockland County, it is hereby ordered:

Section 1. Local implementation of Governor Cuomo's restriction on non-essential businesses

- A. All businesses and not-for-profit entities in the state shall utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize. Each employer shall reduce the in-person workforce at any work locations by 100%. Any essential business or entity providing essential services or functions shall not be subject to the in-person restrictions. An entity providing essential services or functions whether to an essential business or a non-essential business, as defined by the Governor of the State of New York, shall not be subjected to the in-person work restriction, but may operate at the level necessary to provide such service or function.

Section 2. Enforcement

A. Criminal penalties

This local emergency order may be enforced in the manner provided for in NYS Executive Law § 24.

B. Civil Penalties

In addition to any other remedy available under the law, any person designated by the County Executive, may impose a fine for a violation of this local emergency order of up to \$2,000 per violation per day.

C. Collection of penalties

The County Executive, or any person authorized to issue civil penalties pursuant to this order, may request that the County Attorney collect the penalties in a court of law.

D. Appeal

1. When a penalty is assessed, the person aggrieved by the penalty may, within ten business days of receiving notice of the assessment of the penalty, submit to the person that issued the determination, such documents and information, sworn or unsworn, that the aggrieved person believes will serve to reverse or mitigate the determination. Such materials shall be the basis of an appeal of the prior determination. No enforcement of civil penalties shall take place during the appeal period.
2. The person that made the original determination shall review the materials submitted by the aggrieved person and affirm, reverse, or modify the original determination, in a written decision on the appeal.

Section 3. Effective Date.

This Local Emergency Order shall take effect immediately.

Section 4. Duration of Local Emergency Order

The Local Emergency Order shall remain in effect for five days unless sooner modified, extended, or revoked, and may be extended for additional periods not to exceed five days during the pendency of the local state of emergency.

Section 5. Common Name

This Order may be referred to as the "COVID-19 mandatory telecommuting order."

Dated: March __, 2020

Edwin J. Day
County Executive
County of Rockland

2020-01007