

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA,
AUTHORIZING ADMINISTRATIVE ENFORCEMENT OF COVID-19 VIRUS
RELATED PUBLIC HEALTH ORDERS
URGENCY ORDINANCE: 4/5 VOTE REQUIRED**

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

Section I. Findings. This urgency ordinance is adopted pursuant to California Government Code §§ 25123(d) and 25131 and the Emergency Services Act and to support orders and actions taken by the County Health Officer under authority granted in the Health & Safety Code and will take effect immediately upon its approval by at least four-fifths vote of the Board of Supervisors. The Board finds that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety, based upon the following:

- A. COVID-19 is a novel corona virus. Symptoms include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness and death. Beginning in or around February 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a public health emergency of international concern, the Centers for Disease Control and Prevention (CDC) determined the virus presents a serious public health threat, and the U.S. Department of Health and Human Services declared a nationwide Public Health Emergency.
- B. On March 4, 2020, the Governor of the State of California proclaimed a State of Emergency as a result of the threat of COVID-19 to the public health and the economy. The same day the Board of Supervisors adopted Resolution No. 20-0074 ratifying the Proclamation of a Local Emergency and Declaration of Local Health Emergency, finding conditions of extreme peril to the safety of persons and property had arisen within the County caused by the threat of COVID-19.
- C. On March 17, 2020, the County Health Officer ordered all individuals living in the County to shelter in their place of residence, except to provide or receive certain essential services, engage in certain essential activities, and work for essential businesses and governmental services (Order No. C-19-03). This health order was issued on evidence of increasing occurrence of COVID-19 within the community and the Bay Area, and the need to slow the rate of transmission to protect the most vulnerable and prevent the health care system from being overwhelmed.
- D. On March 19, 2020, the Governor issued Executive Order N-33-20 imposing a statewide shelter-in-place order requiring individuals to remain in their places of residence except as needed to maintain continuity of operations of critical infrastructure, access necessities such as food, prescriptions and healthcare, or engage in other authorized activities. This executive order remains in place with certain modifications to authorized activities and business operations.

- E. Between March 31 and June 30, 2020, the County Health Officer subsequently extended and adopted new orders to continue requirements that individuals shelter in place, to allow certain additional business and outdoor recreation activities, and to establish requirements for social distancing, hygiene, and use of face coverings to reduce the rate of transmission and protect the most vulnerable in the community. (Order No. C9-05 (March 31, 2020); Order No. C9-09 (May 1, 2020), Amendment 1 (May 7, 2020), Amendment 2 (May 14, 2020), Amendment 3 (May 22, 2020); Order No. C19-14 (June 5, 2020), Amendment 1 (June 12, 2020); Order No. C19-15 (June 18, 2020).)
- F. On July 1, 2020, to mitigate the increasing spread of COVID-19, the State Public Health Officer issued Guidance on Closure of Sections in Response to COVID-19, instructing counties that have been on the State’s “County Monitoring List” for three consecutive days or more to close indoor operations for certain sectors that promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult;
- G. On July 10, 11, and 12, 2020, Sonoma County recorded daily cases exceeding the limits set forth by the State Public Health Officer. State health officials directed closure of certain businesses and indoor operations for a period of not less than three weeks;
- H. On July 13, 2020, the Governor announced that certain businesses and indoor operations that promote the mixing of populations beyond households must close statewide, and additionally that Sonoma County must close additional indoor operations such as gyms, places of worship, offices for non-critical businesses, personal care services, and shopping malls.
- I. The County has continued to be out of compliance with several indicators set by the California Department of Public Health and has remained on the State’s “County Monitoring List.” The County’s average case rate has remained above 100 cases per 100,000 people (152 as of July 23 and 146 as of July 30), available intensive care unit beds have remained at only half of the State’s indicator metric (10.4% as of July 23 and 30), and hospitalizations have exceeded the State’s indicator metric of more than 20 on at least one day in the past two weeks. Noncompliance with these indicators signifies an urgent need to reinstitute and enforce restrictions and precautionary measures.
- J. Violations of Public Health Orders present an immediate threat to the public health and safety and increase the likelihood that the COVID-19 virus will spread throughout the County and overwhelm our health care systems, cause preventable illnesses and deaths, and inflict other significant harms, including economic and social effects, on our community.
- K. Immediate enforcement of Public Health Orders is necessary to ensure their consistent, effective implementation and to achieve their intended purposes, including controlling the spread of COVID-19 within the County.
- L. Existing strategies for enforcing Public Health Orders include education, misdemeanor criminal prosecution and civil litigation. While these strategies are

helpful and necessary, they have not been sufficient to limit infection spread. Additional enforcement strategies are necessary to incentivize public compliance with Public Health Orders.

- M. Administrative enforcement, including administrative abatement actions, civil penalties, and administrative citations, will provide additional and alternative mechanisms to efficiently and more immediately deter violations and enhance the effectiveness of Public Health Orders to combat the further spread of COVID-19 in the community.
- N. In some circumstances, a response to a Public Health Order violation demands a substantial penalty to provide an effective and significant deterrent. Civil penalties must be, where necessary and appropriate, significant enough to ensure they cannot be dismissed by the commercial or non-commercial violator as “the cost of doing business,” particularly when the impact to public health and safety is high.
- O. Government Code § 25132 makes it a misdemeanor to violate any county ordinance unless by ordinance it is made an infraction. Government Code § 53069.4 authorizes the Board of Supervisors to set administrative penalties for violation of any County ordinance. Government Code § 8634 authorizes the County to adopt orders and regulations that apply during a local emergency, including within incorporated areas (62 Ops. Cal. Atty. Gen. 701 (November 16, 1979)).

Section II. Purpose and Intent. The purpose and intent of this Ordinance is to provide the County, and cities and towns within the County, with administrative enforcement tools, which can be used when necessary in conjunction with education, outreach, and engagement, to assist in achieving compliance with Public Health Orders. It is further intended that the County, and cities and towns within the County, will coordinate enforcement efforts to achieve consistency among jurisdictions and efficient and effective enforcement of Public Health Orders.

Section III. Effective Period. This Ordinance will remain in effect until expiration or termination of the Proclamation of a Local Emergency, or until this Ordinance is modified or revoked by the Board of Supervisors, whichever is sooner.

Section IV. Definitions.

The terms used in this Ordinance have the meanings ascribed to them by Chapter 1 of the Sonoma County Code unless otherwise defined by this section:

- A. “County Health Officer” means the county health officer of the County designated by the Board of Supervisors pursuant to Health and Safety Code § 101000.
- B. “Commercial” means for the purpose of commercial gain or as part of a commercial enterprise.
- C. “Enforcing officer” means an officer, employee, or agent of the County, or a city or town within the County, that is authorized by law or designated by the County

Administrator or city or town manager of that jurisdiction to enforce violations, and may include, without limitation, a law enforcement officer, investigator, or code enforcement officer. When the enforcing officer is a County employee who is acting under a contract with a city or town at the time of the enforcement action, the enforcing officer is considered a city or town officer or agent for the purposes of this Ordinance.

- D. “Non-commercial” means all other violations that are not included within the definition of “commercial” within this section.
- E. “Proclamation of a Local Emergency” means the Proclamation of a Local Emergency for the County of Sonoma regarding COVID-19 issued by the Director of Emergency services on March 2, 2020, and ratified by the Board of Supervisors on March 4, 2020.
- F. “Public Health Order” means any current order related to COVID-19 issued by the County Public Health Officer, the State Public Health Officer, or a federal agency; any federal, state, or local guidance or directives issued by the federal, State, or County Public Health Officer containing mandatory, binding, or enforceable obligations applicable to the public; or any site- or industry-specific protocols required by federal, state, or local jurisdictions.
- G. “Violation” means an act, omission, or condition contrary to a provision of a Public Health Order.

Section V. Adoption of Public Health Orders as County Law.

All Public Health Orders issued during the local health emergency are adopted as the law of the county and deemed orders and regulations of the Board pursuant to Government Code § 8634, and are determined to be necessary for the protection of life and property during the local health emergency.

Section VI. Public Health Order Enforcement.

- A. Authority and Discretion to Enforce. An enforcing officer is authorized to enforce against a violation of a Public Health Order within the enforcing officer’s jurisdiction. Enforcement under this Ordinance is at the sole discretion of the enforcing officer for the county, city, or town in which the violation occurs.
- B. Public Nuisance. A violation of a Public Health Order is a public nuisance.
- C. Enforcement Provisions.
 - i. County Code. A violation is subject to enforcement under the provisions of Sonoma County Code Chapter 1, including Sections 1-7 (General enforcement), 1-7.1 (Civil penalties), 1-7.3 (Administrative procedure for abatement), and 1-7.6 (Administrative citations).
 - ii. City or Town Code. A city or town may elect for a violation to be subject to the city’s or town’s administrative procedures, rules, and remedies established for violations or public nuisances. Notice of the applicable procedures, rules, and remedies must be provided to the responsible party at the time of enforcement action.

- D. Immediate Danger to Health and Safety. Any violation represents an immediate danger to public health and safety under Government Code § 53069.4 and is subject to the immediate imposition of civil penalties.
- E. Civil Penalties.
- i. Non-Commercial Violations. A non-commercial violation is subject to a civil penalty of \$100 per violation.
 - ii. Commercial Violations. A commercial violation is subject to a civil penalty of \$1,000 for a first violation, \$5,000 for a second violation, and \$10,000 for each additional violation by the same responsible party.
 - iii. Imposition of Civil Penalties. Civil penalties may be imposed by an enforcing officer, a hearing officer, or the court.
 - iv. Enforcement Progression. An enforcing officer may first issue a warning to abate a violation prior to imposing a civil penalty. If a violation continues or resumes after imposing civil penalties, the enforcing officer may refer the case to law enforcement for criminal enforcement. It is in the enforcing officer's sole discretion to determine the most effective means of enforcement consistent with this Ordinance, and nothing in this subsection is intended to abridge that discretion.
- F. Litigation Authority. The Office of the County Counsel and each city or town attorneys' office is authorized to file a civil action on behalf of the respective city, town, or county to enjoin any violation and to obtain other appropriate relief needed to abate the violation, as well as to recover all associated costs, attorneys' fees, and any fines or penalties imposed. No further Board authority or permission to initiate litigation is required to enforce violations.
- G. Remedies Cumulative and Nonexclusive. All remedies contained in this Ordinance are cumulative and in addition to any other remedies available under local, state, or federal law, including any criminal, civil, or administrative enforcement. Election to employ the remedies set forth in this Ordinance does not preclude any other means of enforcement with respect to the same violation.
- H. City or Town Alternative Enforcement Regulations. A city or town within the County may adopt an ordinance, resolution, or directive that confirms, supplements, or supplants the enforcement provisions or mechanisms in this Ordinance.

Section VII. CEQA. Adoption of this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines § 15060(c)(2) as an activity that will not result in a direct or reasonably foreseeable indirect physical change in the environment and § 15060(c)(3) as an activity that is not a project as defined in § 15378, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section VIII. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not

affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section IX. Effective Date. This Ordinance is in full force and effect immediately upon its passage by a 4/5 vote. The full text of this Ordinance will be published once before the expiration of 15 days after its passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced and passed on the 6th day of August, 2020, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Rabbitt: Zane: Gore: Hopkins: Gorin:

Ayes:

Noes:

Absent:

Abstain:

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

Attest:

Sheryl Bratton,
Clerk of the Board of Supervisors