



Legislation Text

File #: 2020-0778, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): County Counsel

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Vote Requirement: 4/5th

Supervisory District(s): All

Title:

Urgency Ordinance - COVID-19 Public Health Officer Order Compliance and Administrative Citation and Civil Penalties

Recommended Action:

- A) Introduce, waive reading of, and adopt an Urgency Ordinance authorizing administrative enforcement of COVID-19 Public Health Orders, including administrative citations, administrative nuisance abatement, and civil penalties. (4/5 vote required);
 - B) Adopt a resolution adjusting FY 2020-21 departments' Recommended Budget as follows:
 - i. \$151,907 in Permit Sonoma to cover 1.0 FTE Extra-help Code Enforcement Inspector with equipment, and 1.0 FTE Extra-help Senior Office Assistant
 - ii. \$143,132 in the County Administrator's Office for professional services and paid advertising
- (4/5th Vote Required)

Executive Summary:

The COVID-19 pandemic is unprecedented in duration and scope. On July 13, 2020, Sonoma County was placed on a State County Watch List by the California Department of Public Health due to the recent increase in COVID-19 infections and hospitalizations. As a result, State orders closed a number of local business sectors. It is more important than ever to remain vigilant in stopping the spread of the virus to protect the capacity of the health care system, the health of our most vulnerable community members and our economy. Education and community engagement remain critical tools to mitigate COVID-19 spread.

Enhancement of these efforts through a targeted educational and compliance program is now key to support public health. To date, enforcement of the safety protocols and business closure requirements proscribed in State and local Health Officer Orders has been driven by complaints filed with local law enforcement. In Sonoma County, law enforcement agencies have responded by educating those parties involved and, as a last resort, issuing citations. The ordinance before the Board on an urgency basis, would provide for civil administrative citation authority and civil penalties as an adjunct to current efforts both to give law enforcement additional tools and to allow other staff resources to be devoted to addressing those violations of the health orders.

Discussion:

Since July 10, 2020, Sonoma County has recorded daily case counts of COVID-19 exceeding the indicators set forth by the State Public Health Officer. Although Sonoma County has completed three (3) weeks on the State monitoring list, the State has determined that the County will remain on the list until the State Health Officer determines otherwise based on public health conditions. Sonoma County is out of compliance with State COVID-19 mitigation indicators as of August 3, 2020 on several indicators, including:

- COVID-19 hospitalizations are still above State threshold with more than 20 hospitalizations occurring in one single day over the past two weeks;
- Intensive Care Unit (ICU) bed availability is at 12.2% - below the State's 20% requirement.

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 that Sonoma County must close indoor operations such as gyms, places of worship, offices for non-critical businesses, personal care services, and malls.

Prior to the State orders, Sonoma County's COVID-19 infection rates doubled in a matter of weeks and hospitalizations and deaths - currently at 39-- have tragically continued to climb. These statistics reveal a need to enhance education and outreach efforts as well as enforcement to incentivize compliance to protect community health and local businesses from additional closures.

Compliance efforts to date:

Since the inception of the original County Health Officer Shelter in Place Order in March 2020, enforcement of the provisions in the Order has primarily rested with city and county law enforcement. Law Enforcement response occurs in response to observed violations and/or upon receipt of a specific complaint. Education and voluntary compliance has been the predominant strategy. In some instances, Law Enforcement has issued criminal citations where voluntary compliance was not achieved. Those citations are referred to the District Attorney's Office for possible prosecution. Other enforcement efforts have included County Counsel issuance of Cease and Desist letters to commercial violators, negotiated closures, and one civil action.

Complaints of possible violations come from many sources, including emails to the County Health Department, telephone calls to 211, and direct reports to law enforcement. Enforcement of the order has been complicated, in part, due to the rapid change in requirements of both State and County orders.

Additionally, the State has recently taken a more active role with an Enforcement Task Force consisting of Alcoholic Beverage Control (ABC), California Division of Occupational Safety and Health (Cal/OSHA) and other State licensing entities.

The violations most complained of are commercial establishments operating in violation of the order. With the dimming of the switch by the State Health Orders to reclose certain industries, it is anticipated that enforcement needs will increase. Non-household gatherings, social distancing, and mask order violations have also increased and have led to increased transmission rates.

COVID-19 Public Health Officer Order Education and Compliance Program:

Per direction provided by the Board on July 23, 2020, staff is developing a Compliance Program which consists of several elements:

1. Enhanced Education and Outreach

A comprehensive education and outreach campaign will play a pivotal role in the success of a COVID-19 Education, Compliance and Administrative Citation and Civil Penalty program. Based on the direction provided by the Board on July 23, 2020, the County's current COVID-19 "Safe Sonoma" communications campaign will be amended to include the following:

- A multi-platform marketing campaign (print, radio, and digital) to promote the centralized Compliance Hotline and to educate the public about the civil fines for noncompliance by individuals and by commercial operations including restaurants, stores, and other businesses.
- Placement of radio and TV public service announcements in Spanish and English promoting the importance of wearing facial coverings, avoiding large gatherings, and practicing safe social distancing when outside the home.
- Bilingual (English and Spanish) social media posts to promote the Hotline and details of the Citation and Civil Penalty ordinance. These posts will also promote information available on the County website SoCoEmergency.org and such county-supported resources as the Warm Line for Emotional and Mental Health Support (707-565-2652).
- Bilingual infographics that will be made available to cities, businesses, and other community partners to distribute and/or post for public view.
- Videos to be shared on social media and the county's SoCoemergency.org concerning the civil compliance program. Staff will prioritize contracting with local vendors to create and print campaign materials such as videos and flyers.

Based on Board direction, the Strategic Communications team also will partner with Permit Sonoma, Office of Equity, the Economic Development Board and key Community-Based Organizations to engage in an interactive public outreach campaign to the Latinx community in particular. The campaign will include the following:

- Distribution of door hangars and flyers in Spanish and English.
- Tabling at grocery stores, community centers, and other locations to develop in-person community connections and distribute information concerning safe practices and the importance of compliance with county health directives. Other items to be disseminated (depending on availability) include facial coverings, information about county services such as the Warm Line as well as information about local business services/coupons.

- The distribution of these materials will begin in zip codes that have experienced the highest increases in COVID-19 positive cases in recent weeks. The county will look to contract/partner with Community-Based Organizations, particularly those within the Latinx community, to ensure implementation of a culturally-responsive community engagement effort.

Based on Board direction, other projected costs associated with the marketing and outreach campaign have been modified to include as follows:

- Contracting with Community-Based Organizations for education/public outreach campaign: \$35,000.
- Production and printing of materials for education campaign: \$5,000
- Print and digital marketing campaign for eight weeks beginning Sunday, Aug. 9: \$55,000
- Production, printing and distribution of door hangers: \$5,000
- Social Media advertising (Facebook and Instagram): \$3,630
- Audio advertising on streaming services: \$4,609
- YouTube and video streaming services: \$10,893
- Graphic development for social media: \$2,100
- Radio Commercials (English and Spanish) for eight-week campaign: \$18,900.
- Latinx supermarket videos: \$5,000

TOTAL: \$143,132

This campaign reflects a \$16,000 increase from the proposal presented to the Board on July 23rd. Based on Board feedback, the estimate presented today includes funding for local service providers, including Latinx community based organizations, to distribute materials including door hangers to neighborhoods with the highest case rates and educational materials at community hubs such as grocery stores. This will replace funding that was previously allocated for additional staff members who would have conducted this work. The cost increase is due to additional material production for community distribution and increased paid advertising. The additional advertising includes eight weeks of advertising on streaming services such as Hulu, YouTube, Spotify, and Pandora - channels primarily used by the demographics with the highest case rates.

2. Compliance Hotline

The County will staff a centralized COVID-19 Compliance Hotline and corresponding email account to foster enhanced multi-jurisdictional coordination and provide the public with a streamlined resource for reporting suspected significant violations of Health Officer Orders. Hotline call-takers will triage the calls and forward to the applicable local agencies for follow-up.

There are three (3) methods to report information to COVID-19 Public Health Officer Order Compliance

Hotline:

- Phone: 1-833-SAFE707
- Email: safe707@sonoma-county.org <<mailto:safe707@sonoma-county.org>>
- SoCo Report It: <https://sonomacounty.ca.gov/Services/SoCo-Report-It/Submit-a-Service-Request/>>

3. COVID Compliance Program Staffing Hotline and Inspection Team

To implement the Compliance Program, additional staff resources are needed to operate the complaint hotline as well as to triage and investigate complaints that occur in the unincorporated county. Permit Sonoma staff will serve as the lead point of contact and program administrator. Permit Sonoma staff will receive and triage all complaints received through the COVID Compliance Complaint Hotline and email account as well as the *SoCo Report It* system. Complaints for locations that fall within incorporated jurisdictions will be provided to the cities for their consideration and potential action. Complaints that lie within the unincorporated County area will be assigned to designated enforcement staff including District Attorney Investigators, Park Rangers and Permit Sonoma Code Enforcement Inspectors. In addition, law enforcement personnel will be able to issue administrative tickets under the program. The Senior Office Assistant, along with administrative staff from the District Attorney's Office, will receive and process compliance complaints, administer records management, and provide administrative support to the Code Enforcement Inspector and District Attorney Investigators.

Each agency will strive to first educate violators and when necessary, issue administrative penalties to those who refuse to follow the State and local health orders. County staff will provide centralized training on the current health orders and legal issues to County agencies and cities as well as facilitate the sharing of best practices.

To support the immediate implementation of the Compliance Program, the District Attorney will make available several investigators and administrative staff while Courts activity remains curtailed. County Staff seek approval for a budget adjustment of \$151,907 to hire one (1) extra-help Code Enforcement Inspector including equipment and one (1) extra-help Senior Office Assistant to provide program services through June 30, 2021. Should the District Attorney's Office need to redirect the investigators and staff to criminal matters as a result of increased court activities, staff will come back to the Board for additional resources if needed.

4. Adoption of an Administrative Citation and Civil Penalty Ordinance (Urgency)

The coronavirus rate of spread is increasing in Sonoma County along with the number of deaths due to the virus. The Board has asked that educational efforts be increased and that additional tools be created to protect public health in addition to the existing misdemeanor criminal citation process available only to law enforcement to enforce Health Officer Orders. Based on this direction, County Counsel, in consultation with the City Attorneys in the County, has drafted a Civil Enforcement Urgency Ordinance (attached) that allows County staff to use existing administrative enforcement mechanisms to enforce a violation of any local or state health order, mandate, or site-specific protocol. The Ordinance supplements Chapter 1 of the County Code to provide several options for relief including administrative fines, abatement prosecution, and judicial injunctive action. Repeat offenders may be

referred to law enforcement for criminal prosecution. The Ordinance and its implementation steps allows for a coordinated approach between the County and all cities.

Under the ordinance, every violation of a Public Health Order is a public nuisance. Civil penalties for a verified violation may be imposed by an enforcing officer. Enforcing officer is defined as an officer, employee, or agent of the County, city, or town, that is responsible for enforcing violations, and may include without limitation, a law enforcement officer, investigator, code enforcement officer, or a hearing officer. At all times the enforcing officer has the discretion to first issue a warning to abate a violation prior to imposing any civil penalty. It is in the enforcing officer's discretion to determine the most effective means of enforcement consistent with the intent and spirit of the Ordinance to protect public health through education and then penalties if necessary.

Following robust discussions with the various enforcement groups, the Ordinance proposes a flat civil penalty for violations of any COVID-19 related public health order involving commercial activity or personal action as follows:

A non-commercial violation is subject to a civil penalty of \$100 per each violation. There is no sliding penalty scale and no enhancement of the penalty amount for a second or additional violation by the same violator. Staff is recommending this set penalty amount for these "personal" violations to help promote uniformity of application of the Ordinance. In addition, the single flat amount creates administrative efficiencies due to the challenge of tracking individual violators issued a previous citation that could become the basis for a graduated fine based on the number of violations. Examples of non-commercial violations include: an individual's violation of the masking, social distancing and/or hygiene requirements under the local or state's health order that exposes the public to virus transmission.

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. Commercial means for the purpose of commercial gain or as part of a commercial enterprise. Staff is recommending this "enhancement" type of step-up penalty to achieve greater uniformity in approach between enforcing officers and jurisdictions. This approach is favored by law enforcement and other enforcing agencies. Examples of commercial violations would include : a business hosting or operating a violating event, failure to close a specific commercial enterprise that has been ordered closed under the local or state's health order, a business's refusal to post and follow site specific protection plans, or knowingly allowing COVID-19 positive employees to continue to work at the business site.

Pursuant to your Board's guidance, the civil penalties are intended to be high enough to deter violations, while remaining proportionate to the activity. If the same violation continues or resumes after imposing a civil penalty, the enforcing officer has discretion to refer the matter to the Sheriff's Office or other law enforcement for possible criminal enforcement or civil injunctive action.

The urgency ordinance would take effect upon passage and be effective throughout the County, including both incorporated and unincorporated areas. This would enable enforcing officers in incorporated cities and towns to enforce public health order violations under the same provisions without being mandated to do so, and with the option of adopting their own locally tailored ordinance. Lastly, the proposed ordinance would authorize the County Counsel's Office to file a civil action to enjoin a violation of a public health order, without first seeking authority from the Board, so that staff can move quickly to address the most egregious violations. The ordinance would remain in effect for the duration of the local emergency unless modified or revoked by the Board.

Prior Board Actions:

On July 23, 2020, the Board received staff reports on the increasing threat posed by the COVID-19 virus and efforts to date to support community compliance with the related orders issued by the Public Health Officer.

FISCAL SUMMARY

Expenditures	FY 19-20 Adopted	FY20-21 Projected	FY 21-22 Projected
Budgeted Expenses			
Additional Appropriation Requested		\$295,039	

Total Expenditures		\$295,039	
Funding Sources			
General Fund/WA GF			
State/Federal		\$147,520	
Fees/Other			
Use of Fund Balance			
Contingencies		\$147,519	
Total Sources		\$295,039	

Narrative Explanation of Fiscal Impacts:

To support public information and Compliance Program costs, \$295,039 upon adoption through June 30, 2021 would be funded by expected CARES Act state pass-through funds and General Fund contingencies. In addition, District Attorney Office costs associated with redirection of staff supporting the program will be tracked for CARES and/or FEMA reimbursement eligibility.

Adoption of the ordinance will allow payment of citation fines to a single collection entity, likely the County of Sonoma. Fine revenues will be used to offset the costs of enforcement, including costs related to any appeals. The ordinance allows for recovery of appeals costs by the County in cases where the County, City or Town prevails. Conversely, the ordinance requires all parties to bear their own attorney costs and fees, where applicable, regardless of outcome.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)
Code Enforcement Officer (E/H)	\$6,936.66 - \$7,283.25	1	0
Senior Office Assistant (E/H)	\$4,110.75 - \$4,315.91	1	0

Narrative Explanation of Staffing Impacts (If Required):

Proposed staff will be extra-help through the end of the fiscal year, therefore a position allocation resolution is not needed.

Attachments:

Attachment 1: Urgency Ordinance Adopting COVID-19 Public Health Officer Order Compliance Administrative Citation and Civil Penalties

Attachment 2: Budget Adjustment Resolution

Attachment 3: PowerPoint Presentation

Related Items "On File" with the Clerk of the Board:

None.

