

ORDINANCE NO. 20 - _____

An urgency ordinance of the County of San Bernardino declaring violations of orders of the State or County Health Officer related to the COVID-19 pandemic to be unlawful and a public nuisance, adding Chapter 7 to Division 1 of Title 1, of the San Bernardino County Code, and authorizing the issuance of administrative citations.

WHEREAS, California Government Code section 53069.4 provides authority to the San Bernardino County Board of Supervisors to set administrative penalties for violation of any ordinance enacted by the San Bernardino County Board of Supervisors; and

WHEREAS, establishing administrative penalties as a mechanism to enforce the orders of the Public Health Officer related to the COVID-19 pandemic on an urgency basis is necessary for such remedy to be effective and useful; and

WHEREAS, the administrative penalties will provide an alternative enforcement mechanism that will augment the County's ability to combat the negative effects of the COVID-19 pandemic; and

WHEREAS, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction;

NOW, THEREFORE, the Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. Findings and Purpose.

The Board of Supervisors of the County of San Bernardino finds and declares all of the following:

A. The above recitals are true and correct, and are incorporated herein.

B. At a national, state, and local level, the COVID-19 pandemic is a serious public health crisis. As of July 17, 2020, over 138,000 have died, millions are infected or recovering from infection, and the crisis is worsening.

1 C. On March 4, 2020, Governor Newsom issued a Proclamation of a State
2 of Emergency in the State of California related to the COVID-19 pandemic. On March
3 10, 2020, the San Bernardino County Board of Supervisors proclaimed the existence of
4 a Local Health Emergency based on an imminent and proximate threat to public health
5 from the introduction of COVID-19 in San Bernardino County.

6 D. In light of the COVID-19 pandemic and Governor Newsom's state of
7 emergency proclamation, on March 12, 2020, the Governor issued Executive Order N-
8 25-20 ordering residents to heed any order by local public health officials, "including
9 but not limited to the imposition of social distancing measures, to control the spread of
10 COVID-19." A violation of the Governor's Executive Order N-25-20 is a misdemeanor
11 pursuant to California Government Code section 8665. Further a violation of the
12 County Health Officer's orders adopted to control the spread of COVID-19 is a violation
13 of the Governor's Executive Order N-25-20.

14 E. On June 29, 2020, the California Department of Public Health issued
15 "Guidance For The Use of Face Coverings" updating existing guidance for the use of
16 cloth face coverings by the general public when outside the home.

17 F. On July 13, 2020, the California Department of Public Health issued a
18 Statewide Public Health Order and Guidance on Closure of Sectors in Response to
19 COVID-19, which explain that the community spread of infection is of increasing
20 concern across the state, and continues to expand in counties on the County
21 Monitoring List. The State's justification states the number of hospitalized patients with
22 COVID-19 has increased between 50-100% in California since June 12, 2020, and the
23 number of counties with case rates over 100 per 100,000 residents has gone from
24 three to 31 counties, confirming statewide increased transmission of COVID-19.
25 Community spread increases the likelihood of expanded transmission of COVID-19 in
26 congregate settings such as nursing homes, homeless shelters, jails and prisons, and
27 among individuals at high risk of serious outcomes from COVID-19, including the
28 elderly and those with underlying health conditions. Infection of vulnerable populations

1 can be catastrophic, both in terms of high rates of morbidity and mortality, as well as
2 through the high demand such infections would place on the hospital delivery system.
3 This rise in infections and community spread demonstrates the necessity for more
4 effective enforcement of public health orders to prevent further spread of COVID-19.

5 G. Health and Safety Code sections 120275 and 120295 make it a
6 misdemeanor to violate certain sections of the Health and Safety Code, including those
7 requiring individuals to comply with health orders to facilitate isolation. Government
8 Code section 25132 makes it a misdemeanor to violate any county ordinance unless
9 by ordinance it is made an infraction. Finally, Government Code section 53069.4
10 authorizes the Board of Supervisors to set administrative penalties for violation of any
11 county ordinance, and Government Code section 8634 authorizes the County to adopt
12 orders and regulations (which this Ordinance and all Public Health Orders relative to
13 the COVID-19 pandemic shall constitute) that apply during a local emergency,
14 including within incorporated areas.

15 H. The purpose of this urgency ordinance is to address the small, but
16 increasing number of businesses and activities that are being conducted partly or
17 entirely in a manner that disregards State or local Public Health Orders adopted in
18 response to COVID-19 pandemic. These violations present a serious and immediate
19 risk to public health and safety, contributing greatly to the likelihood of a public health
20 crisis that will cause many preventable illnesses and deaths. These violations also
21 jeopardize local social and economic wellbeing, increasing the potential for renewed
22 curtailment of business operations, school closures, and activity restrictions. This
23 urgency ordinance provides a framework for addressing such violations by establishing
24 an administrative enforcement strategy to complement other existing means of
25 enforcing Public Health Orders.

26 I. In order to address the immediate threat to the public peace, health,
27 safety and welfare, this ordinance helps to ensure that the orders of the Public Health
28 Officer, issued for the purpose of controlling the spread of the COVID-19 virus, are

1 followed by providing an administrative enforcement mechanism as an alternative to
2 the mechanisms already available.

3 J. Issuance of administrative penalties provides a significant deterrent to
4 violating the Public Health Officer's orders respecting COVID-19, while helping to
5 promote social distancing through a process designed to minimize person-to-person
6 contact.

7 K. This alternative enforcement mechanism is also designed to provide
8 some relief to law enforcement, to enable additional County staff to assist with
9 enforcing the Public Health Officer's orders, and to enhance the County's ability to
10 control the spread of COVID-19.

11 L. Pursuant to Section 53069.4 of the California Government Code, the
12 Board of Supervisors elects to create an administrative penalty and hearing process for
13 the purpose of enforcing the orders of the Public Health Officer that are issued for the
14 purpose of controlling the spread of the COVID-19 virus.

15 M. The potential damage caused by a violation of an order of the Public
16 Health Officer demands a substantial penalty so as to provide an effective and
17 significant deterrent to violating such orders.

18 N. For violations of the orders of the Public Health Officer involving activities
19 designed to make a profit, the administrative penalties must be extremely substantial
20 so as not to be relegated as "the cost of doing business".

21 O. Violations of Public Health Orders adopted by State or local Public Health
22 Officers to control the spread of COVID-19 present an immediate threat to the public
23 health and safety. Consistent with Government Code section 25123(d), the Board
24 finds that such violations increase the likelihood that the COVID-19 virus will spread
25 throughout the County and overwhelm our health care systems, cause preventable
26 illnesses and deaths, and inflict other significant harms, including economic and social
27 effects, on our community.

28

1 SECTION 2. Citation. This ordinance may be referred to as the “COVID-19
2 Administrative Penalties Ordinance.”

3
4 SECTION 3. A new Chapter 7 of Title 1, Division 1 (Enforcement of COVID-19
5 Related Public Health Orders) is hereby added to the San Bernardino County Code to
6 read in full as follows:

7
8 **CHAPTER 7: ENFORCEMENT OF COVID-19 RELATED PUBLIC HEALTH**
9 **ORDERS**

10 **Section:**

11 **11.0701 Findings and Purpose.**

12 **11.0702 Definitions.**

13 **11.0703 Adoption of Public Health Orders as County Law.**

14 **11.0704 Violation and Enforcement.**

15 **11.0705 Issuance of Administrative Citations and Penalty Amounts.**

16 **11.0706 Form and Service of Citations.**

17 **11.0707 Appeal of Administrative Citations.**

18
19 **11.0701 Findings and Purpose.**

20 (a) In order to address the immediate threat to the public peace, health,
21 safety and welfare resulting from the COVID-19 pandemic, this ordinance helps to
22 ensure that the orders of the Public Health Officer related to the COVID-19 pandemic,
23 issued pursuant to authority granted in the Health & Safety Code to control the spread
24 of an infectious or communicable disease, are followed by providing an administrative
25 enforcement mechanism as an alternative to the mechanisms otherwise available by
26 law.

27 (b) Issuance of administrative penalties provides a significant deterrent to
28 violating the Public Health Orders, and will help promote public health measures and

1 implement guidance issued by the State or County Public Health Officers.

2 (c) This alternative enforcement mechanism is also designed to provide
3 some relief to law enforcement, to enable additional County staff to assist with
4 enforcing the Public Health Orders, and to enhance the County's ability to achieve the
5 public health purposes supporting the Public Health Orders.

6 (d) Pursuant to Section 53069.4 of the California Government Code, the
7 Board elects to create an administrative penalty and hearing process for the purpose of
8 enforcing Public Health Orders.

9 (e) The potential harm or damage caused by the violation of Public Health
10 Orders demands a substantial penalty so as to provide an effective and significant
11 deterrent to violating such orders.

12 (f) For violations of the Public Health Orders involving activities designed to
13 make a profit, the administrative penalties must be substantial to ensure businesses do
14 not consider the fines as "the cost of doing business."

15 **11.0702 Definitions.** The following definitions shall apply to this chapter:

16 (a) "Board" means the San Bernardino County Board of Supervisors.

17 (b) "Citation" or "Administrative Citation" means an administrative citation
18 issued pursuant to this ordinance under the authority of Government Code section
19 53069.4.

20 (c) "County" means the County of San Bernardino.

21 (d) "Days" means calendar days.

22 (e) "Enforcement Officer" is defined as: (1) those County employees or
23 agents as specified in County Code Section 11.0208(b), and; (2) police officers, code
24 enforcement officers, and any other employees designated by a city or town.

25 (f) "Public Health Order(s)" means any order related to the COVID-19
26 pandemic issued by the County Public Health Officer under authority granted by state
27 law, any order related to the COVID-19 pandemic issued by the State Public Health
28 Officer, any state guidance and directives issued by the State Public Health Officer or

1 California Department of Public Health related to the COVID-19 pandemic containing
2 mandatory, binding, or enforceable obligations applicable to the public, or any site- or
3 industry-specific protocols completed as required by state and local requirements.

4 (g) "Responsible Party" means an individual or legal entity, or the agent or
5 legal guardian of such individual or entity, whose action or failure to act violated a
6 Public Health Order, including, without limitation, any person or entity that causes,
7 maintains, permits, or allows a violation of this chapter, any person or entity that owns,
8 possesses, or controls any parcel of real property upon which a violation of this chapter
9 is maintained, or any person or entity that owns, possesses, operates, manages, or
10 controls any business within the county that is responsible for causing or maintaining a
11 violation of this chapter.

12 **11.0703 Adoption of Public Health Orders as County Law.** All Public Health
13 Orders issued during the declared local health emergency related to COVID-19 are
14 hereby adopted as the law of the county and shall apply to both incorporated cities and
15 towns and unincorporated areas of the County. All Public Health Orders related to
16 COVID-19 pandemic, issued during the COVID-19 local health emergency shall be
17 deemed orders and regulations of the Board, pursuant to Government Code section
18 8634, and are determined to be necessary for the protection of life and property during
19 the COVID-19 local health emergency.

20 **11.0704 Violation and Enforcement.**

21 (a) Any violation of a Public Health Order in the incorporated or
22 unincorporated areas of the County shall be a misdemeanor, shall constitute a public
23 nuisance, and shall represent an immediate danger to public health and safety
24 pursuant to Government Code section 53069.4. Nothing in this chapter shall be
25 interpreted to make any conduct that does not violate a Public Health Order a violation
26 of this chapter.

27 (b) This chapter may be enforced by an Enforcement Officer. Use of the
28 enforcement procedures set forth in this chapter shall be at the sole discretion of the

1 County and its officers, agents, and employees. For purposes of enforcement in the
2 unincorporated area, the Chief Executive Officer shall provide specific direction to
3 Enforcement Officers regarding all aspects of the use of this enforcement process.
4 The enforcement procedures set forth in this chapter are supplemental to all other
5 enforcement procedures provided by local, state, or federal law, including any criminal,
6 civil, or administrative enforcement procedures. Election to employ the procedures set
7 forth in this chapter shall not be exclusive of any other enforcement procedures with
8 respect to the same violation(s).

9 **11.0705 Issuance of Administrative Citations and Penalty Amounts.**

10 (a) Any person who violates a Public Health Order may be issued a citation
11 by an Enforcement Officer. Each and every day a violation of a Public Health Order
12 exists constitutes a separate and distinct offense.

13 (b) When an Enforcement Officer discovers or otherwise determines that a
14 violation of a Public Health Order has occurred, such Enforcement Officer may issue a
15 Notice of Violation to the Responsible Party that provides up to two (2) days to abate
16 the violation. If the Responsible Party receiving the Notice of Violation does not abate
17 the violation in the time provided by the Notice of Violation, the Enforcement Officer
18 may then issue a Citation. This section does not prevent the Enforcement Officer from
19 issuing a Citation without previously issuing a Notice of Violation where, in the
20 Enforcement Officer's sole discretion, the circumstances of the violation make the
21 Notice of Violation unnecessary or ineffective.

22 (c) An administrative penalty for violation of this chapter may be assessed by
23 means of a Citation issued by an Enforcement Officer and shall be payable directly to
24 local agency whose Enforcement Officer issued the Citation. Administrative penalties
25 imposed by means of Citation shall be collected in accordance with the procedures
26 specified in this chapter.

27 (d) The amount of the penalty imposed pursuant to this chapter shall be as
28 follows:

1 (1) For violations involving non-commercial activity, the penalty shall
2 not exceed \$500.00 per violation and in no case shall be less than \$25.00.

3 (2) For violations involving commercial activity, the penalty shall not
4 exceed \$5,000.00 per violation and in no case shall be less than \$200.00.

5 (e) If a violation of this chapter is not corrected, additional Citations may be
6 issued for the same violation.

7 (f) The administrative penalty becomes effective and due immediately upon
8 issuance of the Citation. The Responsible Party has thirty (30) days from the date of
9 service of the Citation to pay the penalty in the absence of a timely submitted request
10 for hearing to appeal the citation, pursuant to Section 11.0707, below.

11 (g) The County may pursue any remedy authorized by law to collect
12 administrative penalties that are not timely paid, including but not limited to a civil
13 action for collection of civil penalties.

14 **11.0706 Form and Service of Citations.**

15 (a) A Citation, or a Notice of Violation issued pursuant to Section 11.0705,
16 above, shall contain the following information:

17 (1) The name and address of the Responsible Party;

18 (2) The date and address or description of the location where the
19 violation occurred;

20 (3) Reference to the Public Health Order that was violated, including
21 reference to the paragraph number containing the provision(s) violated;

22 (4) The amount of the penalty due (or for Notices of Violation, to
23 become due if the Responsible Party fails to abate the violation);

24 (5) Identification of appeal rights, including a copy of the Request for
25 Hearing form;

26 (6) The signature of the Enforcement Officer issuing the Citation; and

27 (7) The date of the issuance of the Citation.

28 (b) A Citation shall be served on the Responsible Party in one or more of the

1 following ways:

2 (1) By personal service, provided the personal service can be
3 accomplished without violating Public Health Orders. Such service is effective if the
4 Citation documents are set down near the Responsible Party and orally identified in a
5 manner that can be heard by the Responsible Party.

6 (2) By posting and mailing a copy of the Citation, if the violation
7 occurred on real property known to the Enforcement Officer to be owned, possessed,
8 or controlled by the Responsible Party. The Citation shall be physically posted on the
9 real property in a position that is likely to catch the attention of a person entering the
10 property, including, without limitation, a front door, a gate, or a mailbox. The Citation
11 shall also be mailed by overnight mail, postage prepaid, to the address at which the
12 Citation was posted, or to any other mailing address of the Responsible Party that is
13 known to the Enforcement Officer.

14 (3) By mailing a copy of the Citation to a mailing address of the
15 Responsible Party that is known to the Enforcement Officer, if personal service or
16 posting is impracticable.

17 (4) By emailing a copy of the Citation to an email address reasonably
18 likely to be accessible to the Responsible Party, if personal service or posting is
19 impracticable.

20 (c) Service shall be complete at the time of personal service or emailing, one
21 (1) day after posting and mailing the Citation, or five (5) days after service by mail
22 alone. The failure of any person to receive the Citation shall not affect the validity of
23 the Citation or of any other code enforcement steps or proceedings taken pursuant to
24 this chapter or other provision of the code.

25 **11.0707 Appeal of Citations.** Except as set forth herein, the procedures set forth
26 in chapter 11.0208(f)(5) of the San Bernardino County Code shall apply to an appeal of
27 a Citation issued pursuant to this chapter.

28

1 SECTION 4. Severability. It is hereby declared to be the intention of the Board
2 of Supervisors that the sections, paragraphs, sentences, clauses and phrases of this
3 Ordinance are severable, and if any phrase, clause, section, paragraph or sentence of
4 this Ordinance shall be declared unconstitutional or invalid by a court of competent
5 jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining
6 phrases, clauses, sentences, paragraphs and sections of this Ordinance.

7
8 SECTION 5. Effective Date. This ordinance shall take effect immediately as an
9 urgency ordinance, and shall be applicable as of _____, 2020, the date of
10 approval of this ordinance. This is based on the Board of Supervisors finding that this
11 ordinance is adopted in compliance with Government Code Section 25123, that it is
12 necessary for the protection of the public peace, health, safety and welfare.

13
14 SECTION 6. CEQA Compliance. The Board of Supervisors finds that adoption
15 of this Ordinance is not subject to the provisions of the California Environmental Quality
16 Act (CEQA) pursuant to CEQA Guidelines section 15060(c)(2), as an activity which will
17 not result in a direct or reasonably foreseeable indirect physical change in the
18 environment.

19
20 _____
CURT HAGMAN, Chairman
Board of Supervisors

21
22 SIGNED AND CERTIFIED THAT A COPY
23 OF THIS DOCUMENT HAS BEEN DELIVERED
24 TO THE CHAIRMAN OF THE BOARD

25 LYNNA MONELL, Clerk of the
Board of Supervisors

26
27 _____
28

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss.
3)

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of the County of San
5 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
6 Supervisors of said County and State, held on the _____ day of _____, 2020,
7 at which meeting were present Supervisors: _____

8 _____,
9 and the Clerk, the foregoing ordinance was passed and adopted by the following vote,
10 to wit:

11 AYES: SUPERVISORS:

12 NOES: SUPERVISORS:

13 ABSENT: SUPERVISORS:

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
15 seal of the Board of Supervisors this ____ day of _____, 2020.

16 LYNNA MONELL, Clerk of the
17 Board of Supervisors of the
18 County of San Bernardino,
19 State of California

20 _____
21 Deputy

22 Approved as to Form:

23 MICHELLE D. BLAKEMORE
24 County Counsel

25 By: _____
26 JOLENA E. GRIDER
27 Deputy County Counsel

28 Date: _____