



City of Sonoma

# Agenda Item Summary

Meeting: City Council - Aug 17 2020

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**Department**

Administration

**Staff Contact**

Cathy Capriola, City Manager  
John A. Abaci, Asst City Attorney  
Robert Smith, Code Enforcement Officer/City  
Prosecutor

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**Agenda Item Title**

Discussion, Consideration and Possible Action to 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

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**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.

**Sonoma County Enforcement Enhancements & Citation Ordinance**

To date, enforcement of the safety protocols and business closure requirements prescribed in State and local Health Officer Orders has been driven by complaints filed with local law enforcement and in some cities, code enforcement staff. In Sonoma County and its cities, staff have responded by educating those parties involved and, as a last resort, the option of issuing a misdemeanor citation. The misdemeanor option was seen as a larger hammer than wanted or necessary by some, and other enforcement tools appeared to be needed.

The Board of Supervisors asked County staff to increase educational efforts and bring additional tools to protect public health. Based on this direction, County Counsel, in consultation with the City Attorneys in the County, drafted a Civil Enforcement Urgency Ordinance. On August 6, 2020, the Sonoma County Board of Supervisors approved a targeted educational and compliance program to support public health which includes approval of an urgency ordinance authorizing administrative enforcement of COVID-19 virus public health orders, additional staff, and marketing program. In addition, the County put a compliance "hotline" in place. The compliance line (1-833-SAFE707) and email (Safe707@sonoma-county.org) are already up and running, M-F (after hours, weekends and emergencies will continue to be directed to law enforcement). (A copy of the County's staff report from that meeting is attached which provides additional background on the County's program and efforts.)

The County ordinance provides 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. Upon further clarification, the County has stated that it will not send Code Enforcement Officers from County staff into any unincorporated areas. While the County ordinance applies to all

citizens regardless of where they live in the county, each city will be responsible for its own enforcement. At this time, Santa Rosa and Cotati are moving forward with a similar ordinance.

City of Sonoma Urgency Ordinance

The City Attorney’s Office has reviewed the County’s ordinance. While the County ordinance was written broadly to try to allow flexibility for cities to utilize the ordinance, legal staff believes that the City Council would need to adopt its own urgency ordinance in order to apply the City’s administrative penalty process in its Municipal Code, as opposed to just utilizing the authority provided under the County’s ordinance. Staff has prepared a City of Sonoma Urgency Ordinance that authorizes administrative enforcement of COVID-19 virus related public health orders by enabling the application of administrative enforcement procedures of the Sonoma Municipal Code to violations of COVID-19 virus related public health orders occurring within city limits. A 4/5 vote of the Council will be required to approve the Urgency Ordinance.

Below is a chart outlining the proposed penalties/fines through the administrative citation process. Staff recommends that the fine amounts be the same as what has been approved by Sonoma County. These are similar to amounts in other neighboring counties.

<b>Proposed Civil Penalties via Administrative Citations</b>	
<i>Non-Commercial / Individuals</i>	<i>Commercial / Business</i>
\$100 per violation	1X = \$1,000 2X = \$5,000 3X = \$10,000

City staff (Police and Code Enforcement) have focused on education during the last few months. The changing scope and details of various public health orders has been confusing at times and education has been important. While the great majority of people and businesses have complied when approached, staff also believes that it takes time to build a culture of compliance when new regulations are put in place. However, just like many regulations, there are at times individuals that choose to not comply. The option to use a citation for individuals or businesses that continue to violate the public health orders is an important tool for staff. It is also helpful to the business community that is complying to communicate to their employees and customers about the potential fines in order to reinforce the importance of following the public health orders.

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. The goal of City staff would be to educate first and use the administrative citations only as necessary.

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**Recommended Council Action**

Review and approve the urgency ordinance with any modifications as determined by the City Council.

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**Alternative Actions**

- Ask for future analysis and direct staff to return with the Urgency Ordinance at a future meeting.
- Decide to not approve the Urgency Ordinance creating administrative citations.

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**Financial Impact**

The City has been utilizing Code Enforcement and Law Enforcement staff in the education and compliance efforts related to the public health orders. This ordinance creates additional enforcement tools and does not create additional costs to the City at this time.

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**Environmental Review**

- Environmental Impact Report
- Negative Declaration
- Exempt
- Not Applicable

**Status**

- Approved/Certified
  - No Action Required
  - Action Requested
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**Attachments**

[City of Sonoma Draft Ordinance](#)  
[Exhibit A - Sonoma County Urgency Ordinance 6317](#)  
[Sonoma County Staff Report 8-6-2020](#)

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**Alignment with Council Goals:**

**Not Applicable**

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**Compliance with Climate Action 2020 Target Goals:**

N/A

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**CC:**

N/A

**ORDINANCE NO. \_\_\_\_\_**

**AN URGENCY ORDINANCE OF THE CITY OF SONOMA  
CONFIRMING AND SUPPLEMENTING THE URGENCY ORDINANCE OF THE  
COUNTY OF SONOMA AUTHORIZING ADMINISTRATIVE ENFORCEMENT OF  
COVID-19 VIRUS RELATED PUBLIC HEALTH ORDERS BY ENABLING THE  
APPLICATION OF ADMINISTRATIVE ENFORCEMENT PROCEDURES OF THE  
SONOMA MUNICIPAL CODE TO VIOLATIONS OF COVID-19 VIRUS RELATED  
PUBLIC HEALTH ORDERS OCCURRING WITHIN CITY LIMITS**

**WHEREAS**, This Ordinance is adopted as an urgency ordinance pursuant to Government Code Section 36937(b). The facts constituting the urgency are as follows:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) 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.

- (5) 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).)
- (6) 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.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) 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.
- (11) 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.

- (12) 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.
- (13) 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.
- (14) 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.
- (15) Government Code Section 25132 makes it a misdemeanor to violate any county ordinance unless by ordinance it is made an infraction. Government Code Section 53069.4 authorizes the Board of Supervisors to set administrative penalties for violation of any County ordinance. Government Code Section 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)).

**WHEREAS**, on August 6, 2020, the County adopted Ordinance No. 6317 “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” (hereafter referred to as “County Ordinance” and attached as Exhibit “A” for reference) which did all of the following: 1) established that violations of Public Health Orders as defined by the County Ordinance constitute a violation of law and a public nuisance within all incorporated and unincorporated areas of the County; 2) established that administrative fines, penalties and other administrative enforcement remedies set forth with the County Code are applicable to violations of Public Health Orders as defined by the County Ordinance within all incorporated and unincorporated areas of the County; 3) authorized each city within the County to confirm, supplement, or supplant the administrative enforcement provisions or mechanisms of the County Ordinance for the administrative enforcement of Public Health Orders within each city; and 4) authorized the County Counsel’s office and the City Attorney’s office of each city to file a civil action on behalf of the city, town, or county to enjoin any violation and obtain other appropriate relief needed to abate the violation.

**WHEREAS**, Section 53069.4 of the Government Code provides the authority for cities to establish procedures to be implemented in order to levy civil administrative fines for

violations of law, which requirements include that an ordinance be adopted to apply administrative fine procedures to violations of law; and

**WHEREAS**, the City has established administrative citation and notice and order proceedings under the authority of Section 53069.4 through its adoption of Chapters 1.28 and 1.30 of the Municipal Code and desires that these same procedures apply to violations of Public Health Orders as defined by the County Ordinance when such violations are being enforced by the City; and

**WHEREAS**, the City wishes to have civil penalties for violations of Public Health Orders that are consistent with those set by the County through its Ordinance which would not be the same as those established under the Sonoma Municipal Code; and

**WHEREAS**, the City Council desires that the City have the authority, procedures, and mechanisms in place for the City to cite, impose, levy, and collect administrative fines for violations of Public Health Orders defined by the County Ordinance whenever City enforcement officers and personnel deem such measures to be advisable in order to protect the public health, welfare, and safety while the County Ordinance and the COVID-19 related State of Emergency remain in effect.

**NOW, THEREFORE**, the City of Sonoma City Council does ordain as follows:

Section 1. The above recitals are hereby declared to be true and correct and represent the findings of the City Council of the City of Sonoma, made in the exercise of its independent judgment. Said findings are incorporated by this reference.

Section 2. The County Ordinance is hereby confirmed and supplemented by Sections Three through Six set forth below.

Section 3. Any violation of a Public Health Order shall be deemed a violation of this ordinance and shall be subject to nuisance abatement and enforcement proceedings under the Sonoma Municipal Code, including Chapter 1.12.

Section 4. Any violation of a Public Health Order shall be subject to enforcement under the civil and administrative provisions of Sonoma Municipal Code Chapters 1.12 (General Provisions), 1.28 (Administrative Citation) and 1.30 (Administrative Notice and Order Proceedings), except that the maximum fine for each violation shall be the same as established by the County Ordinance and as specifically set forth within the following section. Either the procedures of the Sonoma Municipal Code or the administrative enforcement procedures of the Ordinance may be applied to any violation of a Public Health Order. The administrative citation, notice of violation, or other document that imposes the fine shall give the responsible person or party notice of the procedures, rules, and remedies that are being applied to the violation(s) being cited.

Section 5. Any violation of a Public Health Order as defined by the County Ordinance that is administratively enforced under the Sonoma Municipal Code shall be subject to the same civil penalties as established by the County Ordinance; to wit: 1) For a non-commercial violation, the

maximum fine shall be \$100 per violation; 2) For a commercial violation, the maximum fine shall be \$1,000 for a first violation, \$5,000 for a second violation, and \$10,000 for each additional violation by the same responsible party. Any party that is in violation of a Public Health Order shall be considered a “responsible person” or “responsible party” under Chapter 1.28 or 1.30 of the Sonoma Municipal Code, respectively. There may be more than one responsible party for each violation. Each day any violation shall continue may be deemed a separate violation.

Section 6. As used herein, the following terms shall have the following meanings:

A. “Public Health Order” shall mean 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.

B. “Commercial” means for the purpose of commercial gain or as part of a commercial enterprise.

C. “Non-commercial” means all other violations that are not included within the definition of “commercial” within this section.

D. “Violation” shall mean an act, omission, or condition contrary to a provision of a Public Health Order.

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.

Section 7. 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 8. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is, for any reason, deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, or preempted by legislative enactment, such decision or legislation shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Sonoma hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or word thereof, regardless of the fact that any one or more sections, subsections, clauses, phrases, or words might subsequently be declared invalid or unconstitutional or preempted by subsequent legislation.

Section 9. Notice. The City clerk shall certify to the passage and adoption of this ordinance and shall cause this ordinance to be posted within 15 days after its passage, in accordance with Section 36933 of the Government Code.

Section 10. Effective Date. This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately, and shall be posted in three public places in the City. This ordinance shall remain in effect until the earliest of the following: 1) expiration or termination of the Proclamation of a Local Emergency; 2) this ordinance is modified or revoked by the City Council; 3) the County Ordinance is modified or revoked by the Board of Supervisors.

INTRODUCED at a regular meeting of the City Council of the City of Sonoma on the 17th day of August, 2020, and

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sonoma on this 17th day of August, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

**ORDINANCE NO. 6317**

**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**

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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: Aye      Zane: Aye      Gore: Aye      Hopkins: Aye      Gorin: Aye

Ayes: 5

Noes: 0

Absent: 0

Abstain: 0

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

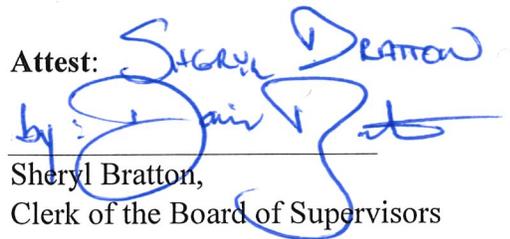
**SO ORDERED.**



Chair, Board of Supervisors

County of Sonoma

Attest:



Sheryl Bratton,  
Clerk of the Board of Supervisors



# COUNTY OF SONOMA

575 ADMINISTRATION  
DRIVE, ROOM 102A  
SANTA ROSA, CA 95403

## SUMMARY REPORT

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**Agenda Date:** 8/6/2020

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**To:** Board of Supervisors

**Department or Agency Name(s):** County Counsel

**Staff Name and Phone Number:** Debbie Latham/565-2421; Sheryl Bratton/565-2431; Jill Ravitch/565-2311; Mark Essick/565-2511; Barbie Robinson/565-4700; Dr. Sundari Mase/565-4426; Tennis Wick/565-1900; Chris Godley/565-1152; Paul Gullixson/565-2431

**Vote Requirement:** 4/5th

**Supervisorial 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:
- \$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
  - \$143,132 in the County Administrator's Office for professional services and paid advertising (4/5 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](http://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](http://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 23<sup>rd</sup>. 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) <<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**

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

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

**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.

<b>Staffing Impacts:</b>			
<b>Position Title (Payroll Classification)</b>	<b>Monthly Salary Range (A-I Step)</b>	<b>Additions (Number)</b>	<b>Deletions (Number)</b>
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.

