

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS
DECLARING VIOLATIONS OF ORDERS OF THE STATE OR COUNTY HEALTH
OFFICER TO BE UNLAWFUL AND A PUBLIC NUISANCE AND AUTHORIZING
THE ISSUANCE OF ADMINISTRATIVE CITATIONS**

The Napa County Board of Supervisors ordains as follows:

SECTION 1. AUTHORITY.

This Urgency Ordinance is adopted pursuant to Government Code section 25123(d), the states of emergency declared by the Governor and the Napa County Executive Officer, and the local health emergency declared by the Napa County Health Officer.

SECTION 2. EMERGENCY FINDINGS.

The Board of Supervisors hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health, or safety, based upon the following facts:

- A. COVID-19 is a disease resulting from a novel coronavirus first detected in December 2019, which causes infectious disease.
- B. Symptoms of COVID-19 are still being discovered, but include fever, cough, and shortness of breath, and those who have been afflicted have experienced anything from mild illness to organ failure and death.
- C. The Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat and the World Health Organization declared the COVID-19 outbreak to be a pandemic.
- D. On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California due to the threat of COVID-19.

E. On March 12, 2020, the Napa County Health Officer declared a local health emergency exists in Napa County due to an imminent and proximate threat to public health from the introduction of COVID-19.

F. On March 13, 2020, the Napa County Executive Officer declared a state of local emergency due to conditions of extreme peril to the safety of persons presented by the potential introduction of COVID-19 into Napa County.

G. On March 13, 2020, the President of the United States proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency.

H. On March 17, 2020, the Napa County Board of Supervisors ratified the local health emergency declared by the Napa County Health Officer and the state of local emergency declared by the Napa County Executive Officer, pursuant to Resolution No. 2020-38.

I. On March 18, 2020, the Napa County Health Officer directed all individuals living in Napa County to shelter at home, with limited exceptions, and for all businesses and governmental agencies to cease non-essential operations in Napa County. The Napa County Health Officer has extended and amended this Order, most recently on July 8, 2020.

J. On March 19, 2020, the Governor issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home or at their place of residence, except to obtain or perform essential services. Subsequent Orders have set forth a staged process for allowing more business operations to begin, with appropriate health measures to reduce the risk inherent in increased activities during the pandemic.

K. On July 13, 2020, the California Department of Public Health issued a Statewide Public Health Order and Guidance on Closure of Sectors in Response to COVID-19, which explain that community spread of infection is of increasing concern across the state, and

continues to grow in Napa County and other counties on the County Monitoring List. The number of hospitalized patients with COVID-19 has increased between 50-100% in California since June 12, 2020, and the number of counties with case rates over 100 per 100,000 residents has gone from three to 31 counties, confirming statewide increased transmission of COVID-19. Community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons, and among individuals at high risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions. Infection of vulnerable populations can be catastrophic, both in terms of high rates of morbidity and mortality, as well as through the high demand such infections would place on the hospital delivery system. This rise in infections and community spread in both Napa County and statewide demonstrates the necessity for more effective enforcement of public health orders to prevent further spread of COVID-19.

L. This Ordinance responds to the specific emergency of COVID-19; municipalities have discretion regarding enforcement of this Ordinance as applied to future emergencies.

M. According to State law, violations of the Health Officer's Orders are misdemeanors punishable by fines or penalties and generally constitute public nuisances, as activities that are injurious to health. State law authorizes peace officers to enforce health officer orders and the Napa County Code provides that enforcement officers may enforce violations as public nuisances.

N. Current language in the Napa County Code may limit the County's ability to issue administrative citations for violations of Health Officer Orders, requiring criminal citation or judicial action to enforce requirements that often must be addressed immediately to prevent or limit exposure to communicable diseases.

SECTION 3. A new Chapter 8.85 (Enforcement of Public Health Orders) is hereby added to the Napa County Code to read in full as follows:

Chapter 8.85

ENFORCEMENT OF PUBLIC HEALTH ORDERS

Sections:

- 8.85.010 Findings and Purpose.**
- 8.85.020 Definitions.**
- 8.85.030 Adoption of County Health Officer Orders as County Law.**
- 8.85.040 Violation and Enforcement.**
- 8.85.050 Issuance of Administrative Citations and Penalty Amounts.**
- 8.85.060 Form and Service of Citations.**
- 8.85.070 Appeal of Administrative Citations.**

8.85.010 Findings and Purpose.

A. In order to address the immediate threat to the public peace, health, safety and welfare, this ordinance helps to ensure that the orders of the County Public Health Officer, issued pursuant to authority granted in the Health & Safety Code to control the spread of an infectious or communicable disease, are followed by providing an administrative enforcement mechanism as an alternative to the mechanisms otherwise available by law.

B. Issuance of administrative penalties provides a significant deterrent to violating the Public Health Orders, and will help promote public health measures and implement guidance issued by the State or County Public Health Officers.

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

D. Pursuant to Section 53069.4 of the California Government Code, the Board elects to create an administrative penalty and hearing process for the purpose of enforcing Public Health Orders.

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

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

8.85.020 Definitions.

The following definitions shall apply to this chapter:

- A. "Board" means the Napa County Board of Supervisors
- B. "Citation" or "Administrative Citation" means a civil citation issued pursuant to this ordinance under the authority of Government Code section 53069.4.

- C. “City” means any of the Cities of American Canyon, Napa, St. Helena, or Calistoga.
- D. “Days” means calendar days, unless otherwise indicated.
- E. “Enforcement Officer” means the following officers or employees or their designated assistants or deputies:
 - 1. Police officers, code enforcement officers, and any other employees designated by a City or the Town;
 - 2. The County Public Health Officer;
 - 3. The director of the department of health and human services;
 - 4. The county executive officer;
 - 5. The county code compliance manager, the code compliance supervisor, and any code compliance officer;
 - 6. The county environmental health manager, supervisor, and any environmental health specialist or environmental management coordinator;
 - 7. The county sheriff;
 - 8. The county fire marshal; and
 - 9. The county counsel.
- F. “County Public Health Officer” means the county health officer designated by the Board pursuant to Health and Safety Code section 101000.
- G. “Public Health Order(s)” means any order issued by the County Public Health Officer under authority granted by state law, any order issued by the State Public Health Officer, any state guidance and directives issued by the State Public Health Officer containing mandatory, binding, or enforceable obligations applicable to the public, or any site- or industry-specific protocols completed as required by state and local requirements.
- H. “Responsible Party” means an individual or legal entity, or the agent or legal guardian of such individual or entity, whose action or failure to act violated a Public Health Order, including, without limitation, any person or entity that causes, maintains, permits, or allows a violation of this chapter, any person or entity that owns, possesses, or controls any parcel of real property upon which a violation of this chapter is maintained, or any person or entity that owns, possesses, operates, manages, or controls any business within the county that is responsible for causing or maintaining a violation of this chapter.
- I. “Town” means the Town of Yountville.

8.85.030 Adoption of Public Health Orders as County Law.

All Public Health Orders issued during a declared local health emergency are hereby adopted as the law of the county and shall apply to both incorporated cities and unincorporated areas of the County. All Public Health Orders issued during a local health emergency shall be deemed orders and regulations of the Board, pursuant to Government Code section 8634, and are determined to be necessary for the protection of life and property during the local health emergency.

8.85.040 Violation and Enforcement.

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

This chapter may be enforced by an Enforcement Officer. Use of the enforcement procedures set forth in this chapter shall be at the sole discretion of the County, City, or Town, and their officers, agents, and employees. The enforcement procedures set forth in this chapter are supplemental to all other enforcement procedures provided by local, state, or federal law, including any criminal, civil, or administrative enforcement procedures. Election to employ the procedures set forth in this chapter shall not be exclusive of any other enforcement procedures with respect to the same violation(s).

8.85.050 Issuance of Administrative Citations and Penalty Amounts.

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

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

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

D. The amount of the penalty imposed pursuant to this chapter shall be as follows:

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

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

E. If a violation of this chapter is not corrected, additional Citations may be issued for the same violation.

F. The administrative penalty becomes effective and due immediately upon issuance of the Citation. The Responsible Party has thirty (30) days from the date of service of the Citation to pay the penalty in the absence of a timely submitted request for hearing to appeal the citation, pursuant to section 8.85.070, below.

G. The County, City, or Town may pursue any remedy authorized by law to collect administrative penalties that are not timely paid, including but not limited to a civil action for collection of civil penalties.

8.85.060 Form and Service of Citations.

- A. A Citation, or a Notice of Violation issued pursuant to section 8.85.050, above, shall contain the following information:
 - 1. The name and address of the Responsible Party;
 - 2. The date and address or description of the location where the violation occurred;
 - 3. Reference to the Public Health Order that was violated, including reference to the paragraph number containing the provision(s) violated;
 - 4. The amount of the penalty due (or for Notices of Violation, to become due if the Responsible Party fails to abate the violation);
 - 5. Identification of appeal rights, including a copy of the Request for Hearing form;
 - 6. The signature of the Enforcement Officer issuing the Citation; and
 - 7. The date of the issuance of the Citation.
- B. A Citation shall be served on the Responsible Party in one or more of the following ways:
 - 1. By personal service, provided the personal service can be accomplished without violating Public Health Orders. Such service is effective if the Citation documents are set down near the Responsible Party and orally identified in a manner that can be heard by the Responsible Party.
 - 2. By posting and mailing a copy of the Citation, if the violation occurred on real property known to the Enforcement Officer to be owned, possessed, or controlled by the Responsible Party. The Citation shall be physically posted on the real property in a position that is likely to catch the attention of a person entering the property, including, without limitation, a front door, a gate, or a mailbox. The Citation shall also be mailed by overnight mail, postage prepaid, to the address at which the Citation was posted, or to any other mailing address of the Responsible Party that is known to the Enforcement Officer.
 - 3. By mailing a copy of the Citation to a mailing address of the Responsible Party that is known to the Enforcement Officer, if personal service or posting is impracticable.
 - 4. By emailing a copy of the Citation to an email address reasonably likely to be accessible to the Responsible Party, if personal service or posting is impracticable.
- C. Service shall be complete at the time of personal service or emailing, one day after posting and mailing the Citation, or five days after service by mail alone. The failure of any person to receive the Citation shall not affect the validity of the Citation or of any other code enforcement steps or proceedings taken pursuant to this chapter or other provision of the code.

8.85.070 Appeal of Citations.

- A. Except as set forth herein, the procedures set forth in chapter 1.28 of the Napa County Code shall apply to an appeal of a Citation issued pursuant to this chapter. Chapter 2.88 shall not apply to appeals of Citations issued pursuant to his chapter.

SECTION 4. SEVERABILITY.

It is hereby declared to be the intention of the Board of Supervisors that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, section, paragraph or sentence of this Ordinance shall be declared unconstitutional or

invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

SECTION 5. EFFECTIVE DATE.

This Urgency Ordinance is adopted pursuant to Government Code Section 25123(d) and shall take effect immediately upon its approval by at least four-fifths vote of the Board of Supervisors.

SECTION 6. CEQA COMPLIANCE.

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

SECTION 7. PUBLICATION.

Within 15 days after adoption, the full text of this Ordinance shall be published in the Napa Valley Register along with the names of those Supervisors voting for and against the Ordinance, and a certified copy of the full text of this Ordinance shall be posted in the Office of the Clerk of the Board of Supervisors along with the names of those Supervisors voting for and against the Ordinance.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

The foregoing Urgency Ordinance was introduced, read and passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on July ____, 2020, by the following four-fifths vote:

AYES: SUPERVISORS _____

 NOES: SUPERVISORS _____

 ABSTAIN: SUPERVISORS _____

 ABSENT: SUPERVISORS _____

NAPA COUNTY, a political subdivision of the State of California

 DIANE DILLON, Chair of the Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Jeffrey M. Brax</u> County Counsel</p> <p>Date: _____</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: _____</p>
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I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET, ROOM 310, IN NAPA, CALIFORNIA ON _____.

_____, DEPUTY
 JOSE LUIS VALDEZ, CLERK OF THE BOARD