



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Executive
Office
Department No.: 012
For Agenda Of: 10/20/20
Placement: Departmental
Estimated Time: 30 minutes
Continued Item: No
If Yes, date from: NA
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director
Mona Miyasato, County Executive Officer
Contact Info: Barney Melekian, Assistant County Executive Officer
Kelly Hubbard, Director Office of Emergency Management

SUBJECT: Ordinance to Adopt Remedies, Including Administrative Fines, for Violations of County Health Officer Orders Pertaining to COVID-19

County Counsel Concurrence

As to form: Yes

Risk Management Concurrence

As to form: N/A

Auditor-Controller Concurrence

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a) Approve the introduction of an Ordinance to amend County Code by adding Chapter 51 to adopt remedies for violations of County Health Officer Orders pertaining to COVID-19;
- b) Read the title and waive further reading of the Ordinance;
- c) Continue the item to the Agenda for November 10, 2020 to consider the adoption (Second Reading) of the Ordinance;
- d) On November 10, 2020, adopt the Ordinance;
- e) Determine that adoption of the Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15269(c), 15061(b)(3); and 15378(b)(5); and direct staff to file a Notice of Exemption (Attachment B).

Summary Text:

This Ordinance would provide peace officers and other public officers designated by the Director of Emergency Services with a tool to enforce County Health Officer Orders in the unincorporated areas of the County, aimed at slowing the spread of COVID-19, coronavirus pandemic. It provides additional enforcement mechanisms to deter violations of County Health Officer Orders, through either infraction citations or administrative fines, which are less punitive and more easily applied than currently available methods.

Staff are bringing this ordinance forward now so that in the future there is a tool ready and available should the County start to see a rise in cases and/or increased impacts to the health care system. There is concern by health officials that the upcoming flu season, holiday gatherings, greater indoor activity due to colder weather, congregation of college students, and general weariness of following health restrictions have a potential to cause future spikes in cases or backsliding on progress made to date. While education and warning have been used successfully so far, continued effort to follow County Health Officer Orders and recommended practices will be critical to prevent regressing, and also improve the county's transmission risk level from "substantial (red)" to the "moderate (orange)" and "minimal (yellow)" tiers of the State's reopening framework.

The intent of the Ordinance is to address egregious situations where education and persuasion is deemed ineffective. It would provide that any violation of the Ordinance could result in either an infraction citation or an administrative fine of one hundred dollars for a first violation, two hundred dollars for the second violation, and five hundred dollars for each additional violation within one year. Currently, existing tools for enforcement include a misdemeanor criminal citation, with a maximum fine of up to \$1,000 or imprisonment up to 90 days; civil complaints with injunctions to stop operations; or criminal action for actions that impair health and safety. These address extreme situations and have rarely been employed. Therefore, staff is seeking other ways to address situations where education does not work. The Ordinance would remain in effect until the Santa Barbara County local emergency proclamation is terminated, unless terminated earlier by the Board.

Background:

On March 4, 2020, Governor Gavin Newsom declared a State of Emergency in California due to the threat of COVID-19. On March 12, 2020, the Santa Barbara County Public Health Officer declared a public health emergency in Santa Barbara County and the County Director of Emergency Services proclaimed a local emergency due to COVID-19. On March 19, 2020, Governor Newsom issued Executive Order N-33-20 directing, with certain exceptions, that all individuals living in California stay at home or at their place of residence.

Santa Barbara County has been on the State's County Monitoring List since June 16, 2020 due to its high rate of positive cases. More recently, the county has experienced a decline in transmission and hospitalizations, therefore being designated a "red county" (indicating substantive transmission) under the State's Blueprint for a Safer Economy. Following the Health Officer's Orders was critical to the community's ability to reduce transmission and to have moved from the purple level to red (substantial spread). Continuing to move up the Blueprint levels (each level indicating a greater level of health safety) provides the ability to return our community closer to normalcy.

Although currently the County's average occurrence of new cases and hospitalizations have improved significantly, the County is still experiencing community transmission and there is still a significant concern that the upcoming flu season, and holidays hold the potential to bring a spike in future cases. Such a spike could negatively affect our healthcare system and restrict further reopening of our economy.

To that end, on October 2, 2020, the County Health Officer updated and extended a Health Officer Order (HOO 2020-12.10) that all gatherings are prohibited unless otherwise excepted and outlining allowances and restrictions to business operations and community activities. Additionally, on September 18, 2020, the County Health Officer updated and extended a Health Officer Order (HOO 2020-10.3) that all people in the County must wear face coverings when in certain enumerated high-risk situations, unless an exception applies. Although these measures will modify as the State continues to update guidance and the County moves through the state's blueprint levels, it is important for all community members to be diligent in following the most current Health Officer Orders and guidance.

Discussion

While residents, businesses and community groups are complying with the current orders, County employees continue to observe noncompliance and receive complaints from members of the community about non-compliance. The violations most frequently identified are businesses not following or appropriate health and safety measures, unauthorized gatherings, and other activities still prohibited under the State's reopening framework.

The County has initiated several programs to support efforts of education and enforcement of the Health Officer's Orders. These programs are focused on education as a primary method of engagement, with the intent to only use enforcement actions for the most egregious violations. Egregious violations are mostly associated with those individuals or businesses that county staff have engaged in multiple educational outreach efforts and yet continued to violate Health Officer Orders. At times, enforcement has been utilized as a first step, but only in response to incidents that create an immediate danger to the health and safety of persons or property and requires immediate correction. County and City RISE Ambassadors, Code Enforcement, Environmental Health and other regulatory agencies continue to outreach and provide education to community and will continue to focus on education and voluntary compliance.

Enforcement Officers for Issuance of Fines

Staff have used the existing California Health and Safety Code designation of enforcement officers to define who would be authorized to issue these administrative fines. While still broadly defined, we anticipate enforcement will be limited to specific County staff positions who already issue citations as part of their duties. Enforcement pursuant to the ordinance would not be a specified duty, single assignment or reassignment of these staff, but instead, an additional tool for those who are already providing outreach, education and compliance efforts in their respective jobs.

Enforcement would be limited to the following positions, in the following manner or areas of concern.

- Environmental Health Services (EHS) – Environmental Health Services would continue to utilize established regulatory processes in their enforcement activities with businesses or operations for which they have regulatory authority. Additionally, EHS plays a lead role within

the Public Health Department to provide guidance and support to those businesses or operations that do not have an associated local government entity for enforcement (i.e. hotels with pool parties). This would provide EHS a method of enforcement for those types of businesses within unincorporated county areas.

- Park Rangers – Park Rangers issue citations per County Code Chapter 26, Rules for Recreation Areas and in support of the Sheriff’s Office for various parking violations, vehicle registration, or related issues. Enforcement of this Ordinance by Park Rangers would be on individual or group violations within County parks associated with large gatherings, unauthorized activities under the latest Health Officer Order or other violations of the Health Order.
- Sheriff Deputies – Sheriff Deputies already have a variety of criminal codes that provide authority to issue citations. This provides them an additional option between education and warning efforts and issuing a citation for a misdemeanor criminal violation with a minimum fine of \$1,000. It is anticipated that this Ordinance can be utilized in response to large gatherings, significant parties, and large events or otherwise unauthorized activities within public and private spaces.
- Animal Control Officers – Animal Control Officers issue citations per County Code Chapter 24A within their day-to-day duties. Enforcement of this Ordinance by Animal Control Officers would be associated with activity they may encounter in the course of their normal duties, such as individual or group violations due to large gatherings, and generally restricted activities under the latest Health Officer Order.
- Agricultural Commission Inspectors – Agricultural Biology Inspectors as well as Weights and Measures Inspectors have daily duties in which they may issue citations per the Food and Agricultural Code and the Business professions Code. Enforcement of this Ordinance by Agricultural Inspectors would be associated with businesses for which they interact regularly and are not following the Health Officer Orders.

The Ordinance provides broad authority to the Director of Emergency Services to utilize additional staff positions for enforcement, should the situation rise in the future. However, staff does not anticipate the need for using that authority.

Administrative Structure

County Counsel and the Office of Emergency Management are developing Administrative processes for administering this ordinance. These processes will include the identification of County staff to serve as Hearing Officers for disputes or contested fines. Currently, County staff play a role as hearing officers for different administrative processes. In addition, staff is finalizing the training requirements procedures and logistical requirements associated with holding the virtual hearings.

Education and Enforcement Stance

Generally, education and enforcement will escalate as follows:

1. First and Second Complaints: First and second complaints, that lead to substantiated violations of the order, will be handled by the local jurisdiction (Ambassadors, City Code Enforcement, Environmental Health, Law Enforcement, Environmental Health) with the goals of education and compliance.
2. Third Complaint: After two educational outreach contacts and appropriate investigation that indicates a substantiated violation, each jurisdiction may consider one or more of the following enforcement options/tools:
 - a. Administrative enforcement: Depending on the type of violation and the authority of each jurisdiction, administrative fines, license action (i.e., suspension), or other administrative remedies may be utilized.
 - b. Civil action: A civil complaint seeking civil penalties and injunctive relief may be filed by the affected jurisdiction.
 - c. Criminal action: If the actions are egregious and pose significant risk to health and safety, Law Enforcement may issue a criminal citation.

Fiscal and Facilities Impacts:

No direct costs to the County are anticipated due to the adoption of this ordinance since Enforcement Officers will be issuing citations and Hearing Officers will be hearing appeals as part of their normal duties.

Special Instructions:

At least five days prior to the Board of Supervisors meeting at which the proposed ordinance is to be adopted, a summary of it shall be published in the *Santa Barbara News-Press*, a newspaper of general circulation published in the County of Santa Barbara in compliance with Government Code Section 25124. Additionally, before the expiration of 15 days after adoption of this Ordinance, a summary of it shall be published together with the names of the members of the Board of Supervisors voting for and against the same in the *Santa Barbara News-Press*.

Following Board approval, Clerk of the Board to please post the Notice of Exemption and forward a stamped copy to Bernard Melekian, ACEO.

Request the Clerk of the Board to return a copy of the Ordinance and Minute Order to: Bernard Melekian, ACEO.

Attachments:

Attachment A: Remedies for Violations of County Health Officer Orders Pertaining to Covid-19

Attachment B: CEQA Notice of Exemption

Authored by: Bernard Melekian, Assistant County Executive Officer
Kelly Hubbard, Director, Office of Emergency Management