

ATTACHMENT A

**REMEDIES FOR VIOLATIONS OF COUNTY HEALTH OFFICER
ORDERS PERTAINING TO
COVID-19
Ordinance**

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF SANTA BARBARA ADDING CHAPTER 51 TO THE SANTA BARBARA COUNTY CODE PURSUANT TO GOVERNMENT CODE SECTIONS 25123 AND 25131 AND CALIFORNIA GOVERNOR NEWSOM'S EXECUTIVE ORDER N-33-20, RELATED TO REMEDIES FOR VIOLATION OF COUNTY HEALTH OFFICER ORDERS PERTAINING TO COVID-19, CORONAVIRUS PANDEMIC

The Board of Supervisors of the County of Santa Barbara hereby ordains as follows:

SECTION 1. Emergency Findings. This Ordinance is adopted pursuant to California Government Code sections 25123 and 25131. This Ordinance shall remain in effect and operative until the Santa Barbara County local health emergency proclamation is terminated, unless terminated earlier by the Board. The Board of Supervisors finds that this Ordinance is necessary for the preservation of the public peace, health and safety, based upon the following declaration of facts:

1. On March 4, 2020, Governor Newsom declared a state of emergency for conditions caused by a novel coronavirus, COVID-19, and on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic, and on March 12, 2020, the County of Santa Barbara declared a local emergency and a local health emergency in relation to COVID-19 in the community; and
2. Since that time, statewide data has demonstrated community-based transmission of COVID-19, resulting in public health conditions that demand measures responsive to those conditions; and
3. In the County of Santa Barbara, as well as throughout California and the nation, there are insufficient quantities of critical healthcare infrastructure, including hospital beds, ventilators and workers, capable of adequately treating mass numbers of patients at a single time – should the virus spread unchecked; and
4. On March 19, 2020, in response to the increasing community-based transmission of the virus and the lack of critical healthcare infrastructure, 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; and
5. Although 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, Santa Barbara County, like many counties, has had difficulty meeting the State's reopening metrics and the State placed the County on

the State's County Monitoring List on June 16, 2020; and

6. On August 28, 2020, the State Public Health Officer ordered an update to the framework for COVID-19 response, and Governor Newsom introduced this framework as the Blueprint for a Safer Economy, in which counties are assigned into risk-based tiers based on the COVID-19 epidemiological information for each county; and
7. To address the widespread transmission of the virus in the County, the Santa Barbara County Health Officer has ordered that all gatherings are prohibited unless otherwise excepted and all people in the County must wear face coverings when in certain enumerated high-risk situations, unless an exception applies; and
8. Despite these orders, law enforcement, city and county personnel, and members of the community report that some individuals, businesses, and other organizations are not complying with the State and County Health Officer's Orders even with increased education and outreach; and
9. A violation of a County Health Officer Order creates an immediate danger to the health and safety of persons or property and requires immediate correction; and
10. Under California Health and Safety Code sections 101029, 120295 et seq., violations of County Health Officer Orders are misdemeanors punishable by fines or penalties and generally constitute public nuisances, as activities that are injurious to health; and
11. Under Health and Safety Code sections 101029, "the sheriff of each county, or city and county, may enforce within the county, or the city and county, all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. Every peace officer of every political subdivision of the county, or city and county, may enforce within the area subject to his or her jurisdiction all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease;" and
12. For the preservation of the public peace, health or safety, these conditions warrant and necessitate that the County adopt this Ordinance to protect the health, safety, and welfare of residents of Santa Barbara County.

SECTION 2. Chapter 51 is hereby added to the Santa Barbara County Code, which includes sections 51-1 to 51-11 and reads as follows:

**ENFORCEMENT OF COUNTY HEALTH OFFICER ORDERS PERTAINING TO
COVID-19, CORONAVIRUS PANDEMIC**

Sections:

51-1 Findings and Purpose.

51-2 Definitions.

51-3 Adoption of County Health Officer Orders as County Law.

51-4 Violation and Enforcement.

51-5 Issuance of Administrative Citations and Fine Amounts.

51-6 Appeal of Administrative Fines.

51-7 Payment of Administrative Fines.

51-8 Judicial Review.

51-9 Severability.

51-10 Effective Date.

51-11 California Environmental Quality Act.

Section 51-1 Findings and Purpose.

(A) In order to address the threat to the public peace, health, safety and welfare, this Ordinance helps to ensure that County Health Officer Orders are followed. County Health Officer Orders are issued pursuant to authority granted in the California Health and Safety Code to control the spread of an infectious or communicable disease. This Ordinance adopts County Health Officer Orders as county law, any violation of which constitutes an infraction, and provides an administrative enforcement mechanism as an alternative to the mechanisms otherwise available by law.

(B) The purpose of this Ordinance is to provide for lesser sanctions than those already provided by Health and Safety Code sections 101029, 120295 et seq., which treat a violation of County Health Officer Orders as a misdemeanor punishable by a fine, imprisonment, or both.

(C) Adopting administrative fines will provide a significant deterrent to violating County Health Officer Orders, and will help promote public health measures and implement guidance issued by the County Health Officer.

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

(E) Pursuant to section 53069.4 of the California Government Code, the Board elects to create an administrative fine and hearing process for the purpose of enforcing County Health Officer Orders.

(F) The potential harm or damage caused by the violation of County Health Officer Orders demands a substantial fine so as to provide an effective and significant deterrent to violating such orders.

Section 51-2 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section.

(A) “Administrative Citation” means a civil citation issued pursuant to this Ordinance under the authority of Government Code section 53069.4.

(B) “Board” means the Santa Barbara County Board of Supervisors.

(C) “County” means the unincorporated area within Santa Barbara County.

(D) “County Public Health Officer” means the county health officer designated by the Board pursuant to Health and Safety Code section 101000.

(E) “County Health Officer Order(s)” means any order related to COVID-19, coronavirus pandemic, issued by the County Public Health officer under authority granted by state law.

(F) “Days” means calendar days, unless otherwise indicated.

(G) “Enforcement Officer” means any peace officer or other public officer as designated by the Director of Emergency Services under Santa Barbara County Code section 12-4(a) and 12-5(a)(4). As used here, public officers include, but are not limited to, these individuals and their deputies and designees: a district attorney, county clerk, controller, auditor, treasurer, recorder, license collector, tax collector, assessor, public administrator, coroner, surveyor, county librarian, county health officer, administrative officer, director of finance, road commissioner, public guardian, and such other officers as are provided by law.

(H) “Hearing Officer” means any of these people who has been appointed by the Director of Emergency Services to rule on appeals of administrative fines imposed under this Ordinance and who is not otherwise involved in the enforcement of this Ordinance: county department executive or manager, or their designee, or an experienced public agency employee, licensed professional, or qualified administrative law judge.

(I) “Notice of Violation” means a written notice to the Responsible Party that a violation exists and the legal authority for that determination.

(J) “Responsible Party” means an individual or legal entity whose action or failure to act violated a County Health Officer Order.

Section 51-3 Adoption of County Health Officer Orders as County Law.

All County Health Officer Orders are determined to be necessary for the protection of life and property during the local emergency declared in connection with the COVID-19 pandemic. The orders are hereby deemed orders and regulations of the Board pursuant to Government Code section 8634 and shall constitute the law of the County within the unincorporated area of Santa Barbara.

County Health Officer Orders can be found at: <https://publichealthsb.org/health-officer-orders/>.

Section 51-4 Violation and Enforcement.

Any violation of a County Health Officer Order shall constitute an immediate danger to public health and safety pursuant to Government Code section 53069.4, a public nuisance, and a violation of this Ordinance. Any person or legal entity who violates this Ordinance is guilty of an infraction, and upon conviction thereof, shall be punishable by a fine in the amount described in Section 51-5(d).

Use of the enforcement procedures set forth in this chapter shall be at the sole discretion of the County and its peace officers and public officers. 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), including Health and Safety Code sections 101029, 120295 et. seq.

Section 51-5 Issuance of Administrative Citations and Fine Amounts.

(A) If an Enforcement Officer determines that a violation of this Ordinance has occurred, the Enforcement Officer may, as an alternative to issuing a criminal citation, issue an Administrative Citation to the Responsible Party.

(B) A Notice of Violation is not required before issuance of the Administrative Citation because the violation of this Ordinance creates an immediate danger to the health and safety of persons or property and requires immediate correction, as provided in Santa Barbara County Code section 24A-2(c). If an Enforcement Officer determines a Notice of Violation would be effective, however, the officer may issue a Notice of Violation to the Responsible Party that provides up to two days to correct the violation. If the violation is corrected, an Administrative Citation will not issue and the Notice of Violation will be treated as a written warning. If the violation is not corrected, an Enforcement Officer may issue an Administrative Citation.

(C) A Citation or Notice of Violation shall include the following information:

- (1) The name and address of the Responsible Party.
- (2) The date of the violation.
- (3) The address or other description of the location where the violation occurred.

(4) The County Health Officer Order violated and a description of the violation.

(5) If a Notice of Violation is issued that orders the correction of a violation, a description of how the violation can be corrected.

(6) The amount of the fine or, in the case of a Notice of Violation, the potential fine.

(7) An advisement of the right to request a hearing to appeal the violation and fine and instructions for filing a request for a hearing.

(D) The penalty imposed pursuant to this Ordinance shall be:

(1) a fine not exceeding one hundred dollars for a first violation;

(2) a fine not exceeding two hundred dollars for the second violation within one year; and

(3) a fine not exceeding five hundred dollars for each additional violation within one year.

(E) An Administrative Citation shall be served on the Responsible Party in one or more of the following ways:

(1) By personal service.

(2) By posting and mailing, if the violation occurred on real property known to the Enforcement Officer to be owned, possessed, or controlled by the Responsible Party.

(3) By mailing to a mailing address of the Responsible Party that is known to the Enforcement Officer, if personal service or posting is impracticable. The Administrative Citation shall be deemed served within two days after the date it was mailed.

(F) Every day a violation of this Ordinance continues shall constitute a separate offense pursuant to Santa Barbara County Code section 1-7.

Section 51-6 Appeal of Administrative Fines.

(A) A Responsible Party may appeal the administrative fine pursuant to the administrative appeal procedures set forth below.

(B) The appellant must file a written appeal with the County within ten working days of service of the Administrative Citation. The written appeal must contain:

1. A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the fine;
2. A brief statement of the material facts which the appellant claims supports his or her contention that no administrative fine should be imposed or that an administrative fine of a different amount is warranted.

(C) An appeal of an administrative fine shall be heard by a neutral Hearing Officer appointed by the Director of Emergency Services. The Hearing Officer shall not be the Enforcement Officer who issued the Administrative Citation or Notice of Violation that is the subject of the hearing and shall not otherwise be involved in the enforcement of this Ordinance.

(D) At the hearing, the appellant will be given the opportunity to testify and present evidence.

(E) In reviewing the fine amount, the Hearing Officer shall consider all facts relating to the issuance of the Administrative Citation and the reasons therefore and shall issue a written decision upholding the fine imposed, eliminating the fine, or modifying the fine and explaining the Hearing Officer's reasons for doing so. The decision of the Hearing Officer shall constitute the final administrative order or decision of the local agency within the meaning of Government Code section 53069.4(b)(1).

(F) The Hearing Officer shall serve a copy of his or her written decision on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The Hearing Officer's decision shall be deemed served within two days after the date it was mailed to the address provided by the appellant.

(G) The costs of the administrative hearing may be assessed to the appellant in addition to any other fines in the event that the Administrative Citation is upheld.

Section 51-7 Payment of Administrative Fines.

(A) The administrative fine is effective and due immediately upon issuance of the Administrative Citation. The Responsible Party has 30 days after the administrative fine becomes a final administrative order to pay the fine to the County. Payment of a fine under this Ordinance does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the Administrative Citation. The payment of a fine does not bar any other enforcement action regarding a violation that is not corrected.

(B) If the fine is not paid in a timely manner, the County may collect the fine, the County's collection costs, and interest. The County may collect by using any available legal means, including but not limited to a civil action or other actions as are allowed for enforcement of a civil judgment pursuant to the Enforcement of Judgment Law, California Code of Civil Procedure section 680.010 et seq.

Section 51-8 Judicial review.

Any person aggrieved by a final administrative order or decision imposing an administrative fine may seek review with the Superior Court in Santa Barbara County pursuant to Government Code section 53069.4.

Section 5-9 Severability.

If any provision or clause of this Ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other Ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional, or otherwise unenforceable.

Section 5-10 Effective Date.

This Ordinance, sections 51-1 through 51-11, shall take effect and be in full force 30 days from the date of its adoption by the Board of Supervisors pursuant to Government Code section 25123 and shall remain in effect and operative until the Santa Barbara County local health emergency proclamation is terminated, unless terminated earlier by the Board.

Section 5-11 California Environmental Quality Act. This Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15269(c) (specific action to mitigate an emergency), section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and section 15060(c)(3) (the activity is not a project as defined in section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.)

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this the 10th day of November, 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

GREGG HART, CHAIR
BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA

ATTEST:
MONA MIYASATO, COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By _____
Deputy Clerk

APPROVED AS TO FORM:
MICHAEL C. GHIZZONI
COUNTY COUNSEL

By _____
Deputy County Counsel