

ORDINANCE NO. _____

AN ~~URGENCY~~ ORDINANCE OF THE LAKE COUNTY BOARD OF SUPERVISORS TO PROVIDE FOR COMPLIANCE WITH STATE AND LOCAL PUBLIC HEALTH ORDERS, TO ASSIST LOCAL BUSINESSES AND MEMBERS OF THE PUBLIC DURING THE CONTINUING PUBLIC HEALTH EMERGENCY, AND TO ADOPT ADMINISTRATIVE FINES ~~AND OTHER REMEDIES~~ FOR VIOLATIONS OF PUBLIC HEALTH ORDERS IN EGREGIOUS CASES

WHEREAS, the Board of Supervisors is empowered by Article XI, Section 7 of the California Constitution, with police power authorizing the Board to take actions determined to be necessary to protect public health, welfare and safety; and

WHEREAS, Government Code section 8634 authorizes the County to promulgate rules and regulations in the event of a declared state of emergency; and

WHEREAS, Government Code section 53069.4 authorizes the Board of Supervisors to set administrative penalties for violation of any County ordinance; and

~~WHEREAS, Government Code section 25131 authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction. The Board finds that, as set forth herein, the facts and circumstances support adoption of this Ordinance on an urgency basis; and~~

WHEREAS, Health and Safety Code section 101025 authorizes the Board of Supervisors to take such measures as may be necessary to preserve and protect the public health in the unincorporated territory of the county, including the adoption of ordinances, and provide for payment of all expenses incurred in enforcing them, such standing authority being independent of any state of emergency; and

WHEREAS, on March 19, 2020, the Governor of the State of California 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 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 this pandemic ("Public Health Orders"); and

WHEREAS, on July 13, 2020, due to a spike in confirmed COVID-19 cases, increased evidence of community transmission, increased hospitalizations, the strain on health care resources, and other epidemiological indicators, the California Public Health Officer issued a statewide order restricting the operations of certain businesses and activities and counties placed on the State monitoring list were subject to more stringent restrictions, resulting in the closure of additional business operations and activities; and

WHEREAS, the County of Lake is now nearly geographically surrounded by counties which the State has placed on its monitoring list, a list that now totals ~~thirty-seven~~ ~~thirty-eight~~ (38) counties; and

WHEREAS, as the County of Lake implements the process of reopening its economy and loosening public restrictions in accordance with and in compliance with applicable State regulations and directives, it is imperative to address the significant concerns of the public that the requirements which accompany this process are adhered to; and

WHEREAS, to ensure compliance with this process it is necessary for the County to provide local businesses and the public with education, training, and compliance assistance to ensure, to the extent possible, the successful reopening of the County of Lake without any undue risk to public health and safety; and

WHEREAS, the efficacy of certain of the public health mandates have been and continued to be evaluated by the Institute for Health Metrics and Evaluation (IHME), a research institute working in the area of global health statistics and impact evaluation at the University of Washington in Seattle. IHME conducts research and trains scientists, policymakers, and the public in health metrics concepts, methods, and tools. In a report issued by IHME on or about June 25, 2020, IHME, after explaining the scientific procedure employed and the data used in reaching its conclusions, stated that their work supports the growing scientific consensus that cloth face masks can reduce respiratory virus infections by 33% and slow community spread of COVID-19; and (Note: this paragraph moved up for clarity.)

WHEREAS, generally, while local agencies and businesses have diligently pursued compliance efforts and the vast majority of those agencies and local businesses are now in compliance with Public Health Orders, this Board believes that a deterrent must be established in egregious cases as to those who violate said orders and who put the health of the general public at risk; and

WHEREAS, not only do such violations create a serious and immediate risk to public health and safety, violations increase the potential for renewed curtailment of business operations and additional activity restrictions, making some level of enforcement in egregious cases necessary; and

WHEREAS, ordinances containing fines and/or penalties in specified situations are generally considered to have a deterrent effect because they demonstrate that a local government is willing to take action against violators under prescribed circumstances.

NOW, THEREFORE, THE LAKE COUNTY BOARD OF SUPERVISORS ORDAINS AS FOLLOWS:

Section One: The above recitals are true and correct, are incorporated hereby by reference and hereby establish the factual basis and purpose supporting the adoption of this Ordinance.

Section Two: **Applicability.**

The provisions of this ordinance shall be effective as to the unincorporated territory of the County thirty (30) days after its passage. The provisions of this ordinance shall become effective in the incorporated territory of the cities within Lake County upon adoption by each city of an ordinance which makes the provisions of this ordinance applicable to its incorporated area.

Section ~~Two~~ Three: Adoption of Public Health Orders as County Law. All Public Health Orders are hereby deemed orders and regulations of the Board of Supervisors pursuant to Government Code section 8634.

Section ~~Three~~ Four: The Board hereby establishes that the County Public Health Department shall offer training, information, and other assistance to local businesses and members of the public as necessary in order to foster compliance with Public Health Orders and the County's Covid-19 reopening plan. Additional qualified employees may be hired temporarily if necessary. Additionally, qualified existing County employees not presently able to return to work shall be given the opportunity to perform such work on behalf of the Public Health Department under the direction of the Public Health Officer. To the

fullest extent possible, the cost of all employees dedicated to this effort shall be funded or reimbursed with state and federal dollars allocated for this purpose and shall not impact the County General Fund. (Alternatively, strike the last sentence altogether because it effectively kills the ordinance with no County funding source identified.)

Section ~~Four~~ Five: **Violations.**

In those rare instances where members of the public and/or local businesses repeatedly reject offers of assistance and refuse to take corrective action to attain compliance with state and local public health orders ~~and the County's reopening plan~~, a Notice of Violation may be issued by the Public Health Officer or his designee. Examples of violations include, but are not limited to: (1) a business operating when that business sector has been ordered closed, (2) failure to adhere to masking requirements, (3) failure to adhere to social distancing requirements, or (4) failure to adhere to mandated hygiene requirements.

a. Enforcement Authority. The Public Health Officer ~~or his/her designee~~ shall have the authority and powers necessary to determine whether a violation exists of this Ordinance, ~~and/or~~ state and local public health orders, ~~and/or the County's Covid-19 reopening plan~~ and the authority to take appropriate action to gain compliance with the provisions of this Ordinance. Said authority and powers include the power to issue Notices of Violation and the power to enter and inspect public and private property ~~as set forth below~~.

b. The Public Health Officer and/or his designee(s) when acting under the Public Health Officer's direction, is/are authorized to enter upon any property or premises to ascertain whether there are violations of this Ordinance, local or state public health orders, and/or the County's reopening plan to inquire as to compliance concerns and/or issues. All such inquiries shall be made in a reasonable manner. If the property owner or other responsible person, as that phrase is defined in Chapter 13 of the Lake County Code, refuses permission to enter or inspect, the Public Health officer may seek an ~~administrative~~ inspection warrant pursuant to ~~the~~ California Code of Civil Procedure ~~section 1822.50 et seq.~~

c. **Notice of Violation:** Upon determining that a violation exists and that correction efforts have been made but were unsuccessful, the Public Health Officer may issue to the person committing said violation a Notice of Violation and Order to Correct. Said notice may be made by personal service or by mail. The notice of violation shall contain:

1. The name and address of the violator;
2. A statement that a determination has been made that a violation of this Ordinance and/or existing state or local public health orders exists and the conditions constituting each and every violation;
3. A specified time period of not less than ten (10) days from receipt of the Notice of Violation within which the violation must be corrected. However, the Public Health officer may require immediate correction of a violation if the violation creates an immediate danger to the health and safety of a person or persons.
4. A statement advising the violator that in the event the violation is not corrected by the expiration of the time specified in the Notice of Violation the violators may be subject to a fine as described in Section 5 herein for the violation(s) described therein up to the maximum amounts for infractions set

forth in subdivision (b) of California Government Code section 25132 and other applicable fines and penalties pursuant to State and local law.

5. A statement that the violator affected by the Notice of Violation may, within ten (10) calendar days after delivery or service of the Notice of Violation, request in writing administrative review to the Board of Supervisors of the findings and determinations in the Notice of Violation.

6. If the Public Health Officer determines that all reasonable efforts are being made to correct the violation, he or she may grant an additional period of time for correction of the violation.

7. Each and every day a violation of this Ordinance exists constitutes a separate and distinct violation.

8. ~~7.~~ **Administrative Appeal:** Any person upon whom a Notice of Violation is served may request administrative appeal of the findings and/or determinations, set out in the Notice of Violation pursuant to procedures set forth in Section 13-53 of the Lake County Code.

9. ~~8.~~ **Enforcement:** When a Notice of Violation has been issued and until it is rescinded, in addition to the fine which may be imposed pursuant Section Five of this Ordinance and/or other penalties that may be imposed pursuant to existing law, County may, when legally appropriate to do so, withhold issuance of licenses, permits and other entitlements to property owned by the violator.

Section ~~Five~~ **Six:** ~~Imposition of Administrative Fines in Egregious Circumstances:~~ Penalties.

a. For purposes of this Ordinance, an egregious violation is one which creates a significant risk to public health. Egregious circumstances creating a significant risk to public health include violations which occur in groups of more than ten (10) people, violations which expose patrons to prolonged indoor interactions without adherence to masking requirements where social distancing is not practiced, and violations which occur under conditions deemed by the Public Health Officer or his designee to already be unsanitary and a risk to public health.

b. Any person violating this Ordinance under circumstances determined by the Public Health Officer to be egregious, where there has been repeated attempts by the Public Health Officer and/or his designee to offer assistance and no corrective action has been taken, may be subject to the imposition of administrative fines as established by this Ordinance in amounts no greater than set forth in Government Code section 25132. Pursuant to Government Code section 25132, a fine shall not exceed one hundred dollars (\$100) for a first violation, shall not exceed two hundred dollars (\$200) for a second violation of the same ordinance within one year of the first violation, and shall not exceed five hundred dollars (\$500) for each additional violation of the same ordinance within one year of the first violation.

c. The use of land, buildings, or premises established, operated, or maintained contrary to the provisions of this article; or any condition dangerous to human life, unsafe, or detrimental to the public health or safety; is declared to be a public nuisance subject to the enforcement procedures of Chapter 13 of the Lake County Ordinance Code. All remedies which are given by law for the prevention and abatement of a nuisance apply to such nuisance, including recovery of the County's enforcement costs.

d. Upon request of the Public Health Officer, the board of supervisors may initiate a civil action against a violator, including injunctive relief.

Section Six: **Expiration.** Unless extended or modified by the Board of Supervisors, this article shall expire on December 31, 2021, or on the date of rescission of the Board's proclamation of Covid-19 emergency, whichever is sooner, and be of no further force or effect.

Section ~~Six~~ **Seven:** It can be seen with certainty that there is no possibility this Ordinance may have a significant effect on the environment.

Section ~~Seven~~ **Eight:** All ordinance or parts of ordinance in conflict herewith are hereby repealed to the extent of such conflict and no further.

Section ~~Eight~~ **Nine:** This Ordinance shall take effect 30 days after its adoption.

The Foregoing Ordinance was passed and adopted by the Board of Supervisors on the ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT OR NOT VOTING:

COUNTY OF LAKE

Chair, Board of Supervisors

ATTEST: Carol J. Huchingson

Clerk of the Board

By:_____

Deputy Clerk

APPROVED AS TO FORM;

Anita L. Grant

County Counsel