

ORDINANCE NO. 3097

AN ORDINANCE OF THE COUNTY OF LAKE TO PROVIDE FOR GRADUATED LEVELS OF ENFORCEMENT OF PUBLIC HEALTH ORDERS THROUGH EDUCATION AND TRAINING AND THE IMPOSITION OF ADMINISTRATIVE FINES

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, 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; 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 World Health Organization has indicated there is no way to predict how, if, or when the COVID-19 pandemic will end; and

WHEREAS, the County of Lake has implemented the process of reopening its economy and loosening public restrictions in accordance with and in compliance with applicable State regulations and directives and wants to continue maintain that process for the benefit of the public and local businesses; and

WHEREAS, it is imperative for this Board to be responsive to the concerns of all residents and to illustrate to the State the County's efforts to adhere to and to enforce its public health orders, not only in regard to local businesses, but as to members of the public as well; 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, generally, members of the public, local agencies and businesses have diligently pursued compliance efforts and the vast majority of those agencies and local businesses are in compliance with public health orders, this Board believes that a graduated approach to enforcement, making use of information dissemination and training prior to the imposition of fines, offers a reasonable means of maintaining compliance; 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: Adoption of Public Health Orders as County Law. A violation(s) of a Public Health Order as defined herein is a violation of this Ordinance and shall be subject to enforcement and administrative procedures in accordance with Government Code section 53069.4.

Section Three: Definitions. For purposes of this Ordinance, the following words and phrases have the following meanings:

- a. “Enforcement Officer” means the following officials and their designees: Health Services Director, Community Development Director, and any official designated by the Board of Supervisors to enforce this Ordinance.
- b. “Responsible Party” means an individual or legal entity whose act or failure to act violates this Ordinance.
- c. “Public Health Orders” means any order(s) issued by the State Public Health Officer and any order issued by the County Public Health Officer under the authority granted by state law.

Section Four: Informal Enforcement. If an Enforcement Officer determines that a violation(s) of this Ordinance has occurred, the Enforcement Officer will contact the Responsible Party and request that the violation be corrected. 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. The Enforcement Officer shall offer assistance to the Responsible Party in the form of training, and/or information relating to the correction of said violation(s). The Enforcement Officer shall afford the Responsible Party a reasonable time of not less than five (5) days to correct the violation and shall work with the Responsible Party to achieve compliance with this Ordinance.

Section Five. Notice of Violation. If informal enforcement is unsuccessful in correcting the violation, the Enforcement Officer shall issue a Notice of Violation to the Responsible Party that provides up to ten (10) days after the Notice of Violation is issued to correct the violation.

Section Six. Administrative Fines. In those rare instances where a Responsible Party receiving the Notice of Violation does not correct the violation(s) in the time specified in that Notice, the Enforcement Officer may impose an administrative fine, but may do so only if the Notice of Violation includes the statement that an administrative fine shall be imposed if the Responsible Party fails to correct the violation(s) within the time period specified in said Notice. The Notice must also specify the amount of that fine.

Section Seven: Contents of the Notice of Violation.

(a) A Notice of Violation will include the following information:

- (1) The date of the violation(s).
- (2) The address or other description of the location where the violation(s) occurred.
- (3) The Public Health Order violated and a description of the violation(s).
- (4) If a Notice of Violation orders the correction of a violation, a description in the Notice of Violation of how the violation(s) can be corrected.
- (5) If applicable, a statement that an administrative fine in an amount specified shall be imposed if the violation(s) is not corrected within the time specified in the Notice of Violation.
- (6) A statement that the violation of this Ordinance and the name of the Responsible Party may be published on a County website
- (7) An advisement of the right to request a hearing to appeal the Notice of Violation must occur within ten (10) days after the service date of the Notice of Violation.

Section Eight. Service of the Notice of Violation.

(a) Personal Service. By personal service, provided that the personal service can be accomplished without violating Public Health Orders. Such service is effective if the Notice of

Violation is set down near the Responsible Party and orally identified in a manner that can be heard by the Responsible Party.

(b) Service by Mail. If personal service is impracticable, by mailing a copy of the Notice of Violation to the Responsible Party by certified mail postage prepaid with a requested return receipt. Simultaneously the citation may be sent by first class mail. If the citation is sent by certified mail and returned unsigned then service shall be deemed effective pursuant to first class mail provided the citation sent by first class mail is not returned.

Section Nine. Administrative Fines Amounts and Other Penalties.

(a) If an administrative fine is imposed as a consequence of the violation of this Ordinance, pursuant to Government Code section 25132, subdivision (b), such an administrative 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.

(b) Collection of Administrative Fines. The administrative fine becomes effective and due upon the Final Order as described in Section Eleven herein. The Responsible Party has thirty (30) days from the date of the Final Order to pay the administrative fine. The County may pursue any remedy authorized by law to collect administrative fines not timely paid.

(c) Publication of Violation. If a Responsible Party fails to timely file an appeal of a Notice of Violation or if the violation is upheld by the Board of Supervisors pursuant to a hearing as described hereinabove, the County may publish on a County website the fact that a violation of this Ordinance occurred and the identity of the Responsible Party.

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Section Ten. Hearing.

(a) A Responsible Party upon whom a Notice of Violation is served may appeal pursuant to the procedures set forth in this section. The appellant must file a written appeal no later than ten (10) days after the service date of the Notice of Violation. The written appeal must contain:

(1) A brief statement setting forth the interest the Responsible Party has in the matter relating to the violation; and

(2) A brief statement of the material facts that the Responsible Party claims supports the contention that no violation exists and/or no fine should be imposed or that a fine of a different amount is warranted.

(b) Notice of the appeal hearing will be served as specified in Section Eight herein and will set the time and location of the appeal hearing.

(c) Said appeal shall be heard by the Board of Supervisors, no later than the next Board meeting following receipt of the appeal.

(d) At the hearing, the Responsible Party will be given the opportunity to testify and to present evidence.

(e) After considering the testimony and evidence submitted at the hearing, or after the appellant has failed to appear at the hearing, the Board of Supervisors shall make and announce a decision as to whether the Notice of Violation is upheld, modified, or dismissed. The decision of the Board shall be final.

Section Eleven. Final Order.

(a) The Notice of Violation shall become a final administrative order on the date the Board of Supervisors' announced decision on an appeal of the Notice of Violation, or if no appeal is filed, on the date the time to appeal said Notice has expired.

Section Twelve. Nonexclusive Remedies. The remedies provided in this Ordinance are cumulative and shall be in addition to any other remedies provided by law.

Section Thirteen. Sunset Clause. This Ordinance shall sunset or be repealed on October 1, 2021, unless the Board of Supervisors takes further legislative action to repeal or to extend this Ordinance.

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

Section Fifteen: Severability. If any section, paragraph, sentence, phrase or word of this Ordinance is declared invalid for any reason, that invalidity shall not affect any other portion of this Ordinance, which shall remain in full force and effect. 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 Sixteen. This Board finds that the fines authorized by this Ordinance are not taxes and are exempt from the provisions of Article XIII C of the California Constitution pursuant to Section 1 of Article XIII C, subdivision (e)(5).

Section Seventeen: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict and no further.

Section Eighteen: This ordinance shall take effect on the 17th day of September, 2020, and before the expiration of fifteen days after its passage, it shall be published at least once in a newspaper of general circulation printed and published in the County of Lake


The Foregoing Ordinance was introduced before the Board of Supervisors on the
11th day of August, 2020, and passed by the following vote on the 18th day of
August, 2020.

AYES: Supervisors Crandell, Scott, and Simon

NOES: Supervisors Sabatier and Brown


ABSENT OR NOT VOTING: None

COUNTY OF LAKE


Moke Simon (Aug 24, 2020 08:13 AKDT)
Chair Board of Supervisors

ATTEST: CAROL J. HUCHINGSON
Clerk of the Board of Supervisors

APPROVED AS TO FORM:
ANITA L. GRANT

By: 
Johanna DeLong (Aug 24, 2020 08:47 PDT)
Deputy

By: _____

