

ORDINANCE NO. _____

URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ADDING CHAPTER 9-24 TO TITLE 9 HEALTH AND SAFETY AUTHORIZING ADMINISTRATIVE ENFORCEMENT OF COVID-19 PUBLIC HEALTH ORDERS

WHEREAS, COVID-19 is a disease resulting from a novel coronavirus first detected in or around December 2019. It is a serious and highly infectious disease. The COVID-19 pandemic is unprecedented in duration and scope; and

WHEREAS, symptoms of COVID-19 are still being discovered and are wide-ranging, including fever, cough, shortness of breath, loss of taste and smell, gastrointestinal distress, extreme fatigue, and others. Those who have been afflicted have experienced anything from no symptoms, to mild illness, to debilitation, to organ failure and death; and

WHEREAS, on January 30, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a public health emergency of international concern, the Centers for Disease Control and Prevention (CDC) determined that the virus presents a serious public health threat, and on January 31, 2020, the U.S. Department of Health and Human Services declared a nationwide Public Health Emergency; and

WHEREAS, on March 2, 2020, due to the potential introduction of COVID-19 in Sonoma County, the Sonoma County Health Officer proclaimed a Local Health Emergency and the Sonoma Director of Emergency Services issued a Proclamation of Local Emergency; and

WHEREAS, on March 2, 2020, following the Declaration of Local Health Emergency by the Sonoma County Health Officer, the City Manager, acting in his capacity as Director of Emergency Services, issued a Proclamation of Existence of a Local Emergency within the City of Santa Rosa; and

WHEREAS, on March 3, 2020, by Resolution RES-2020-035, the Council of the City of Santa Rosa ratified the Proclamation of the Existence of a Local Emergency issued by the Director of Emergency Services; and

WHEREAS, On March 4, 2020, the California Governor proclaimed a State of Emergency to exist in California due to the threat of COVID-19. That same day, the Sonoma County Board of Supervisors adopted Resolution No. 20-0074 ratifying the Proclamation of a Local Emergency issued by the Sonoma County Director of Emergency Services and the Declaration of Local Health Emergency issued by the Sonoma County Health Officer; and

WHEREAS, on March 13, 2020, the President of the United States proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency; and

WHEREAS, on March 17, 2020, the County Health Officer ordered all individuals living in the County to shelter in their place of residence, except to provide or receive certain essential services, engage in certain essential activities, and work for essential businesses and

governmental services (Order No. C-19-03); Order No. C-19-03 was issued on evidence of increasing occurrence of COVID-19 within the local community and the Bay Area, and the need to slow the rate of transmission to protect the most vulnerable and prevent the health care system from being overwhelmed; and

WHEREAS, on March 19, 2020, the Governor issued Executive Order N-33-20, imposing a statewide shelter-in-place order requiring individuals to remain in their places of residence, except to perform essential services or to engage in essential activities. Subsequent Executive Orders have set forth a staged process for gradually allowing business operations to re-open, with appropriate health measures to reduce the risk inherent in increased activities during the pandemic; and

WHEREAS, the County Health Officer subsequently extended and adopted new orders to continue requirements that individuals shelter in place, to slowly allow certain additional business and outdoor recreation activities, and to establish requirements for social distancing, hygiene, and use of face coverings to reduce the rate of transmission and protect the most vulnerable in the community. (Order No. C9-05 (March 31, 2020); Order No. C9-09 (May 1, 2020), Amendment 1 (May 7, 2020), Amendment 2 (May 14, 2020); Amendment 3 (May 22, 2020); Order No. C19-14 (June 5, 2020), Amendment 1 (June 12, 2020); Order No. C19-15 (June 18, 2020); and

WHEREAS, on July 1, 2020, due to increasing spread of COVID-19, the State Public Health Officer issued guidance on Closure of Sections in Response to COVID-19, instructing counties that have been on the State's "County Monitoring List" for three consecutive days or more to close indoor operations for certain sectors that promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult, in order to further mitigate the spread of the virus; and

WHEREAS, on July 10, 11, and 12, 2020, Sonoma County recorded daily cases counts exceeding the limits set forth by the State Public Health Officer, and State health officials directed closure of certain businesses and indoor operations for a period of not less than three weeks; and

WHEREAS, on July 13, 2020, the Governor announced that certain businesses and indoor operations that promote the mixing of populations beyond households must close statewide, and additionally that Sonoma County must close additional indoor operations such as gyms, places of worship, offices for non-critical businesses, personal care services, and malls; and

WHEREAS, on July 22, 2020, to help slow COVID-19's spread, protect vulnerable individuals, and prevent the healthcare system in the County from being overwhelmed, the County Health Officer issued Order No. C19-16-I isolating to their homes all persons who have COVID-19 and persons likely to have COVID-19 as determined by their treating provider; and

WHEREAS, on July 24, 2020, there were 995 cases of COVID-19 in the City of Santa Rosa which at that time represented 45% of all the COVID-19 infections in the City since March

and reflected one of the highest rates of infection within the County. This data provides a clear picture that the City, the County's densest region, is the highly susceptible to virus transmission and has been hit among the hardest; and

WHEREAS, County-wide, the County has continued to be out of compliance with several indicators set by the California Department of Public Health, including average case rates, availability of intensive care unit beds, and hospitalizations, and the County has therefore remained on the State's "County Monitoring List," reflecting an immediate need to reinstitute and enforce restrictions and precautionary measures; and

WHEREAS, violations of Public Health Orders present an immediate threat to the public health and safety and will increase the likelihood that the COVID-19 virus will continue to spread throughout the City, cause preventable illnesses and deaths, inflict social and economic hardships on our community and place our health care systems at risk; and

WHEREAS, immediate enforcement of the Public Health Orders is necessary to ensure their consistent, effective implementation and to achieve their intended purposes of controlling the spread of COVID-19 in the City; and

WHEREAS, existing strategies for enforcing Public Health Orders include education, misdemeanor criminal prosecution and civil litigation; although helpful and necessary, these strategies are not adequate alone to limit the spread of COVID-19, and it has become clear that additional enforcement strategies are needed to incentivize compliance with Public Health Orders; and

WHEREAS administrative enforcement through administrative citations and civil fines will provide additional and alternative mechanisms to efficiently and more immediately deter violations and enhance the effectiveness of Public Health Orders to combat the negative effects of the COVID-19 pandemic; and

WHEREAS, in some circumstances, Public Health Order violations demand a substantial penalty to provide an effective and significant deterrent to ensure they cannot be dismissed as "the cost of doing business," particularly when the impact to public health and safety is so high; and

WHEREAS, on August 6, 2020, the Board of Supervisors of the County of Sonoma adopted an urgency ordinance in which it adopted all Public Health Orders as law of the County, to be in effect throughout the duration of the County's Declaration of Local Health Emergency and Proclamation of Local Emergency; and

WHEREAS, that urgency ordinance also declares the violation of a Public Health Order to be a public nuisance, establishes civil fines for violations of Public Health Orders, and authorizes enforcement by officers, employees and agents of both the County and the cities and towns within the County; and

WHEREAS, the City Code does not currently provide for enforcement of Public Health Orders by City officers, employees or agents, other than law enforcement; and

WHEREAS, in light of the urgent public health conditions arising from COVID-19 within the City of Santa Rosa as well as in the County as a whole, City staff recommend that the City Council adopt an ordinance, to take effect immediately, to authorize the City's Code Enforcement Officers and others designated by the City Manager, to enforce County and State Public Health Orders during the Local Health Emergency; and

WHEREAS, Government Code section 36937(b) allows an ordinance to take effect immediately, if it is an ordinance for the immediate preservation of public peace, health or safety and it contains a declaration of the facts constituting the urgency; and

WHEREAS, Section 8 of the Santa Rosa City Charter authorizes the City Council to adopt an urgency measure to take effect immediately upon its adoption if necessary to preserve the public peace, health or safety if such ordinance contains the reasons for its urgency; and

WHEREAS, such an urgency measure requires a five-sevenths vote of the City Council for adoption; and

WHEREAS, the City Council has been provided with information upon which the findings and actions set forth in this Ordinance are based, allowing the Council to adopt this urgency ordinance to be effective upon adoption; and

WHEREAS, for the reasons set forth above, this Ordinance is declared by the Council of the City of Santa Rosa to be necessary for preserving the public peace, welfare, health or safety and to avoid a current, immediate and direct threat to peace, health, safety or welfare of the community and the recitals above taken together constitute the City Council's statement of the reason for adopting this Ordinance on an urgency basis.

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. The Council finds, based on evidence and records presented, that this Ordinance is necessary for the protection of the public peace, health, safety and welfare.

Section 2. Chapter 9-24 is added to the Santa Rosa City Code as follows:

“Chapter 9-24 ADMINISTRATIVE ENFORCEMENT OF COVID-19 PUBLIC HEALTH ORDERS

9-24.010 Intent.

It is the intent of this Ordinance (a) to authorize City staff, including but not limited to Santa Rosa Police, Santa Rosa Code Enforcement Officers, and others as may be designated by the City Manager, to enforce Orders of the Sonoma County Public Health Officer and of the

California State Public Health Officer within the City limits, and (b) to provide City staff with administrative enforcement tools to assist in achieving compliance with those Orders.

9-24.020 Definitions.

As used in this chapter, the following capitalized terms shall have the following meaning:

(A) “Citation” or “Administrative Citation” means a civil citation issued pursuant to this ordinance.

(B) “City” means the City of Santa Rosa.

(C) “Commercial” means for the purpose of commercial gain or as part of a commercial enterprise.

(D) “Council” means the Santa Rosa City Council.

(E) “County” means the County of Sonoma.

(F) “County Public Health Officer” or “County Health Officer” means the County Health Officer designated by the Sonoma County Board of Supervisors pursuant to Health and Safety Code section 101000.

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

(H) “Enforcement Officer” means any City of Santa Rosa employee or agent of the City with the authority to enforce any provision of the Santa Rosa City Code or ordinance, state law or public nuisance, including code enforcement officers, police officers and any other employees designated by the City Manager.

(I) “Local Health Emergency” means the Local Health Emergency declared by the Sonoma County Health Officer on March 2, 2020.

(J) “Non-commercial” means all violations that are not included within the definition of “commercial” within this section.

(K) “Public Health Order” means any current order issued by the Sonoma County Public Health Officer or the California State Public Health Officer related to COVID-19 and containing mandatory, binding, or enforceable obligations applicable to the public.

(L) “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 City that is responsible for causing or maintaining a violation of this chapter.

(M) "Violation" means an act, omission, or condition contrary to a provision of a Public Health Order.

9-24.030 Adoption of Public Health Orders as City law.

All Public Health Orders issued during the Local Health Emergency are adopted as the law of the City and deemed orders and regulations of the Council, pursuant to Government Code section 8634, and are determined to be necessary for the protection of life and property during the Local Health Emergency.

9-24.040 Nonexclusivity and election of proceedings.

All procedures and remedies contained in this Chapter are cumulative and in addition to any other procedures and remedies available under local, state or federal law, whether administrative, civil or criminal in nature. As such, the provisions of this Chapter may be utilized alone or in conjunction with any other procedure or remedy. Election to employ the procedures or remedies provided by this Chapter shall be at the sole discretion of the City, and shall be without prejudice to the City choosing to also proceed simultaneously or subsequently by pursuing different proceedings and remedies with respect to the same violation.

9-24.050 Violation and enforcement.

(A) Any violation of a Public Health Order is a public nuisance.

(B) Any violation of a Public Health Order represents an immediate danger to public health, safety and welfare and may be enforced as a misdemeanor, as a public nuisance, through injunctive relief, or as a civil violation through citation and immediate imposition of civil penalties as detailed in this Chapter.

(C) Each and every day a violation of a Public Health Order exists constitutes a separate and distinct offense.

(D) This chapter may be enforced by any Enforcement Officer employed, contracted or otherwise engaged by the City.

9-24.060 Issuance of administrative citations and establishment of civil penalties.

(A) When an Enforcement Officer discovers or otherwise determines that a violation of a Public Health Order has occurred, such Enforcement Officer may issue a Citation as provided by this Chapter.

(B) All violations of a Public Health Order are subject to a civil penalty as follows:

- 1) A non-commercial violation shall be subject to a civil penalty of \$100 per violation.
- 2) A commercial violation shall be subject to a civil penalty of \$1,000 for a first violation, \$5,000 for a second violation, and \$10,000 for each additional violation by the same responsible party.
- 3) Civil penalties may be imposed by an Enforcement Officer, a hearing officer or a court.

(C) The civil penalty provided in Subsection (b) becomes effective and due immediately upon issuance of the Citation or upon issuance of an order by a hearing officer or a court, whichever occurs first. Payment shall be made to the City of Santa Rosa at the address provided in the Citation or order. The Responsible Party shall have twenty-one (21) days from the date of service of the Citation or order to pay the penalty in the absence of a timely submitted appeal, pursuant to section 9-24.080, below.

(D) City may pursue any remedy authorized by law to collect civil penalties that are not timely paid, including but not limited to a civil action for collection of civil penalties or submission to a collection agency.

9-24.070 Form and service of citations.

(A) A Citation issued pursuant to this Chapter 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 has been violated, including reference to the paragraph number containing the provision(s) violated;
- 4) The amount of the penalty due;
- 5) Identification of appeal rights and a description of how to appeal; and
- 6) The signature of the Enforcement Officer issuing the Citation along with the date of the issuance of the Citation.

(B) A Citation issued pursuant to this Chapter shall be served on the Responsible Party in one of the following ways:

1) By personal service, provided the personal service can be accomplished without violating Public Health Orders. Without limitation to other methods of personal service, personal 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.

9-24.080 Appeal of citations.

(A) Except as otherwise set forth herein, the procedures set forth in Chapter 1-30, Article 6, of the Santa Rosa City Code shall apply to an appeal of a Citation issued pursuant to this chapter.”

Section 3. Authority. This Ordinance is enacted pursuant to the City of Santa Rosa’s general police powers, Section 8 of the Charter of the City of Santa Rosa, and Article XI of the California Constitution and Government Code.

Section 4. Environmental Determination. Adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

Section 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

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Section 6. Effective Date. This Ordinance shall take effect immediately upon its adoption.

IN COUNCIL DULY PASSED AND ADOPTED this _____ day of _____, 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM:

City Attorney