

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: SUE GALLAGHER, CITY ATTORNEY
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CITY ATTORNEY'S OFFICE
JESSE OSWALD, CHIEF BUILDING OFFICIAL
PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
SUBJECT: ADMINISTRATIVE ENFORCEMENT OF PUBLIC HEALTH
ORDERS

AGENDA ACTION: URGENCY ORDINANCE

RECOMMENDATION

It is recommended by the City Attorney and the Planning and Economic Development Department that the Council adopt an urgency ordinance adding Chapter 9-24 — Authorizing Administrative Enforcement of COVID-19 Public Health Orders – to the City Code to authorize administrative enforcement and penalties for violation of Public Health Orders related to the COVID-19 pandemic.

EXECUTIVE SUMMARY

The County of Sonoma and the City of Santa Rosa continue to suffer high rates of COVID-19 infections, placing our community and its health care system at significant risk. The County has been placed on the State County Watch List by the California Department of Public Health due to recent increases in infections and hospitalizations. Our community's health and well-being is threatened and our economy left in precarious condition. It is critical that we do all we can to stop the spread of COVID-19.

The Sonoma County Health Officer and the State Health Officer have issued multiple orders restricting certain business activities and requiring personal responsibility for social distancing, masking and hygiene. The measures set forth in these orders are essential for controlling the spread of infection. To date, enforcement of those orders has relied primarily on criminal enforcement and judicial actions. While helpful and necessary, these strategies have not been sufficient to stem the spread of COVID-19 and it has become clear that additional enforcement strategies are needed to incentivize compliance with Public Health Orders.

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The City Attorney and the Department of Planning and Economic Development recommend that Council consider adoption of an urgency ordinance to establish a civil citation process, with associated fines, to expand options for enforcement of violations of state and local health orders. The recommendation is consistent with recent actions taken by the Sonoma County Board of Supervisors. Under the City Charter, five affirmative votes are necessary to adopt an urgency ordinance.

BACKGROUND

In an effort to curtail the spread of COVID-19, State and County public officials have restricted the activities and operations of businesses and individuals through Public Health Orders. Those Orders have been amended over time, reflecting the evolution of State mandates and changing local conditions. More recent State orders permitted a staged process for gradually allowing some business operations to re-open, based upon epidemiological indicators such as improved case rates, hospitalization capacity and testing availability.

By late June 2020, however, indicators in many areas of California showed worsening conditions. In early July 2020, the Governor announced that Sonoma County had been added to a “watch list” of California counties being closely monitored for COVID-19 activity, due to the County’s spike in confirmed cases, increased evidence of community transmissions, increased hospitalizations, and other epidemiological indicators. Concerns continued to grow and on July 13, 2020, the State Public Health Officer issued orders restricting the operations of a broad range of businesses and activities statewide in an effort to reduce community transmission and ensure the security of health care resources. Counties on the state monitoring list, including Sonoma County, were compelled to take a step back from their re-opening.

On July 24, 2020, there were 995 confirmed active cases of COVID-19 in the City of Santa Rosa, comprising 45% of all coronavirus infections in Santa Rosa since March. These recent numbers reflected one of the highest rates of infection across the entire County.

County-wide, the County has continued to be out of compliance with indicators set by the California Department of Public Health. Statistical data reveals high average case rates, low availability of intensive care unit beds, and rising hospitalizations.

To help to address these concerns, the Sonoma County Board of Supervisors, on August 6, 2020, adopted an urgency ordinance adopting all Public Health Orders as the law of the County so long as the County’s Declaration of Local Health Emergency and Proclamation of Local Emergency remain in effect. The urgency ordinance declared the violation of a Public Health Order to be a public nuisance, established civil fines for violations of the Public Health Orders and authorized administrative enforcement by officers, employees and agents of the County and equally by the officers, employees and agents of the cities and towns within the County.

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At the same time, the Sonoma County Board of Supervisors directed the initiation of a public education campaign and established a centralized “Compliance Hotline” to receive and triage reports of violations.

PRIOR CITY COUNCIL REVIEW

Not applicable.

ANALYSIS

ENFORCEMENT OF PUBLIC HEALTH ORDERS

The majority of City residents and businesses have complied with Public Health Orders during these challenging times. There is an increasing need for the City, however, to address businesses and activities of individuals acting in a manner contrary to the Public Health Orders. Violations of Public Health Orders not only create a serious and immediate threat to public health and safety, but also jeopardize social and economic welfare by increasing the potential for renewed curtailment of business operations, school closures, and activity restrictions.

Currently, by Order of the Sonoma County Health Officer, violations of the County’s Public Health Orders are enforceable as criminal misdemeanors pursuant to Health & Safety Code sections 120275 and 120295. Civil actions for injunctive relief/temporary restraining orders may also be pursued through the judicial Superior Court process. While these enforcement mechanisms can be effective, they are, at times, too slow, are resource and staff-intensive, overly punitive and/or leave ultimate control in the hands of others.

As the COVID-19 pandemic persists in the City and throughout the State, there is an increasing need for cities and counties to expand the tools available to enforce Public Health Order violations.

The proposed Urgency Ordinance adds an additional enforcement tool by creating a civil administrative process to address Public Health Order violations. Informal intervention and education will continue to be the initial strategy to encourage voluntary compliance in the community.

If adopted, the new enforcement tool will supplement, not replace, the current enforcement methods available. In addition to enforcing compliance where needed, staff is hopeful that the administrative citation process will deter violations before they occur.

AUTHORITY FOR URGENCY ORDINANCE

Under Cal. Const., XI, § 7, a city or county may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. Government Code section 36937(b) allows an ordinance to take effect

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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. 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 reason for its urgency.

FEATURES OF THE PROPOSED ORDINANCE

The proposed urgency ordinance includes the following elements:

1. Complements the County's urgency ordinance, by providing for enforcement of County and State Public Health Orders within the City;
2. Focuses on the procedures of enforcement, and does not delve into areas of medical expertise, leaving those decisions in the hands of the medical officials;
3. Establishes authority for issuance of civil citations as an additional tool for enforcement;
4. Sets civil penalties as follows: \$100 for each non-commercial violation, tiered penalties for commercial violations at \$1000 for the first violation, \$5000 for the second violation, and \$10,000 for any subsequent violations;
5. Allows designated civil Enforcement Officers to enforce Public Health Orders, thereby expanding enforcement capabilities and reducing burdens on law enforcement;
6. Does not alter law enforcement's parallel enforcement authority;
7. Allows Enforcement Officers to intervene and educate violators of the Public Health Orders to encourage voluntary compliance and to issue a citation after a grace period if the violation has not been abated;
8. Provides the cited party access to an appeal, to ensure due process, pursuant to Government Code section 53069.4; and
9. Allows Enforcement Officers to focus on violations of particular concern based on local conditions.

FISCAL IMPACT

Collection of the administrative citation penalties of code enforcement activities will be applied to the administrative hearing fund.

ENVIRONMENTAL IMPACT

This action is exempt from 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.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Urgency Ordinance

CONTACT

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