

BEFORE THE BOARD OF SUPERVIORS OF THE COUNTY OF SAN BENITO

Ordinance No. _____

**AN URGENCY ORDINANCE OF BOARD OF SUPERVISORS OF THE COUNTY OF
SAN BENITO INCORPORATING BY REFERENCE AND AUTHORIZING
ADMINISTRATIVE PENALTIES AND CIVIL ENFORCEMENT OF STATE OF
CALIFORNIA AND SAN BENITO COUNTY PUBLIC HEALTH OFFICER COVID-19
EMERGENCY ORDERS**

The Board of Supervisors of the County of San Benito ordains as follows:

SECTION 1. Introduction and Purpose, Legal Background, Findings and Declarations

Exhibit “A”, “Introduction and Purpose”, and Exhibit “B”, “Legal Background, Findings and Declarations” are attached hereto and incorporated herein by this reference.

SECTION 2. Citation. This Ordinance may be referred to as the “COVID-19 Administrative Penalty Ordinance.”

SECTION 3. Definitions.

- A. “Board” means the San Benito County Board of Supervisors.
- B. “Citation” or “Administrative Citation” means a citation issued pursuant to this Ordinance.
- C. “County” means the County of San Benito, and when referring to territory, refers to all land within the unincorporated areas of the County of San Benito.
- D. “County Health Officer” shall mean the County Health Officer appointed by the County of San Benito.
- E. “Days” means calendar days.
- F. “Enforcement Officer” means any peace officer, the County Health Officer and anyone designated by the Health Officer, the Director of Emergency Services and anyone designated by the Director, any Code Enforcement Officer from the Division of Code Enforcement in the Resource Management Agency, the Director of Health and Human Services, and anyone designated by the Director, and anyone identified by resolution of the Board.
- G. “Hearing Officer” means any person appointed to conduct any hearing or proceeding under the provisions of this Ordinance, unless otherwise specified, including, without limitation, the administration of oaths, the issuance of subpoenas, the receipt of evidence, and the entry of findings of fact and law.
- H. “Public Health Order(s)” shall have the meaning set forth in Section 4, below.

I. "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. This term specifically means and includes, but is not limited to, any of the following:

- 1) Any person or entity that causes, maintains, permits, or allows a violation of this Ordinance.
- 2) Any person or entity that owns, possesses, or controls any parcel of real property in the County upon which a violation of this Ordinance is maintained.
- 3) Any trustee of any trust that holds legal title to any parcel of real property in the County upon which a violation of this Ordinance is maintained.
- 4) Any person or entity that owns, possesses, operates, manages, or controls any business within the County that is responsible for causing or maintaining a violation of this Ordinance.

SECTION 4. Adoption of Public Health Orders as County Law.

All of the following are hereby incorporated by referenced into this Ordinance and shall constitute "Public Health Orders," as that term is used herein:

- A. County Health Officer orders relating to the COVID-19 pandemic, including those now in existence and any that later come into existence, and including all materials expressly incorporated by reference into such orders.
- B. All orders of the State Public Health Officer, state guidance documents issued for businesses and activities that have been adopted or approved by the County Health Officer, as well as any state guidance and directives posted on covid19.ca.gov that are described as mandatory, binding, or otherwise presented as enforceable obligations, under the statutory authority of the State Public Health Officer or any other provision of law, or as directed by the Governor pursuant to the Governor's emergency powers, all of the above of which are now in existence and any that later come into existence, and including all materials expressly incorporated by reference into such orders or documents;
- C. Any site-specific protocol (including but not limited to a completed Social Distancing Protocol Worksheet) completed as required by state and local requirements. The failure to post such protocol in violation of any of the foregoing requirements shall also be a violation of this Ordinance.

All Public Health Orders are hereby deemed orders and regulations of the Board of Supervisors pursuant to Government Code § 8634, shall constitute the law of the County within both unincorporated and incorporated areas, and are determined to be necessary for the protection of life and property during the local emergency declared in connection with the COVID-19 pandemic.

Any violation of a Public Health Order shall constitute an immediate danger to public health and safety pursuant to Government Code § 53069.4 and shall constitute a public nuisance. Nothing in

this Ordinance shall be interpreted to make any conduct that does not violate a Public Health Order a violation of this Ordinance.

SECTION 5. Violation and Enforcement.

- A. Citations; Each Day a Separate Violation. This Ordinance may be enforced at any location within the County by an Enforcement Officer through the issuance of an Administrative Citation with penalties, as described more fully in Section 7, below. Each and every day, or portion thereof, that a violation of this Ordinance exists constitutes a separate and distinct offense.
- B. Powers of Enforcement Officer. As set forth more fully in Section 7, below, the Enforcement Officer shall have the authority and powers necessary to determine whether a violation exists and take appropriate action to gain compliance with the law and abate any violation. The Enforcement Officer shall further have authority to issue Administrative Citations and any other notices and orders necessary to obtain compliance and cost recovery, as well as the power to inspect public and private property as provided by law, impose fines and fees, and use the administrative remedies that are available under state law, this Ordinance, and other applicable provisions of the San Benito County Code
- C. Obstruction. In addition, every person who willfully resists, delays, or obstructs any Enforcement Officer or Hearing Officer in the discharge or attempt to discharge any duty of their office or employment in connection with this Ordinance shall be guilty of a misdemeanor, punishable by a fine not exceeding \$1,000, or by imprisonment in a County jail not to exceed one year, or by both that fine and imprisonment.
- D. False Statements. Further, every person who willfully states anything which that person knows to be false in any oral or written statement to an Enforcement Officer or Hearing Officer regarding the subject of an investigation, Citation, or hearing occurring pursuant to this Ordinance shall be guilty of a misdemeanor, punishable by a fine not exceeding \$1,000, or by imprisonment in a County jail not to exceed one year, or by both that fine and imprisonment.
- E. Litigation Authority. The Office of the County Counsel is hereby authorized to file a civil action on behalf of the County to enjoin any violation(s) of this Ordinance and to obtain other appropriate relief needed to cease and abate such violations, as well as to recover all associated County costs, attorneys' fees, and any fines or penalties imposed. No further Board authority or permission to initiate litigation is required to enforce violations of this Ordinance.

SECTION 6. Nonexclusivity and Election of Proceedings.

- A. This Ordinance provides for enforcement proceedings that are supplemental to all other enforcement proceedings authorized by local, state or federal law, whether administrative, civil or criminal in nature. Any election to proceed under this Ordinance and shall be without prejudice to the County choosing to also proceed simultaneously or subsequently by pursuing

different or additional means of enforcing the same violation. Election to issue a Citation or take any other action authorized by this Ordinance shall be at the sole discretion of the Enforcement Officer, and nothing in this Ordinance shall be interpreted to mandate that an Enforcement Officer take certain steps in response to potential violations of Public Health Orders or to preclude and Enforcement Officer from engaging informal oral or written requests to gain compliance.

- B. Nothing in this Ordinance alters or diminishes the authority of the Sheriff, the County Counsel, or the District Attorney to address any such violations. Further, nothing in this Ordinance or decisions made hereunder, including decisions not to take any enforcement action authorized in this Ordinance, shall create any liability for the County, or any Enforcement Officer.

SECTION 7. Administrative Citations; Penalties and Fees.

- A. Issuance. An Enforcement Officer may issue a Citation to any Responsible Party violating any provision of this Ordinance. The Enforcement Officer may issue a Citation for a violation not committed in their presence if they determine through investigation, including but not limited to credible input from County staff, that the Responsible Party did commit or is otherwise responsible for the violation.

- B. Penalties. Penalties (fines) for Administrative Citations issued pursuant to this Ordinance shall be as follows:

- 1) The civil penalty for each non-commercial violation shall be a fine not to exceed five hundred dollars (\$500). The minimum amount of any such fine shall be twenty-five dollars (\$25.00).
- 2) The civil penalty for each violation involving a commercial activity shall be a fine not to exceed ten thousand dollars (\$10,000). The minimum amount of any such fine shall be two hundred and fifty dollars (\$250).

- C. Factors in Setting Amount. In determining the amount of a fine pursuant to subsection B, above, the Enforcement Officer shall consider:

- 1) The gravity of the public health risk posed by the violation;
- 2) Whether the Responsible Party has been previously counseled regarding the violation;
- 3) For a violation arising from commercial activities, whether the violation is likely to result in increased revenue or avoided costs;
- 4) Whether the violation is the subject of a prior Citation;
- 5) Whether the Responsible Party is making good faith efforts to achieve and maintain compliance with Public Health Orders; and
- 6) Any other matters relating to the nature, circumstances, extent, and gravity of the violation.

For a Citation that includes one or more violations arising from commercial activity, fines imposed for each day of violation shall automatically double, up to the maximum amounts set forth above.

- D. Grace Period. If a violation is capable of being cured (i.e., is an ongoing violation and the Responsible Party has the apparent ability to effect a resolution), an Administrative Citation may include a grace period to cure the violation(s) and avoid the civil penalty set forth in the Citation. The grace period may range from 24-72 hours from the date of the Citation. In determining whether to provide a grace period and in determining the length of any grace period included in a Citation, the Enforcement Officer shall consider the same factors provided above in connection with setting a fine amount. All matters relating to grace periods are within the sole discretion of the Enforcement Officer and are not appealable.
- E. Compliance Reporting Following Grace Period. The Responsible Party must cure each cited violation and must report to the Enforcement Officer when each cited violation is cured prior to expiration of the grace period. Each such report must include the Responsible Party's contact information and availability information sufficient to ensure the Enforcement Officer can verify compliance within 72 hours of the date of cure.
- F. Payment of Administrative Fines. All fines and fees shall be payable to the County in accordance with the procedures specified in this Ordinance, unless otherwise directed in the Citation. Fines shall be paid to the County within 30 days from the date of service of the Administrative Citation, unless an appeal is properly requested. If an appeal is properly requested and the fine is upheld or reduced at that administrative hearing, then the confirmed fine amount shall be paid to the County within 30 days from the date of service of the decision. Payment of the fines and fees shall not excuse the failure to correct the violation or bar further enforcement action by the County.
- G. Administrative Fees. The County may adopt one or more administrative fees to recover the costs associated with the issuance, enforcement, processing, and collection of Administrative Citations. The administrative fees shall be established by resolution of the Board. The administrative fees shall be assessed on each Administrative Citation and collected in the same manner and at the same time as the civil penalty; however, the administrative fees shall be assessed only once per Administrative Citation. Until a new administrative fee is established, any existing applicable fees shall apply.
- H. Late Fee; Collection Costs. Any person who fails to pay any fine or administrative fee imposed pursuant to the provisions of this Ordinance shall be liable for the payment of a late fee. The late fee shall be in an amount established by resolution of the Board. In addition to the administrative fee and late fee, the County is entitled to recover all costs, expenses, fees, and attorneys' fees associated with collecting upon any administrative fines, fees, or costs authorized by this Ordinance.

SECTION 8. Contents of an Administrative Citation; Service.

- A. Contents. Each Citation issued under this Ordinance shall contain:

- 1) The date of the violation.
- 2) The name of the Responsible Party being cited.
- 3) The address or a description of the location where the violation occurred.
- 4) Identification and a brief description of the Public Health Order(s) requirements violated by the Responsible Party.
- 5) The grace period (if any) to cure each cited violation in order to avoid a fine, along with an order that the Responsible Party report to the Enforcement Officer when each cited violation is cured, along with the Responsible Party's contact information, in order for the Officer to verify compliance promptly after the correction.
- 6) The amount of the fine for each cited violation that will be imposed if the cited Violation is not cured within the grace period (if any). If there is no Grace Period, the fine shall be immediately imposed.
- 7) The location(s) and the office hours and mailing address where fines may be paid.
- 8) A notice that the fine amount will automatically reaccrue (and for violations arising from commercial activity, double pursuant to Section 7, above) each day beyond the grace period (if any) that the cited violation persists, up to the maximum amount set forth herein. Each day that the violation occurs after the maximum amount is reached shall be at the maximum amount set forth above per day.
- 9) The amount of all other fees and charges authorized by this Ordinance.
- 10) A brief statement that the violation determination and/or fine amount may be appealed, as follows:

To Appeal this Citation: The violations(s) identified in this Citation and the amount of fine imposed may be appealed within ten calendar days of service of the Citation by providing the Clerk of the Board of Supervisors, County of San Benito (481 Fourth St. Hollister, CA 95023) with a request in writing for an appeal. The request shall be entitled "REQUEST FOR APPEAL OF ADMINISTRATIVE CITATION" and must set forth the factual and/or legal basis for the appeal in detail sufficient to apprise the County of the nature of the appeal and general objections and arguments to be raised by the Responsible Party. All appeal requests shall include a deposit of \$750 toward the costs of a hearing officer unless you include a request for waiver of the deposit concurrently with filing the appeal. The County Administrator may grant the waiver request if you provide sufficient evidence of an inability to pay. If your request is denied, you must provide the deposit within five calendar days or the appeal shall be deemed withdrawn. Any appeal that does not meet all of these requirements will be rejected following review by the Office of the County Counsel. If you do not prevail on the appeal, the hearing officer will require you to reimburse all hearing costs incurred by the County, including the hearing officer's fees and charges.

- 11) A brief description of the fine payment process, including the 30-day timeframe to pay the fine and other fees and charges, the late fee for failure to pay on time, and that unpaid amounts may become a lien and special assessment against the real property where the violation occurred.
- 12) The name and signature of the citing Enforcement Officer and appropriate contact information.

B. Service. Service of a Citation may occur by any of the following methods:

- 1) Personal service upon the owner or other Responsible Party.
- 2) First-class or certified mail to a Responsible Party's business address, or last known personal address using data from the last equalized assessment roll or other reliable information available to the Enforcement Officer.
- 3) For violations involving the use of real property owned or leased by a Responsible Party, by posting the notice in a conspicuous place at the property entrance.
- 4) For any Responsible Party registered with the Secretary of State, by certified mail to that party's agent for service of process at the address registered with the Secretary of State, or as otherwise permitted by law. For any such party required to register with the Secretary of State that has not designated an agent for service of process with the Secretary of State, then a notice may be served on that party by certified mail to the Secretary of State.
- 5) By e-mail when an email address is provided by that party.
- 6) In any other manner reasonably calculated to effectuate notice.

Service by posting shall be deemed effective at the time of posting. Service by mail or e-mail shall be deemed effective upon deposit in the mail or transmission of the e-mail. The failure of any Responsible Party to receive any Citation served in accordance with this Section shall not affect the validity of the Citation nor any subsequent proceeding or action relating to the Citation or the violation(s) identified therein.

SECTION 9. Administrative Appeals.

- A. To hear appeals of Administrative Citations issued pursuant to this Ordinance, the Board of Supervisors authorizes the use of a hearing officer appointed pursuant to San Benito County Code.
- B. Upon receipt of the written appeal, the matter shall be promptly set for a hearing before the hearing officer. The hearing will be conducted remotely using video technology, such as WebEx or ZOOM, unless the parties otherwise mutually agree to an in-person hearing with the concurrence of the hearing officer.
- C. Unless a hearing is waived by the County and the Responsible Party (appellant) in favor of a determination based upon written filings, including arguments and supporting evidence in the form of declaration testimony and other competent evidence, the hearing officer shall hold an de novo administrative hearing to determine whether the conditions described in the Citation constitute a violation under this Ordinance and to review and decide any other matters properly appealed by the appellant. The hearing may be continued from time to time for good cause.
- D. The appellant shall be given an opportunity at the hearing to present and elicit testimony (including by cross-examination) and other evidence regarding matters properly appealed, including the existence of one or more violations and the administrative penalty amount. Failure of the appellant(s) to appear and present evidence at the hearing shall be deemed a withdrawal of the request for hearing and shall constitute a failure to exhaust administrative remedies. Upon failure to appeal, the hearing officer will require you to reimburse all costs incurred by the County, including the hearing officer's fees and charges.

- E. The appellant may choose to be represented by an attorney; however, formal rules of evidence or procedure shall not apply, including rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will require an undue amount of time.
- F. The standard of proof shall be a preponderance of the evidence and the County bears the burden of proof to establish the existence of the violation, if placed in dispute by the notice of appeal. The burden of proof on all other matters shall be borne by the appellant.
- G. The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter certified by the state or San Benito County Superior Court at its sole cost.
- H. After the hearing, the hearing officer shall render his or her written decision affirming, reversing or modifying the determination that one or more violations occurred. If the violation is affirmed, the decision shall include a statement that the County is entitled to recover administrative penalties and any other fees, charges, or costs authorized by this Ordinance and included in the Citation. The hearing officer may also reduce the amount of the administrative penalty if warranted, taking into consideration all evidence provided by the appellant (and any responsive evidence adduced by the County, in connection with the factors set forth in Section 7, above).
- I. A copy of the decision shall be served on the parties and shall be final and conclusive when signed by the hearing officer and served upon the County Counsel and the appellant. For service upon the appellant, the hearing officer shall effect service in the manner requested by the appellant or, if no manner of service is provided, pursuant to the service methods in Section 8, above, with the assistance of the County if desired.
- J. Payment of all fines, fees, charges, and costs specified in the hearing officer's decision shall be made to the County within 30 calendar days of service of the decision, unless timely appealed to the Superior Court. Any Responsible Party aggrieved by the decision of a Hearing Officer may obtain further review by filing appropriate materials with the San Benito County Superior Court in accordance with the timelines and provisions as set forth in California Government Code § 53069.4. The Hearing Officer's decision shall constitute the final administrative order or decision of the County pursuant to Section 53069.4.
- K. Excepting the \$750 deposit required at the time an appeal is filed, hearing officer fees and costs shall be advanced by the County. If the violation is affirmed, the hearing officer shall award the County reimbursement of all hearing expenses borne by the County, including the Hearing Officer's compensation. If the Enforcement Action is only partially upheld and/or if

the fine amount is reduced, the Hearing Officer may proportionately reduce the County's reimbursement of hearing expenses in his or her sole discretion. If the Enforcement Action is dismissed entirely, then the County shall bear the hearing costs and reimburse any deposit provided by the appellant.

- L. The appellant may settle any appeal with the Office of the County Counsel at any time for good cause, without the need for approval by the Board of Supervisors. The County Counsel shall consult with the County Administrator and County Director of Health and Human Services, or their designees, prior to entering into any settlement. The terms of all such settlements shall be publicly disclosed upon request.

SECTION 10. Confidentiality of Complaints.

The County shall take all reasonable steps to ensure that the identity and personal information of any person making a complaint to the County concerning a violation of this Ordinance shall remain confidential. It is declared and found by the Board that the public interest served by encouraging complaints to the County without fear of retribution clearly outweighs the public interest served by disclosure of the complainant's identity and information. No penalty shall be assessed until the factual basis for the complaint has been verified by the Enforcement Officer.

SECTION 11. Real Property Liens.

All violations of this Ordinance constitute a public nuisance and associated enforcement costs are considered costs of abatement. All unpaid abatement costs may be secured by a nuisance abatement lien recorded on title to the property where the violation occurred (provided that the property owner is on notice of the nature and extent of the violation and did nothing to take reasonable steps to curtail or prevent it) and by special assessment placed on the tax bill of said property. All steps taken to impose a lien and create a special assessment shall comply with applicable requirements of state law.

SECTION 12. Severability.

The provisions of this Ordinance are separate and severable. If any provision of this Ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this Ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

SECTION 13. This order takes precedence over ordinances and resolutions in conflict herewith for the limited purposes stated herein.

SECTION 14. Effective Date and Publication.

This Ordinance shall take effect immediately as an urgency ordinance upon its passage by a 4/5 or greater vote of the Board of Supervisors. Upon the cessation of the COVID-19 State of Emergency, this Ordinance shall have no further force or effect.

This Ordinance shall be published once within 15 days of its passage.

In regular session of the Board of Supervisors of the County of San Benito, adopted this 21st day of July 2020, on regular roll call of the members of said Board by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTION:

Jaime De La Cruz
Chair, Board of Supervisors

ATTEST:
Janet Slibsager, Clerk of the Board

APPROVED AS TO LEGAL FORM:
San Benito County Counsel
Barbara J. Thompson

By: _____
Clerk of the Board

By: _____
Barbara Thompson
County Counsel

EXHIBIT “A”
Introduction and Purpose

At a national, state, and local level, the COVID-19 virus pandemic is a serious public health crisis. According to the United States Centers for Disease Control, as of July 14, 2020, in the United States alone, over 135,000 people have died, and over 3.35 million are infected or recovering from the virus, and the crisis is worsening.

Statistics within California and San Benito County are also sobering:

- In a 24-hour period ending at 12:00 noon on July 8, 149 Californians lost their lives to COVID-19, of the 7,087 recorded since March 22 through July 12, while the overall testing positivity rate over a 14-day period increased to 7.1 percent, up 36.2 percent from the beginning of the period.
- Statewide, a 20.95 percent increase in COVID-19 hospitalizations occurred over the last 14 days, with 6,745 individuals hospitalized as of July 12.
- ICU admissions also increased 43 percent over the last 14 days, with 1,886 COVID-19 positive patients in ICUs across the state.
- As of July 14, 2020, 398 confirmed cases of COVID-19 were reported in San Benito County, including a significant and escalating number of suspected cases of community transmission (including transmission at large events).
- 2 people have died in San Benito County of COVID-19 as of July 14, 2020, and one person is currently hospitalized. San Benito County exceeded the state’s 14-day case rate threshold of 100 cases per 100,000 residents and the overall positivity rate. The County’s current case rate value is 217.1. The 14-day case rate equals the total number of cases diagnosed and reported over a 14-day period divided by the number of people living in the county. This number is then multiplied by 100,000. Further, the overall testing positivity rate for the past seven days >8%. The County’s current value is 6.8%.

Significant state and local government actions have been taken to address the pandemic and reduce its public health effects. Exhibit “B” (Legal Background and Findings), below, summarizes these actions, including steps taken to close many businesses, schools, and organized activities long considered essential to everyday life in our community. In recent weeks, many businesses have reopened and activities have resumed under orders and other guidance issued by the California Department of Public Health, the State Public Health Officer, and the County Health Officer, defined collectively as “Public Health Orders.” The vast majority of reopened businesses and activities are being conducted in compliance with applicable Public Health Orders, reducing the risk of COVID-19 spread.

The purpose of this Urgency Ordinance is to address the small but increasing number of businesses and activities that are being conducted partly or entirely in a manner that disregards Public Health Orders adopted in response to the COVID-19 pandemic. These violations present a serious and immediate risk to public health and safety, contributing greatly to the likelihood of a crisis that will cause many preventable illnesses and deaths. These violations also jeopardize local social and economic wellbeing, increasing the potential for renewed curtailment of business operations, school closures, and activity restrictions. This Urgency Ordinance provides a

framework for addressing such violations by establishing an administrative enforcement strategy to complement other, existing means of enforcing Public Health Orders, as outlined.

EXHIBIT “B”

Legal Background, Findings and Declarations

- A. On March 4, 2020, pursuant to his authority under the California Emergency Services Act, Government Code §§ 8625, et seq., the Governor of the State of California proclaimed a state of emergency related to the global pandemic associated with the novel coronavirus disease 2019 (COVID-19). Pursuant to that authority under Government Code § 8567, orders and regulations, including directives, and guidance issued by the Governor and State agencies acting on the Governor’s orders, take immediate effect and have the force of law for the duration of the emergency;
- B. On March 6, 2020, pursuant to his authority acting as the County of San Benito Emergency Services Director, under San Benito County Code § 11.01.006 (A)(1), the County Administrative Officer proclaimed the existence of a Local Emergency in the County of San Benito due to COVID-19, which was unanimously ratified and extended by the Board of Supervisors with Resolution No. 2020-19, adopted on March 10, 2020;
- C. On March 12, 2020, the Governor of the State of California issued Executive Order N-25-20, including the order that all residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19. A violation of the Governor’s Executive Order N-25-20 is a misdemeanor pursuant to California Government Code § 8665;
- D. On March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, incorporating the Order of the State Public Health Officer dated March 19, 2020, ordering all individuals in the State of California to stay home or at their place of residence, except as outlined by the California Department of Public Health (CDPH), during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery systems is capable of serving all, including those at higher risk and the most vulnerable. Health and Safety Code §§ 120275 and 120295 make it a misdemeanor to violate certain sections of the Health and Safety Code, including those requiring individuals to comply with health orders to facilitate the control of infectious diseases. Pursuant to § 120155, the sheriff of each county may enforce all orders of the State Department of Public Health issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease;
- E. On May 4, 2020, the Governor of the State of California issued Executive Order N-60-20, directed all residents to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide, including provisions for staged re-openings of specific business and public activity sectors;

- F. On May 7, 2020, the State Public Health Officer issued an Order directing the terms under which staged re-openings of specific business and public activity sectors may occur for counties or other local public health jurisdictions;
- G. On July 1, 2020, due to increasing spread of COVID-19 in areas of the State of California, the State Public Health Officer issued Guidance on Closure of Sections in Response to COVID-19, instructing counties that have been on the County Monitoring List for three consecutive days or more to close indoor operations for certain sectors which promote the mixing of populations beyond households and make adherence to physical distancing with face coverings difficult, and that within those sectors, those that are not able to continue their business through outdoor operations must close that portion of their business effective immediately for at least three (3) weeks, in order to further mitigate the spread of the virus;
- H. On July 5, 6, and 7, 2020, San Benito County recorded daily cases counts exceeding the limits set forth by the State Public Health Officer and State health officials have directed San Benito County to close or modify for a period of not less than three weeks;
- I. On July 8, 2020, the Health Officer of the County of San Benito issued an Order, effective July 10, 2020, at 11:59 p.m. directing the closure of certain activities in the County of San Benito, including but not limited to all brewpubs, breweries, bars, and pubs and indoor operations of specific industries, such as dine-in restaurants, family entertainment centers, movie theaters, museums, zoos, card rooms, wineries and wine tasting rooms, until further notice.
- J. On July 13, 2020, the State Public Health Officer issued an order affecting Counties including San Benito on the County Monitoring List closing indoor operations for additional sectors which promote the closed-space mixing of populations beyond households and/or make adherence to physical distancing with face coverings difficult, including: gyms and fitness centers, places of worship, protests, offices for non-Critical Infrastructure sectors as designated on [covid19.ca.gov](https://www.covid19.ca.gov), personal care services (including nail salons, massage parlors, and tattoo parlors), hair salons and barbershops, and malls.
- K. Under Section 11.90 (f) of the California Budget Act of 2020, in order to receive federal funds provided to the State of California under the CARES Act, local governments are required to certify "adherence to federal guidance and the state's stay-at-home requirements and other health requirements as directed in gubernatorial Executive Order N-33-20, subsequent executive orders or statutes, and all State Department of Public Health orders, directives, and guidance issued in response to the COVID-19 public health emergency." Although it is yet to be defined, "adherence" may likely entail reasonable, good faith local efforts to enforce COVID-19 Public Health Orders.
- L. Government Code § 25132 makes it a misdemeanor to violate any county ordinance unless by ordinance it is made an infraction. Government Code § 53069.4 authorizes the Board of Supervisors to set administrative penalties for violation of any County ordinance, and Government Code § 8634 authorizes the County to adopt orders and regulations (which this

Ordinance and all Public Health Orders shall constitute) that apply during a local emergency, including within incorporated areas (62 Ops. Cal. Atty. Gen. 701 (November 16, 1979)).

- M. The intent of this Urgency Ordinance is to provide additional non-criminal enforcement tools, in addition to education and a misdemeanor prosecutions to assist in achieving compliance with the Public Health Orders for COVID-19 by authorizing enforcement of violations of that guidance under San Benito County Code, Title 1 – General Provisions; Code Enforcement.
- N. In support of the adoption of this Urgency Ordinance, the Board of Supervisors finds as follows:
- 1) The facts set forth in Exhibit “A” and Exhibit “B” A. – M., above, are true and correct.
 - 2) Violations of Public Health Orders adopted to control of the spread of COVID-19 present an immediate threat to the public health and safety. Consistent with Government Code § 25123(d), the Board finds that such violations increase the likelihood that the COVID-19 virus will spread throughout the County and overwhelm our health care systems, cause preventable illnesses and deaths, and inflict other significant harms—including economic and social effects—on our community.
 - 3) Immediate enforcement of Public Health Orders is necessary to ensure their consistent, effective implementation and to achieve their intended purposes, including controlling the spread of COVID-19 in San Benito County.
 - 4) Existing strategies for enforcing Public Health Orders include misdemeanor citations and prosecution, and a variety of other approaches. These approaches are not sufficient to deter violations.
 - 5) Government Code § 8634 authorizes the County to promulgate rules and regulations in the event of a declared state of emergency. Such rules and regulations may apply throughout the County, including within incorporated as well as unincorporated territory. Government Code § 53069.4 authorizes the Board of Supervisors to set administrative penalties for violation of any County ordinance.
 - 6) Administrative penalties will provide an alternative enforcement mechanism to augment the County's ability to combat the negative effects of the COVID-19 pandemic. In particular, administrative penalties deter violations of public health orders and other binding, enforceable mandates adopted in connection with the COVID-19 pandemic. Administrative penalties could also provide relief to law enforcement, enabling additional County staff to assist with enforcing Public Health Orders and enhancing the County's ability to control the spread of COVID-19.
 - 7) In some circumstances, Public Health Order violations demand a substantial penalty to provide an effective and significant deterrent. Administrative penalties must be—where

necessary and appropriate—significant enough to ensure they cannot be dismissed as “the cost of doing business.”

Government Code § 25131 expressly 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. The Board further finds that this Ordinance should apply only within the unincorporated area of the County to provide the County with broad authority to address violations of Public Health Orders that contribute to the spread of COVID-19 in our communities.