

ORDINANCE NO. ____

A REGULAR ORDINANCE OF THE COUNTY OF SAN BENITO, STATE OF CALIFORNIA, PROVIDING THAT VIOLATIONS OF LOCAL HEALTH OFFICER ORDERS, STATE PUBLIC HEALTH OFFICER ORDERS, CALIFORNIA DEPARTMENT OF PUBLIC HEALTH GUIDANCE, OR EXECUTIVE ORDERS OF THE GOVERNOR OF THE STATE OF CALIFORNIA, THAT REQUIRE THE WEARING OF MASKS OR FACIAL COVERINGS IN THE UNINCORPORATED AREA DURING THE COVID-19 PANDEMIC ARE VIOLATIONS OF THE COUNTY CODE AND SUBJECT TO THE ADMINISTRATIVE CITATION PROCESS OF SAN BENITO COUNTY CODE CHAPTER 1.04

County Counsel Summary

This ordinance would provide that violations of local health officer orders, State public health officer orders, guidance from the California Department of Public Health, or executive orders of the Governor of the State of California that require the wearing of masks or facial coverings in the unincorporated area during the COVID-19 pandemic are violations of the County Code and subject to the administrative citation process set forth therein.

WHEREAS, 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; and,

WHEREAS, 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; and,

WHEREAS, 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; and,

WHEREAS, 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. 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; and,

WHEREAS, 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; and,

WHEREAS, on June 18, 2020, the State Department of Public Health issued guidance requiring the wearing of masks and facial coverings during the COVID-19 pandemic, with various exemptions; and

WHEREAS, 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 placed the County of the monitoring list, requiring the closure of certain businesses and other facilities and operations; and,

WHEREAS, 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; and,

WHEREAS, 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))

WHEREAS, the intent of this Ordinance is to provide additional non-criminal enforcement tools, in addition to education and infraction prosecutions, to assist in achieving compliance with the Public Health Orders for COVID-19; and

WHEREAS, the evidence and scholarly research has concluded that the wearing of masks or facial coverings helps slow the spread of COVID-19; and,

WHEREAS, violations of local health officer orders, State public health officer orders, guidance from the California Department of Public Health, or executive orders of the Governor of the State of California that require the wearing of masks or facial coverings are misdemeanors than can be processed through the criminal justice system; and,

WHEREAS, such criminal proceedings are burdensome to those involved in the process, including the California courts, Sheriff, District Attorney and Public Defender; and,

WHEREAS, an administrative citation and fine process will provide for more regular and cost effective enforcement of local health officer orders, State public health officer orders, guidance from the California Department of Public Health, and executive orders of the Governor of the State of California that require the wearing of masks or facial coverings; and,

WHEREAS, in light of the declared federal, state, and County emergency due to the occurrence of COVID-19, and the Orders of the County Health Officer and State Public Health Officer, the guidance from the California Department of Public Health, and the executive orders of the Governor of the State of California, there is a need to provide for enforcement of those orders and guidance in a more administrative manner rather than through traditional criminal proceedings; and,

WHEREAS, preservation of the public peace, health, safety and welfare requires adoption of this ordinance to establish an administrative citation process for violations of local health officer orders, State public health officer orders, guidance from the California Department of Public Health, and executive orders of the Governor of the State of California that require the wearing of masks or facial coverings in the unincorporated area during the COVID-19 pandemic; and

WHEREAS, such an administrative citation process currently exists in Chapter 1.04 of the San Benito County Code; and,

WHEREAS, it is neither necessary nor appropriate to amend the County Code to provide for the administrative processing of violations of local health officer orders, State public health officer orders, guidance from the California Department of Public Health, or executive orders of the Governor of the State of California that require the wearing of masks or facial coverings during the COVID-19 pandemic because of the potential temporary nature of the circumstances requiring such orders and guidance; and,

WHEREAS, it is necessary and appropriate for the protection of the public peace, health, safety and welfare of the County to provide that violations of local health officer orders, State public health officer orders, guidance from the California Department of Public Health, or executive orders of the Governor of the State of California that require wearing of masks or facial coverings in the unincorporated areas during the COVID-19 pandemic are violations of the San Benito County Code and subject to the Administrative Citation process set forth in Chapter 1.04 of the San Benito County Code;

NOW THEREFORE,

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

SECTION 1. PURPOSE AND FINDINGS.

Pursuant to Article XI, section 7 of the California Constitution, and Government Code sections 25845 and 53069.4, the County of San Benito may adopt and enforce ordinances and regulations

not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens.

The San Benito County Board of Supervisors hereby finds and declares that the recitals set forth above are true and correct.

SECTION 2. VIOLATIONS.

A. Notwithstanding the definition of “administrative citation” in the San Benito County Code, any violation of a local health officer order, State public health officer order, guidance from the California Department of Public Health, or executive order of the Governor of the State of California that requires the wearing of masks or facial coverings in the unincorporated area during the COVID-19 pandemic, is a violation of the San Benito County Code and subject to the Administrative Citation process set forth in Chapter 1.04 of the San Benito County Code, and subject to the fines set forth therein. Repeated violations of such order or guidance may be cited or prosecuted as an infraction. Notwithstanding the above, the first violation of this ordinance shall be addressed through a written warning.

B. 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.

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.

SECTION 3. ENFORCEMENT.

A. The San Benito County Sheriff and the San Benito County District Attorney shall not be required to, but may, enforce the provisions of this ordinance. The County Administrative Officer is authorized and directed to designate such County employees or officers as “enforcement officials,” as defined in the San Benito County Code, to enforce the provisions of this ordinance, and may hire full or part-time temporary employees or retired annuitants to perform such function. The County Administrative Officer shall ensure that appropriate training is provided to those persons designated to enforce the provisions of this ordinance.

B. No penalty shall be assessed until the factual basis for the complaint has been verified by the Enforcement Officer.

C. Any revenue received from administrative citations greater than the costs of enforcement shall be set aside in a dedicated fund, to be used as determined by the Board of Supervisors, for COVID-related expenses, such as grants to businesses and non-profits.

D. 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 4. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 5. TERM.

This Ordinance shall take effect 30 days after adoption. This ordinance shall remain in effect until the last to occur of: a) termination of a local health officer order, b) termination of a State public health officer order, c) termination of guidance from the California Department of Public Health, or d) termination of an executive order of the Governor of the State of California, each of which requires the wearing of masks or facial coverings during the COVID-19 pandemic. Additionally, upon the cessation of the COVID-19 State of Emergency, this Ordinance shall have no further force or effect, and this ordinance shall have no further force and effect if the Board does not adopt a Resolution every 45 days supporting continuation of enforcement through a program including Administrative Citations. If adoption of such a Resolution does not occur, this ordinance expires 45 days after the last adopted Resolution.

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In regular session of the Board of Supervisors of the County of San Benito, introduced on August 4, 2020, and adopted this 18st day of August 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:
County Counsel
Barbara J. Thompson

By: _____
Clerk of the Board

By: _____
Barbara Thompson