

ORDINANCE NO. 2020-\_\_\_ **DRAFT**

AN URGENCY ORDINANCE INCREASING ADMINISTRATIVE FINES FOR  
VIOLATIONS OF PUBLIC HEALTH ORDERS  
PERTAINING TO THE COVID-19 PANDEMIC

The Contra Costa County Board of Supervisors ordains as follows:

**Section 1. Findings.**

- A. On January 30, 2020, the World Health Organization declared the outbreak of a novel coronavirus that causes the disease named coronavirus disease 2019 (“COVID-19”), a public health emergency of international concern.
- B. On January 31, 2020, as the result of confirmed cases of COVID-19, the U.S. Secretary of Health and Human Services declared a public health emergency nationwide.
- C. On March 3, 2020, Contra Costa Health Services announced the first case of local transmission of the virus causing COVID-19 in Contra Costa County.
- D. On March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act (Gov. Code, § 8550 et seq.).
- E. On March 10, 2020, the Board of Supervisors found that due to the introduction of COVID-19 in the County, conditions of disaster or extreme peril to the safety of persons and property had arisen, commencing on March 3, 2020. Based on these conditions, under Government Code section 8630, the Board adopted Resolution No. 2020/92, proclaiming the existence of a local emergency throughout the County.
- F. The legislative bodies of a number of cities in Contra Costa County have also adopted local emergency proclamations due to COVID-19 under Government Code section 8630.
- G. On March 16, 2020, the County Health Officer issued an order requiring County residents to shelter at their places of residence in order to slow community transmission of COVID-19, subject to exceptions for the provision and receipt of essential services while complying with social distancing requirements to the maximum extent possible. The County Health Officer extended the order on March 31, 2020, and on April 29, 2020.
- H. On March 19, 2020, the State Public Health Officer issued an order directing all individuals living in California to stay at home except as needed to facilitate authorized, necessary activities or to maintain the continuity of operations of critical infrastructure sectors.
- I. On May 7, 2020, the State Public Health Officer announced that statewide data supported the gradual modification of the statewide stay at home order to allow more businesses that had been closed to reopen.

- J. On May 18, 2020, the County Health Officer extended the shelter-in-place order, continuing restrictions on many activity, travel, and business functions but allowing a limited number of additional businesses to resume operating. On June 2, June 5, and June 16, 2020, the County Health Officer issued orders allowing additional businesses to resume operating.
- K. Since May, the statewide data has demonstrated a significant increase in the spread of COVID-19, resulting in public health conditions that demand measures responsive to those conditions.
- L. On July 11, 2020, the County Health Officer issued an order increasing restrictions on certain businesses and activities that were previously cleared for operation, because they present a high risk for disease transmission due to prolonged contact between persons at those businesses and activities.
- M. On July 13, 2020, the State Public Health Officer issued an order requiring counties on the state’s County Monitoring List to close certain businesses that had been allowed to reopen to close again. Contra Costa County is on the state’s County Monitoring List.
- N. Violations of public health orders related to the control of the spread of COVID-19 present an immediate threat to the public peace, health, and safety, as described in Government Code section 25123(d), in that violations of the orders increase the likelihood that COVID-19 will continue spreading, overwhelming health care systems and leading to injury and death that might otherwise be substantially reduced through adherence to public health orders.
- O. On July 28, 2020, the Board of Supervisors adopted Ordinance No. 2020-21, an urgency ordinance that established administrative fines for violations of public health orders. There is an urgent need for the County to authorize an increase in administrative fines for violations of public health orders to ensure increased compliance with public health orders. Increased compliance is necessary in light of the statewide surge of COVID-19 cases and hospitalizations that began in the middle of October 2020. On October 14, 2020, the seven-day average COVID-19 adjusted daily case rate was 4.6 cases per 100,000 people in the County. By November 24, 2020, the adjusted rate had more than doubled, to 9.7 cases per 100,000 persons in the County. Hospitalizations of COVID-19 patients have also increased, from a seven-day average of 27 patients in County hospitals as of October 14, 2020, to a seven-day average of 100 patients in County hospitals as of December 2, 2020. Data reported by the State of California indicates that 10 percent to 30 percent of COVID-19 patients will require intensive care. Of 116 COVID-19 patients hospitalized in the County on December 2, 2020, 27 were in intensive care units (ICUs), and only 55 ICU beds were available in the County for all patients, leaving the County with 31 percent available ICU capacity. Available ICU capacity in hospitals in the Bay Area region was 25.3 percent on December 3, 2020, and is projected to fall to 15 percent by mid-December. If the current trends continue, according to State projections, Bay Area hospitals collectively may be operating at 91 percent of their full capacity by December 24, 2020, and by January 1, 2021, the demand for ICU beds may exceed the current supply.

**Section 2. Applicability and Authorization.**

- (a) This ordinance provides for administrative fines, enforcement, and collection remedies to address any violation of a Public Health Order, as defined in Section 3.
- (b) Remedies under this ordinance are in addition to any other remedy allowed by applicable law.
- (c) This ordinance is authorized by Government Code sections 8634 and 53069.4.

**Section 3. 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:
  - (1) County Director of Health Services.
  - (2) County Director of Conservation and Development.
  - (3) County Sheriff.
  - (4) Any official designated by a city council or city manager, or by a special district board of directors or general manager, to enforce this ordinance in that jurisdiction.
- (b) “Public Health Order” means any order issued by the County Public Health Officer under authority granted by state law and any order issued by the State Public Health Officer.
- (c) “Responsible Party” means an individual or legal entity, or the agent of the individual or legal entity, whose act 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 ordinance; any person or entity that owns, possesses, or controls any parcel of real property in the County where a violation of this ordinance is maintained; or 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.**

Persons in the County shall comply with all applicable requirements in all currently effective Public Health Orders. A violation of a Public Health Order is a violation of this ordinance.

**Section 5. Administrative Fines.**

- (a) A Responsible Party that violates this ordinance may be issued a Notice of Fine by an Enforcement Officer.
- (b) If an Enforcement Officer determines that a violation of this ordinance occurred, the Enforcement Officer may issue a Notice of Violation to the Responsible Party that

provides up to two days to correct the violation. If the Responsible Party receiving the Notice of Violation does not correct the violation in the time specified in the Notice of Violation, the Enforcement Officer may then issue a Notice of Fine. This section does not prevent an Enforcement Office from issuing a Notice of Fine without previously issuing a Notice of Violation when, in the Enforcement Officer's sole discretion, the circumstances of the violation make the Notice of Violation unnecessary or ineffective.

- (c) A Notice of Violation and a Notice of Fine will include the following information:
  - (1) The date of the violation.
  - (2) The address or other description of the location where the violation occurred.
  - (3) The Public Health Order violated and a description of the violation.
  - (4) If a Notice of Violation orders the correction of a violation, a description in the Notice of Violation of how the violation can be corrected.
  - (5) The amount of the fine.
  - (6) An advisement of the right to request a hearing to appeal the fine and instructions for filing a request for hearing.
- (d) An administrative fine will be assessed by means of a Notice of Fine. The amounts of the fines imposed pursuant to this ordinance are as follows:
  - (1) For violations involving non-commercial activity, the amount of the fine will be \$\_\_\_\_\_ [*current fine: \$100*] for a first violation, \$\_\_\_\_\_ [*current fine: \$200*] for a second violation, and \$\_\_\_\_\_ [*current fine: \$500*] for each additional violation within one year of the initial violation.
  - (2) For violations involving commercial activity, the amount of the fine will be \$\_\_\_\_\_ [*current fine: \$250*] for a first violation, \$\_\_\_\_\_ [*current fine: \$500*] for a second violation, and \$\_\_\_\_\_ [*current fine: \$1,000*] for each additional violation within one year of the initial violation.
- (e) Acts, omissions, or conditions in violation of this ordinance that continue, exist, or occur on more than one day constitute separate violations and offenses on each day.

## **Section 6. Hearings.**

- (a) A Responsible Party upon whom an administrative fine is imposed may appeal the fine pursuant to the procedures set forth in this section. The appellant must file a written appeal within 10 days after the service date of the Notice of Fine. The written appeal must contain:

- (1) A brief statement setting forth the interest the Responsible Party has in the matter relating to the imposition of the fine; and
  - (2) A brief statement of the material facts that the Responsible Party claims supports the contention that 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 10 and will set the time and location of the appeal hearing.
  - (c) An appeal of an administrative fine will be heard by a hearing officer established or appointed by the agency issuing the Notice of Fine.
  - (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 hearing officer will issue a written decision to uphold, modify, or cancel the administrative fine and will list in the decision the reason or reasons for that decision. The decision will be served as specified in Section 10.

**Section 7. Final Order.** The imposition of the administrative fine becomes a final administrative order at one of the following times:

- (a) On the date that service of the Notice of Fine is complete, if the Responsible Party fails to file a written appeal within the time specified.
- (b) On the date that service of the hearing officer's written decision is complete, if the appeal was timely filed.

**Section 8. Payment of the Fine.** The administrative fine is effective and due immediately upon issuance of the Notice of Fine. The Responsible Party has 30 days after the administrative fine becomes a final administrative order to pay the fine to the agency issuing the Notice of Fine. Payment of a fine under this ordinance does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the Notice of Fine. The payment of a fine does not bar any other enforcement action regarding a violation that is not corrected.

**Section 9. Collection.** If the fine is not paid within 30 days after the imposition of the fine becomes a final administrative order, the County may collect the fine, the County's collection costs, and interest. An administrative fine accrues interest at the same annual rate as any civil judgment, beginning on the 20th day after the fine becomes a final administrative order. The County may collect by using any available legal means, including but not limited to a civil action or other actions as are allowed for enforcement of a civil judgment pursuant to the Enforcement of Judgment Law, California Code of Civil Procedure section 680.010 et seq.

**Section 10. Service.**

- (a) All notices or decisions required to be served by this ordinance will be served by one or more of the following methods.
  - (1) By personal service.
  - (2) By posting and mailing, if the violation occurred on real property known to the Enforcement Officer to be owned, possessed, or controlled by the Responsible Party. Posting of the notice or decision will be conspicuously on or in front of the property. If the property has no frontage, posting will be on the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner. The notice or decision will also be mailed by overnight mail, postage prepaid, to the address at which the notice or decision was posted, or to any other mailing address of the Responsible Party that is known to the Enforcement Officer.
  - (3) By mailing to a mailing address of the Responsible Party that is known to the Enforcement Officer, if personal service or posting is impracticable.
- (b) Service is complete at the time of personal service, one day after posting and mailing the notice or decision, or five days after service by mail alone. The failure of a Responsible Party to receive a properly addressed service shall not affect the validity of the proceedings.

**Section 11. Judicial Review.** A final administrative order may be appealed to the Superior Court of Contra Costa County in accordance with the provisions set forth in Government Code section 53069.4.

**Section 12. Severability.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof that can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses are declared to be severable. The 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 13. Declaration of Urgency.** This ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety of the County. The facts constituting the urgency of this ordinance’s adoption are set forth in Section 1.

**Section 14. Effective Date.** This ordinance becomes effective immediately upon passage by four-fifths vote of the Board of Supervisors. This ordinance shall expire and be repealed as of the termination of the local emergency proclaimed in response to the COVID-19 pandemic.

**Section 15. Publication.** Within 15 days after passage, this ordinance shall be published once with the names of the supervisors voting for and against it in the East Bay Times, a newspaper published in this County.

PASSED ON December 15, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:     DAVID J. TWA,  
              Clerk of the Board of Supervisors  
              and County Administrator

\_\_\_\_\_  
Board Chair

By:

\_\_\_\_\_  
Deputy

[SEAL]

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