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**ORDINANCE NO. \_\_\_\_\_**

**An ordinance of the County of San Bernardino declaring violations of orders of the State or County Health Officer related to the COVID-19 pandemic to be unlawful and a public nuisance, adding Chapter 7 to Division 1 of Title 1, of the San Bernardino County Code, and authorizing the issuance of administrative citations.**

**WHEREAS**, California Government Code section 53069.4 provides authority to the San Bernardino County Board of Supervisors to set administrative penalties for violation of any ordinance enacted by the San Bernardino County Board of Supervisors; and

**WHEREAS**, establishing administrative penalties as a mechanism to enforce the orders of the Public Health Officer related to the COVID-19 pandemic is necessary for such remedy to be effective and useful; and

**WHEREAS**, the administrative penalties will provide an alternative enforcement mechanism that will augment the County's ability to combat the continuing negative effects of the COVID-19 pandemic;

**NOW, THEREFORE**, the Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

**SECTION 1. Findings and Purpose.**

The Board of Supervisors of the County of San Bernardino finds and declares all of the following:

A. The above recitals are true and correct, and are incorporated herein.

B. At a national, state, and local level, the COVID-19 pandemic is a serious public health crisis. The COVID-19 virus originated in a foreign country in late 2019, was declared a "public health emergency of international concern" by the World Health Organization in January 2020 and has caused infections and deaths across the globe through 2020. The United States Human Services Secretary declared a public health

1 emergency on January 31, 2020. As of July 17, 2020, over 138,000 have died, millions  
2 were infected or recovering from infection, and the crisis was worsening. As of  
3 September 22, 2020, the number of deaths in the United States exceeded 200,000.  
4 Despite the implementation of various state and local mitigation measures, the  
5 pandemic continues.

6 C. On March 4, 2020, Governor Newsom issued a Proclamation of a State  
7 of Emergency in the State of California related to the COVID-19 pandemic. On March  
8 10, 2020, the San Bernardino County Board of Supervisors proclaimed the existence of  
9 a Local Health Emergency based on an imminent and proximate threat to public health  
10 from the introduction of COVID-19 in San Bernardino County.

11 D. In light of the COVID-19 pandemic and Governor Newsom's state of  
12 emergency proclamation, on March 12, 2020, the Governor issued Executive Order N-  
13 25-20 ordering residents to heed any order by local public health officials, "including  
14 but not limited to the imposition of social distancing measures, to control the spread of  
15 COVID-19." A violation of the Governor's Executive Order N-25-20 is a misdemeanor  
16 pursuant to California Government Code section 8665. Further a violation of the  
17 County Health Officer's orders adopted to control the spread of COVID-19 is a violation  
18 of the Governor's Executive Order N-25-20.

19 E. On July 13, 2020, the California Department of Public Health issued a  
20 Statewide Public Health Order and Guidance on Closure of Sectors in Response to  
21 COVID-19, which explained that the community spread of infection is of increasing  
22 concern across the state, and continues to expand in counties on the County  
23 Monitoring List. The State's justification at that time showed the number of hospitalized  
24 patients with COVID-19 increased between 50-100% in California over the preceding  
25 30 days, and the number of counties with case rates over 100 per 100,000 residents  
26 went from three to 31 counties, confirming statewide increased transmission of COVID-  
27 19.

28 F. Through August 2020, the State reported some downward trends in

1 deaths and new cases, and on August 28<sup>th</sup>, announced a new color-coded tier system  
2 to classify each county's risk level, from "minimal" (color yellow) to "widespread" (color  
3 purple), based on the number of reported new cases/100,000 population in each  
4 county, and the positivity rate for each county. The County of San Bernardino was  
5 determined to be in the purple risk level (widespread), with more than 7 daily new  
6 cases/100,000 population and a positivity rate exceeding 8%. In order to move to a  
7 lower-risk tier, the County must meet the new system's criteria for a two (2) week  
8 period. In order to decrease the daily rate of new cases and the positivity rate, a more  
9 effective enforcement of public health orders is needed to prevent increased or further  
10 spread of COVID-19.

11 G. Scientists continue to analyze the transmission of the COVID-19 virus.  
12 Community spread increases the likelihood of expanded transmission of COVID-19 in  
13 congregate settings such as nursing homes, homeless shelters, jails and prisons, and  
14 among individuals at high risk of serious outcomes from COVID-19, including the  
15 elderly and those with underlying health conditions. Infection of vulnerable populations  
16 can be catastrophic, both in terms of high rates of morbidity and mortality, as well as  
17 through the high demand such infections would place on the hospital delivery system.  
18 A repeat in the rise in infections and community spread necessitates more effective  
19 enforcement of public health orders to prevent further spread of COVID-19.

20 H. Health and Safety Code sections 120275 and 120295 make it a  
21 misdemeanor to violate certain sections of the Health and Safety Code, including those  
22 requiring individuals to comply with health orders to facilitate isolation. Government  
23 Code section 25132 makes it a misdemeanor to violate any county ordinance unless  
24 by ordinance it is made an infraction. Finally, Government Code section 53069.4  
25 authorizes the Board of Supervisors to set administrative penalties for violation of any  
26 county ordinance, and Government Code section 8634 authorizes the County to adopt  
27 orders and regulations (which this Ordinance and all Public Health Orders relative to  
28 the COVID-19 pandemic shall constitute) that apply during a local emergency,

1 including within incorporated areas.

2 I. The purpose of this ordinance is to address the small, but increasing  
3 number of businesses and activities that are being conducted partly or entirely in a  
4 manner that disregards State or local Public Health Orders adopted in response to  
5 COVID-19 pandemic. For example, on September 12, 2020, a large unpermitted party  
6 consisting of hundreds of partygoers and live entertainment was held in Apple Valley.  
7 The following week, several other unpermitted parties were planned or held. One party  
8 was set to be held in Bloomington on September 18, 2020. San Bernardino County  
9 Code Enforcement and Sheriff's Department succeeded in stopping it while large scale  
10 setup was ongoing. Two days later, on September 20, 2020, another unpermitted  
11 party was held in Muscoy with attendance in the hundreds. During this event, an  
12 individual was stabbed and there were multiple reports of weapons being discharged.  
13 There currently are credible reports of additional large-scale gatherings set to take  
14 place the weekend of September 26, 2020.

15 J. These violations present a serious and immediate risk to public health  
16 and safety, contributing greatly to the likelihood of a public health crisis that will cause  
17 many preventable illnesses and deaths. These violations also jeopardize local social  
18 and economic wellbeing, increasing the potential for renewed curtailment of business  
19 operations, school closures, and activity restrictions. This ordinance provides a  
20 framework for addressing such violations by establishing an administrative  
21 enforcement strategy to complement other existing means of enforcing Public Health  
22 Orders.

23 K. In order to address the immediate threat to the public peace, health,  
24 safety and welfare, this ordinance helps to ensure that the orders of the Public Health  
25 Officer, issued for the purpose of controlling the spread of the COVID-19 virus, are  
26 followed by providing an administrative enforcement mechanism as an alternative to  
27 the mechanisms already available.

28 L. Issuance of administrative penalties provides a significant deterrent to

1 violating the Public Health Officer's orders respecting COVID-19, while helping to  
2 promote social distancing through a process designed to minimize person-to-person  
3 contact.

4 M. This alternative enforcement mechanism is also designed to provide  
5 some relief to law enforcement, to enable additional County staff to assist with  
6 enforcing the Public Health Officer's orders, and to enhance the County's ability to  
7 control the spread of COVID-19.

8 N. Pursuant to Section 53069.4 of the California Government Code, the  
9 Board of Supervisors elects to create an administrative penalty and hearing process for  
10 the purpose of enforcing the orders of the Public Health Officer that are issued for the  
11 purpose of controlling the spread of the COVID-19 virus.

12 O. The potential damage caused by a violation of an order of the Public  
13 Health Officer demands a substantial penalty so as to provide an effective and  
14 significant deterrent to violating such orders.

15 P. For violations of the orders of the Public Health Officer involving activities  
16 designed to make a profit, the administrative penalties must be extremely substantial  
17 so as not to be relegated as "the cost of doing business".

18 Q. Violations of Public Health Orders adopted by State or local Public Health  
19 Officers to control the spread of COVID-19 present an immediate threat to the public  
20 health and safety. Consistent with Government Code section 25123(d), the Board  
21 finds that such violations increase the likelihood that the COVID-19 virus will spread  
22 throughout the County and overwhelm our health care systems, cause preventable  
23 illnesses and deaths, and inflict other significant harms, including economic and social  
24 effects, on our community.

25  
26 SECTION 2. Citation. This ordinance may be referred to as the "COVID-19  
27 Administrative Penalties Ordinance."  
28

1 SECTION 3. A new Chapter 7 of Title 1, Division 1 (Enforcement of COVID-19  
2 Related Public Health Orders) is hereby added to the San Bernardino County Code to  
3 read in full as follows:

4 **CHAPTER 7: ENFORCEMENT OF COVID-19 RELATED PUBLIC HEALTH**  
5 **ORDERS**

6 **Section:**

7 **11.0701 Findings and Purpose.**

8 **11.0702 Definitions.**

9 **11.0703 Adoption of Public Health Orders as County Law.**

10 **11.0704 Violation and Enforcement.**

11 **11.0705 Issuance of Administrative Citations and Penalty Amounts.**

12 **11.0706 Form and Service of Citations.**

13 **11.0707 Appeal of Administrative Citations.**

14  
15 **11.0701 Findings and Purpose.**

16 (a) In order to address the immediate threat to the public peace, health,  
17 safety and welfare resulting from the COVID-19 pandemic, this ordinance helps to  
18 ensure that the orders of the Public Health Officer related to the COVID-19 pandemic,  
19 issued pursuant to authority granted in the Health & Safety Code to control the spread  
20 of an infectious or communicable disease, are followed by providing an administrative  
21 enforcement mechanism as an alternative to the mechanisms otherwise available by  
22 law.

23 (b) Issuance of administrative penalties provides a significant deterrent to  
24 violating the Public Health Orders, and will help promote public health measures and  
25 implement guidance issued by the State or County Public Health Officers.

26 (c) This alternative enforcement mechanism is also designed to provide  
27 some relief to law enforcement, to enable additional County staff to assist with  
28 enforcing the Public Health Orders, and to enhance the County's ability to achieve the

1 public health purposes supporting the Public Health Orders.

2 (d) Pursuant to Section 53069.4 of the California Government Code, the  
3 Board elects to create an administrative penalty and hearing process for the purpose of  
4 enforcing Public Health Orders.

5 (e) The potential harm or damage caused by the violation of Public Health  
6 Orders demands a substantial penalty so as to provide an effective and significant  
7 deterrent to violating such orders.

8 (f) For violations of the Public Health Orders involving activities designed to  
9 make a profit, the administrative penalties must be substantial to ensure businesses do  
10 not consider the fines as “the cost of doing business.”

11 **11.0702 Definitions.** The following definitions shall apply to this chapter:

12 (a) “Board” means the San Bernardino County Board of Supervisors.

13 (b) “Citation” or “Administrative Citation” means an administrative citation  
14 issued pursuant to this ordinance under the authority of Government Code section  
15 53069.4.

16 (c) “County” means the County of San Bernardino.

17 (d) “Days” means calendar days.

18 (e) “Enforcement Officer” is defined as: (1) those County employees or  
19 agents as specified in County Code Section 11.0208(b), and; (2) police officers, code  
20 enforcement officers, and any other employees designated by a city or town.

21 (f) “Public Health Order(s)” means any order related to the COVID-19  
22 pandemic issued by the County Public Health Officer under authority granted by state  
23 law, any order related to the COVID-19 pandemic issued by the State Public Health  
24 Officer, any state guidance and directives issued by the State Public Health Officer or  
25 California Department of Public Health related to the COVID-19 pandemic containing  
26 mandatory, binding, or enforceable obligations applicable to the public, or any site- or  
27 industry-specific protocols completed as required by state and local requirements.

28 (g) “Responsible Party” means an individual or legal entity, or the agent or

1 legal guardian of such individual or entity, whose action or failure to act violated a  
2 Public Health Order, including, without limitation, any person or entity that causes,  
3 maintains, permits, or allows a violation of this chapter, any person or entity that owns,  
4 possesses, or controls any parcel of real property upon which a violation of this chapter  
5 is maintained, or any person or entity that owns, possesses, operates, manages, or  
6 controls any business within the county that is responsible for causing or maintaining a  
7 violation of this chapter.

8 **11.0703 Adoption of Public Health Orders as County Law.** All Public Health  
9 Orders issued during the declared local health emergency related to COVID-19 are  
10 hereby adopted as the law of the County and shall apply to both incorporated cities and  
11 towns and unincorporated areas of the County. All Public Health Orders related to  
12 COVID-19 pandemic, issued during the COVID-19 local health emergency shall be  
13 deemed orders and regulations of the Board, pursuant to Government Code section  
14 8634, and are determined to be necessary for the protection of life and property during  
15 the COVID-19 local health emergency.

16 **11.0704 Violation and Enforcement.**

17 (a) Any violation of a Public Health Order in the incorporated or  
18 unincorporated areas of the County shall be a misdemeanor, shall constitute a public  
19 nuisance, and shall represent an immediate danger to public health and safety  
20 pursuant to Government Code section 53069.4. Nothing in this chapter shall be  
21 interpreted to make any conduct that does not violate a Public Health Order a violation  
22 of this chapter.

23 (b) This chapter may be enforced by an Enforcement Officer. Use of the  
24 enforcement procedures set forth in this chapter shall be at the sole discretion of the  
25 County and its officers, agents, and employees. For purposes of enforcement in the  
26 unincorporated area, the Chief Executive Officer shall provide specific direction to  
27 Enforcement Officers regarding all aspects of the use of this enforcement process.  
28 The enforcement procedures set forth in this chapter are supplemental to all other



1 enforcement procedures provided by local, state, or federal law, including any criminal,  
2 civil, or administrative enforcement procedures. Election to employ the procedures set  
3 forth in this chapter shall not be exclusive of any other enforcement procedures with  
4 respect to the same violation(s).

5 **11.0705 Issuance of Administrative Citations and Penalty Amounts.**

6 (a) Any person who violates a Public Health Order may be issued a citation  
7 by an Enforcement Officer. Each and every day a violation of a Public Health Order  
8 exists constitutes a separate and distinct offense.

9 (b) When an Enforcement Officer discovers or otherwise determines that a  
10 violation of a Public Health Order has occurred, such Enforcement Officer may issue a  
11 Notice of Violation to the Responsible Party that provides up to two (2) days to abate  
12 the violation. If the Responsible Party receiving the Notice of Violation does not abate  
13 the violation in the time provided by the Notice of Violation, the Enforcement Officer  
14 may then issue a Citation. This section does not prevent the Enforcement Officer from  
15 issuing a Citation without previously issuing a Notice of Violation where, in the  
16 Enforcement Officer's sole discretion, the circumstances of the violation make the  
17 Notice of Violation unnecessary or ineffective.

18 (c) An administrative penalty for violation of this chapter may be assessed by  
19 means of a Citation issued by an Enforcement Officer and shall be payable directly to  
20 local agency whose Enforcement Officer issued the Citation. Administrative penalties  
21 imposed by means of Citation shall be collected in accordance with the procedures  
22 specified in this chapter.

23 (d) The penalty imposed pursuant to this chapter shall be limited to violations  
24 involving the gathering of participants in excess of five hundred (500) or more persons  
25 at one time, such as, but not limited to, sporting events, rodeos, or music events and  
26 shall not exceed \$25,000.00 per violation and in no case shall be less than \$5,000.00.

27 (e) If a violation of this chapter is not corrected, additional Citations may be  
28 issued for the same violation.

1 (f) The administrative penalty becomes effective and due immediately upon  
2 issuance of the Citation. The Responsible Party has thirty (30) days from the date of  
3 service of the Citation to pay the penalty in the absence of a timely submitted request  
4 for hearing to appeal the citation, pursuant to Section 11.0707, below.

5 (g) The County may pursue any remedy authorized by law to collect  
6 administrative penalties that are not timely paid, including but not limited to a civil  
7 action for collection of civil penalties.

8 **11.0706 Form and Service of Citations.**

9 (a) A Citation, or a Notice of Violation issued pursuant to Section 11.0705,  
10 above, shall contain the following information:

- 11 (1) The name and address of the Responsible Party;
- 12 (2) The date and address or description of the location where the  
13 violation occurred;
- 14 (3) Reference to the Public Health Order that was violated, including  
15 reference to the paragraph number containing the provision(s) violated;
- 16 (4) The amount of the penalty due (or for Notices of Violation, to  
17 become due if the Responsible Party fails to abate the violation);
- 18 (5) Identification of appeal rights, including a copy of the Request for  
19 Hearing form;
- 20 (6) The signature of the Enforcement Officer issuing the Citation; and
- 21 (7) The date of the issuance of the Citation.

22 (b) A Citation shall be served on the Responsible Party in one or more of the  
23 following ways:

- 24 (1) By personal service, provided the personal service can be  
25 accomplished without violating Public Health Orders. Such service is effective if the  
26 Citation documents are set down near the Responsible Party and orally identified in a  
27 manner that can be heard by the Responsible Party.
- 28 (2) By posting and mailing a copy of the Citation, if the violation

1 occurred on real property known to the Enforcement Officer to be owned, possessed,  
2 or controlled by the Responsible Party. The Citation shall be physically posted on the  
3 real property in a position that is likely to catch the attention of a person entering the  
4 property, including, without limitation, a front door, a gate, or a mailbox. The Citation  
5 shall also be mailed by overnight mail, postage prepaid, to the address at which the  
6 Citation was posted, or to any other mailing address of the Responsible Party that is  
7 known to the Enforcement Officer.

8 (3) By mailing a copy of the Citation to a mailing address of the  
9 Responsible Party that is known to the Enforcement Officer, if personal service or  
10 posting is impracticable.

11 (4) By emailing a copy of the Citation to an email address reasonably  
12 likely to be accessible to the Responsible Party, if personal service or posting is  
13 impracticable.

14 (c) Service shall be complete at the time of personal service or emailing, one  
15 (1) day after posting and mailing the Citation, or five (5) days after service by mail  
16 alone. The failure of any person to receive the Citation shall not affect the validity of  
17 the Citation or of any other code enforcement steps or proceedings taken pursuant to  
18 this chapter or other provision of the code.

19 **11.0707 Appeal of Citations.** Except as set forth herein, the procedures set forth  
20 in chapter 11.0208(f)(5) of the San Bernardino County Code shall apply to an appeal of  
21 a Citation issued pursuant to this chapter.

22  
23 SECTION 4. Severability. It is hereby declared to be the intention of the Board  
24 of Supervisors that the sections, paragraphs, sentences, clauses and phrases of this  
25 Ordinance are severable, and if any phrase, clause, section, paragraph or sentence of  
26 this Ordinance shall be declared unconstitutional or invalid by a court of competent  
27 jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining  
28 phrases, clauses, sentences, paragraphs and sections of this Ordinance.

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SECTION 5. This ordinance shall take effect 30 days from the date of adoption.

SECTION 6. CEQA Compliance. The Board of Supervisors finds that adoption of this Ordinance is not subject to the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15060(c)(2), as an activity which will not result in a direct or reasonably foreseeable indirect physical change in the environment.

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CURT HAGMAN, Chairman  
Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY  
OF THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD

LYNNA MONELL, Clerk of the  
Board of Supervisors

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1 STATE OF CALIFORNIA )  
2 COUNTY OF SAN BERNARDINO ) ss.  
3 )

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of the County of San  
5 Bernardino, State of California, hereby certify that at a regular meeting of the Board of  
6 Supervisors of said County and State, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
7 at which meeting were present Supervisors: \_\_\_\_\_

8 and the Clerk, the foregoing ordinance was passed and adopted by the following vote,  
9 to wit:

10 AYES: SUPERVISORS:

11 NOES: SUPERVISORS:

12 ABSENT: SUPERVISORS:

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official  
14 seal of the Board of Supervisors this \_\_\_\_ day of \_\_\_\_\_, 2020.

15 LYNNA MONELL, Clerk of the  
16 Board of Supervisors of the  
17 County of San Bernardino,  
18 State of California

19 \_\_\_\_\_  
20 Deputy

21 Approved as to Form:

22 MICHELLE D. BLAKEMORE  
23 County Counsel

24 By: \_\_\_\_\_  
25 JOLENA E. GRIDER  
26 Deputy County Counsel

27 Date: \_\_\_\_\_  
28