

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

October 6, 2020

FROM

GARY McBRIDE, Chief Executive Officer, County Administrative Office

SUBJECT

Ordinance Related to Enforcement of COVID-19 Public Health Orders

RECOMMENDATION(S)

CONTINUED FROM TUESDAY, SEPTEMBER 29, 2020, ITEM NO. 82:

1. Approve introduction of ordinance relating to enforcement of COVID-19 public health orders, declaring violations of orders of the State or County Health Officer related to COVID-19 to be unlawful and a public nuisance and authorizing the issuance of administrative citations.
2. Make alterations, if necessary, to proposed ordinance.
3. Approve introduction of the proposed ordinance.
4. Read title only of proposed ordinance, waive reading of the entire text, and SCHEDULE FOR FINAL ADOPTION ON TUESDAY, OCTOBER 27, 2020 on the Consent Calendar.
(Presenter: Gary McBride, Chief Executive Officer, 387-5417)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item may result in the use of additional Discretionary General Funding (Net County Cost). However, enforcement of COVID-19 public health orders is a COVID-19 expense and therefore eligible for the County to use Federal Coronavirus Aid, Relief and Economic Security (CARES) Act Coronavirus Relief Funds if no other COVID-19 related federal or state funding is available.

BACKGROUND INFORMATION

On September 29, 2020 (Item No. 82), the Board of Supervisors (Board) continued the introduction of the ordinance, and requested that staff make some modifications. The revised recommended ordinance deletes administrative citations for commercial and non-commercial activity, and clarifies that administrative citations for mass events may apply where 500 or more persons are gathered at one time. The recommended revised ordinance would provide an additional enforcement mechanism to address the recent increase in the number of new infections and to prevent defined mass gatherings which may cause additional harm by spreading the COVID-19 infection throughout the community, thereby endangering public health and safety. The ordinance establishes a civil administrative citation and appeal process for the unincorporated portion of the County. The recommended ordinance does not authorize an administrative citation and penalty to be issued to an individual for the mere failure to wear a mask or face covering.

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This enforcement tool would designate specified County staff to act as “Enforcement Officers” who can issue administrative citations for mass events of specific size within the unincorporated area that are not complying with the State and County Health Orders. Such administrative citations may be issued for each violation of a State and/or County Health Order, with fines as follows: ranging between \$5,000 to \$25,000 for the defined mass gathering events. The ordinance is also drafted so that incorporated cities and towns within the County can take their own actions to adopt this enforcement tool within their jurisdictional boundaries to assist in stopping the spread of COVID-19. The administrative citations are subject to appeal through an administrative process in the existing procedures set forth in County Code 11.0208(f)(5).

COVID-19 originated in Wuhan, China in late 2019 and began spreading, initially, within China and then to other countries. On January 30, 2020, the World Health Organization declared the outbreak to be a “public health emergency of international concern”. This was followed on January 31, 2020 by the United States Human Services Secretary declaring a public health emergency. Cases internationally, within the US and within California (as evidenced by the Governor’s Proclamation) continue to rise.

On March 4, 2020, the State of California declared a state of emergency as a result of the COVID-19 outbreak due to the rising number of confirmed cases and anticipated complications for those infected, including potential deaths. On March 10, 2020, the County Public Health Officer declared a local health emergency to help ensure county government and the public were prepared for the possibility that COVID-19 would appear within the county. On March 10, 2020 (Item No. 75), the Board proclaimed the existence of a local emergency within San Bernardino County resulting from COVID-19, which causes infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases, death.

On March 19, 2020, the Governor issued a statewide “Stay-at-Home” Order (Order) to help prevent the spread of COVID-19. This Order remained in place and on April 28, 2020, the Governor unveiled a four-phased plan to reopen the State. As part of this phased reopening plan, Phase 2 would involve reopening and modifications for “low-risk” sectors where “low-risk” sectors are defined as businesses where the potential virus transmission rates tend to be low, may include businesses such as florists, sporting goods stores, apparel retailers, manufacturers and logistics. While more sectors began to reopen, the State continued to make orders and issue guidance on the pandemic based on current vital statistics.

On June 21, 2020, the California Department of Public Health placed the County on the statewide monitoring list, as the number of COVID-19 infected persons exceeded the threshold of 100 per 100,000 population over a period of 14 days. On June 28, 2020, the State Public Health Director announced new restrictions applicable to seven counties due to the rapid pace of spread of COVID-19. The County remained on that State monitoring list through the end of August when the State adopted a new tier system to measure each county’s status.

Also on July 1, 2020, Governor Newsom issued a letter to “California Elected Officials” calling for “political subdivisions of the State [to] ensure compliance with public health orders within their communities” and stating that the refusal to “ensure compliance with, or take enforcement action against noncompliance with these statewide public health directives...could jeopardize their eligibility for state funding.”

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On August 28, 2020, the State announced a new color-coded tier system to classify each county's risk level, from "minimal" (color yellow) to "widespread" (color purple), based on the number of reported new cases per 100,000 population in each county, and the positivity rate for each county. The County of San Bernardino was determined to be in the purple risk level (widespread), with more than 7 daily new cases per 100,000 population and a positivity rate exceeding 8%. In order to move to a lower-risk tier, the County must meet the new system's criteria for a two (2) week period. In order to decrease the daily rate of new cases and the positivity rate, a more effective enforcement of public health orders is needed to prevent increased or further spread of COVID-19.

In response to the COVID-19 pandemic, the County has instituted the COVID-Compliant Business Partnership Program, a program focusing on obtaining voluntary compliance with public health orders aimed at stopping the spread of COVID-19, and where businesses, once approved, may collect up to \$2,500 in funding from the County to offset costs and impacts directly related to complying with COVID-19 health and safety protocols. This program has been largely successful. Under the education component of the COVID-Compliant Business Partnership Program, County staff will also educate and provide information to high-risk businesses on best safety practices for their specific industry, State guidance, and also provide the opportunity for the high-risk businesses to apply for the COVID-Compliant Business Partnership Program.

If the ordinance is adopted, it would authorize administrative citations for defined mass gathering events.

PROCUREMENT

Not Applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Penny Alexander-Kelley, Chief Assistant County Counsel, 387-5455) on October 2, 2020; Finance (Stephenie Shea, Administrative Analyst, 387-4919) on October 2, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on September 24, 2020.

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Record of Action of the Board of Supervisors
County of San Bernardino

Public Comment: Sherry Sag, Raul Rodriguez Jr., Nancy Richardson, Deanna Adams, Shannon Gerstheimer, Kristie Sepulveda-Burchit, Jamie Castillo, Nicole Rafferty, Claudia Rodriguez, Melissa Whetsell, LaToya Brooks

CONTINUED TO TUESDAY, OCTOBER 27, 2020

Moved: Robert A. Lovingood Seconded: Janice Rutherford
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: October 6, 2020



cc: File -
jm 10/14/2020