

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

UNCODIFIED URGENCY ORDINANCE
OF THE CITY COUNCIL OF THE CITY OF
FORT BRAGG ~~ADOPTING~~ AMENDING
ORDINANCE NO. 961-2020
ADMINISTRATIVE PENALTIES FOR
VIOLATION OF THE COUNTY HEALTH
OFFICER'S COVID-19 PANDEMIC
ORDERS

FIRST AMENDMENT TO
URGENCY ORDINANCE
NO. 961-2020

WHEREAS, on March 4, 2020, the Governor declared a State of Emergency in California due to the threat of Coronavirus Disease 2019 ("COVID-19"); and

WHEREAS, on March 4, 2020, the Mendocino County Board of Supervisors and Department of Public Health declared a public health emergency in Mendocino County due to COVID-19; and

WHEREAS, on March 17, 2020, the Fort Bragg City Manager, acting as the Director of Emergency Services, declared a local emergency due to COVID-19, which was ratified by the City Council at its March 24, 2020 City Council meeting; and

WHEREAS, on March 18, 2020, the Mendocino County Health Official issued a Shelter-in-Place Order, which was revised on March 24, 2020; and

WHEREAS, on March 19, 2020, the Governor issued Executive Order N-33-20 which orders California Residents to stay at home except for certain critical activities. Due to directives from federal, state, and local health officers, residents have been advised to avoid public gatherings and stay at home to prevent the spread of this disease; and

WHEREAS, on March 31, 2020, the Mendocino County Board of Supervisors adopted an urgency ordinance adopting administrative penalties for violations of the County Health Officer's Orders pertaining to the COVID-19 pandemic; and

WHEREAS, on April 1, 2020, the City of Ukiah City Council adopted an urgency ordinance adopting administrative penalties for violations of the County Health Officer's Orders pertaining to the COVID-19 pandemic.

WHEREAS, during the months of June and July, 2020, Mendocino County and the City of Fort Bragg, have experienced a significant surge in the number of confirmed cases and in community spread of COVID-19; and

WHEREAS, on July 8, 2020, the Mendocino County Board of Supervisors adopted an urgency ordinance amending the ordinance adopted on March 31, 2020, to establish stronger administrative penalties for violations of the County Health Officer's Order requiring members of the public to wear facial coverings and allowing for the waiver of the 24-hour warning period for non-commercial violations of County Health Officer's Orders pertaining to the COVID-19 pandemic and the order requiring facial coverings in public; and

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WHEREAS, the City of Ukiah on July 15, 2020 adopted an urgency ordinance amending its ordinance establishing administrative penalties for violations of the County Health Officer's Orders and specifically providing for more stringent fines for violations of the County Health Officer's Order requiring members of the public to wear facial coverings; and

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WHEREAS, the use of Facial Coverings has become a critical component in preventing the spread of COVID-19; as California and Mendocino County have reopened portions of the economy and allowed additional activities.

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NOW, THEREFORE, the Fort Bragg City Council ordains as follows:

Section 1. Legislative Findings and Purpose. The City Council hereby finds as follows:

1. In light of the COVID-19 pandemic and Governor Newsom's state of emergency proclamation, on March 12, 2020, the Governor issued Executive Order N-25-20, ordering residents to heed any order by local public health Officers, "including but not limited to the imposition of social distancing measures, to control the spread of COVID-19."
2. A violation of the Governor's Executive Order N-25-20 is a misdemeanor pursuant to California Government Code § 8665.
3. A violation of the County Health Officer's orders made to control the spread of COVID-19, including but not limited to the Shelter-in-Place Order that was issued on March 24, 2020, is a violation of the Governor's Executive Order N-25-20.
4. California 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 isolation, such as the County Health Officer's Shelter-in-Place Order.
5. Violations of the orders of the County Health Officer related to the control of the spread of COVID-19 presents an immediate threat to the public peace, health and safety in that they increase the likelihood that the COVID-19 virus will spread throughout the County and City in a manner that may overwhelm their health care systems and may lead to injury and death that might otherwise be substantially reduced through adherence to the orders of the County Health Officer.

6. The immediate enforcement of the orders of the County Health Officer is necessary for the effective implementation of such orders for the purpose of controlling the spread of COVID-19 in Mendocino County and the City of Fort Bragg.

7. California Government Code § 53069.4 provides authority to the City Council of the City of Fort Bragg to set administrative penalties for violation of any ordinance enacted by the City Council.

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

9. Issuance of administrative penalties provides a significant deterrent to violating the County Health Officer's orders respecting COVID-19, will help promote social distancing through a process designed to minimize person-to-person contact.

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

11. Pursuant to California Government Code § 53069.4, the City Council elects to create an administrative penalty and hearing process for the purpose of enforcing the orders of the County Health Officer that are issued for the purpose of controlling the spread of the COVID-19 virus.

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

13. For violations of the orders of the County Health Officer involving predatory profiteering in a declared local emergency, the administrative penalties must be substantial enough to deter such practices.

Section 2. Applicability.

This ordinance applies from May 11, 2020, until the County Health Officer's Shelter-in-Place and the California Governor's stay at home orders expire or are lifted within the incorporated City limits or such additional period of time as declared by City Council resolution.

Section 3. Authority.

This ordinance is adopted pursuant to the general police power of the City under Cal. Const. Art XI § 7 to protect the health, safety and welfare of its citizens, the local emergency declared by the City Manager on March 17, 2020 pursuant to Government Code Section 8630 and the Governor's Executive Order N-25-20.

Section 4. Citation.

This ordinance may be referred to as the "COVID-19 Administrative Penalties Ordinance."

Section 5. Definitions.

A. "Citation" or "Administrative Citation" means a civil citation issued pursuant to Section 9 of this Ordinance.

B. "Commercial Activity" means the distribution and sale or rental of goods and the provision of services other than Essential Services as defined in the County Health Officer's COVID-19 Order.

C. "COVID-19 Order" means an order of the County Health Officer that is now in existence, or later comes into existence, which is issued for the purpose of controlling the spread of the COVID-19 virus, and which reflects the Governor's order to all residents to heed the orders of local public health officers, as stated in paragraph 1 of Executive Order N-25-20 that was issued by the Governor of California on March 12, 2020.

D. "Days" means calendar days.

E. "Enforcement Officer" means the City Manager, any peace officer with jurisdiction in the City of Fort Bragg, or anyone identified by resolution of the City Council.

F. "Responsible Party" means the legal entity, or the officer, agent, employee or representative operating on behalf of or in the course of the business of such entity, whose action or failure to act violates a COVID-19 Order.

Section 6. Adoption of County Health Officer Orders as City Law.

All COVID-19 Orders are hereby incorporated into this Ordinance as the law of the City of Fort Bragg.

Section 7. Violation and Enforcement.

~~A. A violation of a COVID-19 Order shall be a misdemeanor, a public nuisance, and a violation of this Ordinance, and as such, a violation of this Ordinance may be enforced as a misdemeanor, as a public nuisance, or as a civil violation through imposition of administrative penalties as detailed in this ordinance.~~

~~B. It shall be a violation of this ordinance and the Law of the City of Fort Bragg, enforceable as an infraction, nuisance, or civil penalty by way of an Administrative Citation, for any individual person to willfully or negligently refuse to wear a Facial Covering in compliance with a COVID-19 Order after an Enforcement Officer has informed the person that a facial covering is required by this section. As used herein "Facial Covering" means any worn garment, mask or device without holes that covers both the nose and mouth, such as a banana, a scarf, a neck gaiter, or other homemade cover, which can be secured to the head with ties or straps or wrapped securely around the lower-face, including but not limited to a face shield.~~

B. This Ordinance may be enforced by an Enforcement Officer.

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C. Use of this Ordinance shall be at the sole discretion of the City, its officers, agents and employees.

Section 8. No Exclusivity and Election of Proceedings.

This Ordinance provides for enforcement proceedings that are supplemental to all other enforcement proceedings provided by local, state or federal law, whether administrative, civil or criminal in nature. As such, the provisions of this Ordinance may be utilized alone or in conjunction with any other remedy at law or in equity, including, but not limited to, temporary restraining order and preliminary or permanent injunctive relief. Election to employ one or more proceedings provided by this Ordinance shall be at the sole discretion of the City and shall be without prejudice to the City choosing to also proceed simultaneously or subsequently by pursuing different enforcement proceedings or remedies with respect to the same violation.

Section 9. Issuance of Notice or Citation; Penalty Amounts.

A. Each and every day a violation of a COVID-19 Order exists constitutes a separate and distinct offense. One or more citations may be issued for each day the violation continues.

B. Any Responsible Party violating any provision of a COVID-19 Order may be issued an Administrative Citation by an Enforcement Officer.

C. 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 witnesses, City staff, and interested persons, that the Responsible Party did commit or is otherwise responsible for the violation.

D. When an Enforcement Officer discovers, or otherwise determines that a violation of a COVID-19 Order occurred, such Enforcement Officer may issue a Notice of Violation to the Responsible Party that provides twenty-four (24) hours to abate the violation, or may proceed with issuing an administrative citation for either a violation involving non-commercial activity or for any violation of Section 7.B, without providing 24 hours to abate the violation. The decision to issue a Notice of Violation rather than a Citation is at the discretion of the Enforcement Officer.

E. If the Responsible Party has not abated, or otherwise repeats the same violation as stated in the Notice of Violation, after the passage of twenty-four (24) hours from the service of the Notice of Violation, the Enforcement Officer may then issue an Administrative Citation that imposes a civil penalty.

F. The civil penalty for each violation involving a non-Commercial Activity shall be a fine of ~~\$100~~25.00 for the first offense committed by a Responsible Party, ~~\$2~~50.00 for the second offense committed by that Responsible Party and ~~\$75~~500.00 for the third or subsequent offenses committed by that Responsible Party.

G. The civil penalty for each violation involving a Commercial Activity shall be a fine of \$100.00 for the first offense committed by a Responsible Party, \$250.00 for the second offense committed by that Responsible Party, \$500.00 for the third offense committed by that Responsible Party and \$1,000.00 for the fourth or subsequent offenses committed by that Responsible Party.

H. The administrative penalty becomes effective and due immediately upon issuance of the Citation. The Responsible Party has ninety (90) days from the date of service of the Citation to pay the penalty in the absence of a timely submitted request for an administrative hearing to appeal the citation.

I. The administrative penalty, or any portion thereof, may be waived by the City Manager as the Director of Emergency Services at her discretion.

Section 10. Form and Service for Citation or Notice.

A. The Administrative Citation or Notice of Violation shall contain the following information:

1. The name and address of the Responsible Party; and
2. The date, time and address or description of the location where the violation occurred; and
3. Reference to the COVID-19 Order that the act or omission violated, including reference to the paragraph number containing the provision violated and the date of issuance of the COVID-19 Order; a brief description of the violation should be included if greater specificity is required to provide adequate notice of the violation; and
4. The amount of the penalty if the notice provided is for an Administrative Citation; and
5. Identification of appeal rights and a description of how to appeal; and
- ~~6-6.~~ Location and method of payment
- 6-7. The signature of the Enforcement Officer issuing the Citation along with the date of issuance of the Citation.

B. Any Administrative Citation or Notice of Violation issued pursuant to this Ordinance shall be served upon the Responsible Party pursuant to Section 11 of this Ordinance.

Section 11. Service Procedures.

An Administrative Citation may be served on the Responsible Party as follows:

A. Personal service: Personal service may be accomplished without violating the COVID-19 Orders by setting the Citation documents down near the Responsible Party and stating, in a voice loud enough to be heard by the Responsible Party, that the documents are for the Responsible Party, if the Responsible Party subsequently either picks up the documents or makes an indication that they understand that the documents are intended for them; or

B. Posting and Mailing: Posting and mailing requires both of the following:

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1. Posting the Citation on any real property within the City in which the City has knowledge that the Responsible Party has a legal interest, or at the location at which the violation occurred; posting shall be placed in a position that is likely to catch the attention of a person entering the property, including but not limited to a front door, gate, or near a mailbox; and

2. Mailing the Citation by first class mail, postage prepaid, to the address that the citation was posted, or to any other mailing address of the Responsible Party that is known to the City if the City reasonably believes that such mailing address will be at least as effective at reaching the Responsible Party, including but not limited to an address provided by a Responsible Party in a request for appeal of a Citation; or

C. By Mail: Service by mail may be accomplished by sending the Citation by first class mail, to the location that the violation occurred, or to any other mailing address of the Responsible Party that is known to the City if the City reasonably believes that such mailing address will be at least as effective at reaching the Responsible Party, including but not limited to an address provided by a Responsible Party in a request for appeal of a Citation.

D. Service shall be complete at the time of personal service, or forty-eight (48) hours after posting and mailing, or five days after service by mail alone.

Section 12. Procedure to Appeal an Administrative Citation.

A. Any recipient of a Citation who is identified as a Responsible Party may contest that he or she was responsible for violating the COVID-19 Order as cited by appealing the citation to the City.

B. To appeal the Citation, the recipient must give notice to the City within ten (10) days from the date of service of the Citation that they are appealing the Citation. The notice to the City may be made by providing a document, in writing, which may be transmitted electronically to the City Manager at tmiller@fortbragg.com, bearing the title, "Appeal of Administrative Citation," containing the following:

1. The name, address and phone number of the appellant; and
2. Sufficient information to identify the Citation; and
3. The grounds on which the Citation is being contested; and
4. All information, including copies of any exhibits, that supports the grounds for appealing the Citation.

C. Upon receipt of a timely requested appeal, the City will present the matter to the County Health Officer, City Manager, or their designee, so that they can make an initial determination about whether the appellant violated a COVID-19 Order as stated in the citation being appealed.

1. The County Health Officer, City Manager, or designee, will consider the appeal by reviewing any or all of the associated documents presented by the appellant or the City;
2. The County Health Officer, City Manager, or designee, may choose to consult the appellant, or any other person they believe may offer relevant information;
3. If the County Health Officer, City Manager, or designee, determines that a violation did not occur, the City will withdraw its citation along with the associated penalty;
4. If the County Health Officer, City Manager, or designee, determines that a violation occurred, the City will give notice to the appellant, pursuant to Section 9, of the determination along with instructions on how to continue pursuing their appeal, if desired.

D. If appellant does not submit a timely request to the City for a hearing by a Hearing Officer after appellant is served the notice of determination of the County Health Officer, City Manager, or designee, such determination shall become the final administrative order.

E. If the appellant wishes to have a hearing after determination by the County Health Officer, City Manager, or designee, the appellant must provide written notice to the City within ten (10) days of service of the notice of the County Health Officer, City Manager, or designee's determination, at which point the City will arrange for the matter to be heard by the City Council as detailed below.

F. The City Council authorizes the appointment and use of the City's Hearing Officer(s) pursuant to Fort Bragg City Municipal Code § 1.06 for the purpose of hearing appeals pursuant to this Ordinance.

G. If the matter is sent to the City Council, the City will cause the matter to be set for hearing at the earliest practicable date after the lifting of all shelter-in-place and/or other social distancing orders of the County Health Officer that were issued to control the spread of COVID-19.

H. The City will provide notice to the appellant that specifies the date, time and location of the hearing. Notice may be given by first class mail at the mailing address listed in the request for appeal. If by mail, such notice shall be placed in the mail no later than fifteen (15) days prior to the hearing.

I. Prior to the hearing in front of the City Council, the City will provide the City ~~Council~~ Council all the documents provided by the appellant, along with any additional documents that the City believes are relevant and supportive of its case.

Section 13. Hearing Procedure.

At the time and place stated in the notice of public hearing, the City Council shall hear and consider all relevant evidence, objections or protests, and shall receive testimony from the Responsible Party, witnesses, City staff, and interested persons relative to such violation of a COVID-19 order. The hearing may be continued from time to time. The City Council may request additional information from the parties prior to issuing a written decision. The failure of any

appellant of an Administrative Citation to appear at the scheduled hearing shall constitute a failure to exhaust administrative remedies.

Section 14. Administrative Order.

A. At the conclusion of the hearing, the City Council shall determine whether the Responsible Party violated a COVID-19 Order as specified in the Citation being contested, and shall state the reasons for that decision in a written order.

B. If the City Council determines that the Responsible Party violated a COVID-19 Order as detailed in the appealed Citation, then the penalty amount identified in the Citation, or as otherwise adjusted by the City Council, shall be immediately due and payable to the City upon service of the notice of determination.

C. If the City Council determines that the Responsible Party did not violate a COVID-19 Order as detailed in the appealed Citation, the City Council shall order the Citation dismissed, and the Citation will be deemed withdrawn by the City.

D. The City Council shall provide a copy of the written decision and administrative order to the City, and the City shall serve the City Council's decision and order to appellant either personally or by first class United States mail, postage prepaid.

E. The City Council's written decision and order shall become the final administrative order of the City.

Section 15. Right to Judicial Review.

Any Responsible Party aggrieved by the decision of the City Council may obtain further review by filing a petition for review with the Mendocino County Superior Court in accordance with the timelines and provisions as set forth in California Government Code § 53069.4.

Section 16. Failure to Pay Fines.

The City may pursue any remedy authorized by law to collect administrative penalties that are not timely paid, including but not limited to a civil action for collection of civil penalties.

Section 17. Notices.

A. The Administrative Citation and all notices to be given or served pursuant to this Ordinance shall be given or served on the Responsible Party in accordance with the provisions of this Ordinance.

B. If a notice is required by this Ordinance, including but not limited to a notice of Citation, and the notice is properly given or served pursuant to the provisions of this Ordinance, the failure to receive such notice shall not affect the validity of proceedings conducted pursuant to his Ordinance.

Section 18. Urgency Ordinance.

This Ordinance is hereby declared to be necessary for the immediate preservation of the public peace, health, and safety and will take effect and be in force upon its adoption by a four-fifths

(4/5) vote of the members of the Fort Bragg City Council. The facts constituting the urgency are as follows:

1. On March 4, 2020, the Governor declared a State of Emergency in California due to the threat of Coronavirus Disease 2019 ("COVID-19"). On March 17, 2020, the City's Director of Emergency Services declared a local emergency due to COVID-19, which was ratified by the City Council at its March 24, 2020 Special City Council meeting. Due to directives from federal, state, and local health officers, residents have been advised to avoid public gatherings and stay at home to prevent the spread of this disease.

2. On March 16, 2020, the Governor issued Executive Order N-25-20. The order mandates that residents heed any order by local public health officers, "including but not limited to the imposition of social distancing measures, to control the spread of COVID-19."

3. On March 18, 2020, the Health Officer of the County of Mendocino issued a shelter in place order, the violation of which is punishable as a misdemeanor. The Health Officer has since issued revisions to that original order, including an order requiring members of the public to wear facial coverings, including those dated April 24, 2020 and May 8, 2020.

4. The purpose of these restrictions on travel and shelter in place orders and requiring members of the public to wear facial coverings is to inhibit and reduce the spread of the COVID-19 coronavirus to protect the health of the City, Mendocino County, the State of California and the entire country.

5. Violations of the orders of the County Health Officer related to the control of the spread of COVID-19 present an immediate threat to the public peace, health and safety in that they increase the likelihood that the COVID-19 virus will spread throughout the County and City in a manner that may overwhelm our health care systems and may lead to injury and death that might otherwise be substantially reduced through adherence to the orders of the County Health Officer.

6. The immediate enforcement of the orders of the County Health Officer is necessary for the effective implementation of such orders for the purpose of controlling the spread of COVID-19 in Mendocino County and the City of Fort Bragg.

7. It would substantially defeat the purpose of the temporary administrative enforcement mechanism for orders of the County Health Officer provided by this Ordinance and endanger the health of the community, if the effective date of this Ordinance were delayed to permit introduction at one City Council meeting, adoption at a second meeting and a referendum period of 30 days following adoption of the Ordinance.

Section 19. CEQA Compliance.

The adoption of this Ordinance is not subject to CEQA pursuant to Sections 15060(c)(2) and 15061(b)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably

foreseeable indirect physical change in the environment and because there is no possibility that it may have a significant effect on the environment.

Section 20. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

The foregoing Urgency Ordinance was introduced by Councilmember ~~Albin Smith~~ and adopted at a regular meeting of the City Council of the City of Fort Bragg held on ~~May 11~~ July 27, 2020 by the following vote:

AYES: ~~Councilmembers Albin Smith, Morsell Haye, Norvell, Peters, and Mayor Lee.~~
NOES: ~~None.~~
ABSENT: ~~None.~~
ABSTAIN: ~~None.~~
RECUSE: ~~None.~~

William V. Lee,
Mayor

ATTEST:

June Lemos, CMC
City Clerk

PUBLISH: ~~May 21, 2020.~~
EFFECTIVE DATE: ~~May 11, 2020~~ July 27, 2020.