



# ORDINANCE No. \_\_\_\_\_

## OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

### **AN UNCODIFIED TEMPORARY URGENCY ORDINANCE AUTHORIZING COUNTY ENFORCEMENT OFFICERS TO ENFORCE ORDERS ISSUED BY THE PUBLIC HEALTH OFFICER REGARDING THE NOVEL CORONAVIRUS (COVID-19) (4/5 AFFIRMATIVE VOTE REQUIRED)**

THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

SECTION I: Findings

- A. A novel coronavirus known as SARS-CoV-2 is causing outbreaks of the coronavirus disease (“COVID-19”) that has now spread globally; and
- B. On January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency in response to COVID-19; and
- C. On March 4, 2020, Governor Gavin Newsom declared a state of emergency to exist in California as a result of COVID-19; and
- D. On March 5, 2020, the Public Health Officer for the County of Nevada issued a Declaration of Local Health Emergency due to the potential introduction of COVID-19 in Nevada County and associated threat to the public health; and
- E. On March 10, 2020, the Board of Supervisors of the County of Nevada ratified the existence of a local emergency as proclaimed by the Health Officer; and
- F. On March 12, 2020, Governor Gavin Newsom signed Executive Order N-25-20 giving state and local public health officials the authority to issue guidance limiting or recommending limitations upon attendance at public assemblies, conferences or other mass events; and
- G. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations for critical infrastructure (the “Shelter in Place Order”); and
- H. A violation of the Governor’s Executive Orders (N-25-20, N-33-20, and N-60-20) is a misdemeanor pursuant to California Government Code section 8665; and
- I. Government Code section 8634 states, “During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread publicity and notice;” and

J. On April 7, 2020, in an effort to slow the spread of COVID-19 and to protect vulnerable individuals and to help prevent the local healthcare system from being overwhelmed, the Nevada County Public Health Officer issued two Orders requiring the self-isolation of anyone diagnosed with or showing symptoms consistent with COVID-19 and requiring the self-quarantine of anyone exposed to an individual diagnosed with COVID-19; and

K. On May 4, 2020 Governor Newsom issued Executive Order N-60-20, ordering residents to continue to obey State public health directives; and

L. On June 18, 2020, the California Department of Public Health released its Guidance on the Use of Face Coverings, requiring face coverings be worn state-wide in the certain high-risk circumstances and with the specified exceptions; and

M. On July 13, 2020 the Statewide Public Health Officer issued a Statewide Order closing bars, pubs, brewpubs, and breweries, subject to certain exception. The same order restricts indoor operations of dine-in restaurants, wineries and tasting rooms, family entertainment centers, movie theaters, and other indoor businesses; and

N. A violation of a state or local Health Officer's orders made to control the spread of COVID-19, is a violation of the Governor's Executive Orders N-25-20, N-33-20, and N-60-20; and

O. California Health and Safety Code sections 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, such as a state or local Health Officer's shelter in place order or restrictions on indoor operations; and

P. California Government Code section 25132 makes it a misdemeanor to violate any county ordinance unless by ordinance it is made an infraction; and

Q. Violations of the orders of a state or local Health Officer 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 they increase the likelihood that the COVID-19 virus will spread throughout the County in a manner that may overwhelm our healthcare systems and may lead to injury and death that otherwise are likely to be substantially reduced through adherence to a state or local Health Officer's orders; and

R. The immediate enforcement of the orders of a state or local Health Officer is necessary for the effective implementation of such orders for the purpose of controlling the spread of COVID- 19 in Nevada County; and

S. California Government Code section 53069.4 provides authority to the Nevada County Board of Supervisors to set administrative penalties for violation of any ordinance enacted by the Nevada County Board of Supervisors; and

T. Establishing administrative penalties as a mechanism to enforce the orders of a state or local Health Officer's orders on an urgency basis is necessary for such remedy to be effective and useful; and

U. The administrative penalties will provide an alternative enforcement mechanism that will augment the County's ability to combat the negative effects of the COVID-19 pandemic; and

V. Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction.

## SECTION II: Definitions

A. “Business Activity” shall mean all for-profit and non-profit business and commercial enterprise activities within the County of Nevada that are subject to COVID-19 Orders issued by the Public Health Officer for the County of Nevada, the Environmental Health Director for the County of Nevada, the State Public Health Officer, and all executive orders issued by the Governor of the State of California relating to COVID-19.

B. “COVID-19 Order” means an order of the Governor of the State of California or County of Nevada Health Officer, Statewide public health directive, and/or order of the County Environmental Health Department, 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 March 4, 2020 declaration of a State of Emergency, Executive Order N-33-20, issued by the Governor of the State of California on March 19, 2020 and Executive Order N-60-20, issued by the Governor of the State of California on May 4, 2020.

C. “Day” or “days” shall mean calendar days.

D. “Enforcing Officer” means the Health Officer of the County, or anyone designated by the Health Officer, any Code Compliance Officer or Environmental Health officer designated by the Director of the Community Development Agency, any peace officer with jurisdiction in the County of Nevada, or anyone identified by resolution of the Board.

E. “Responsible Party” means an individual or legal entity, or the agent or legal guardian of such individual or entity, whose action or failure to act violated a COVID-19 Order.

## SECTION III: Incorporation into County Law.

All COVID-19 Orders are hereby incorporated into this ordinance as the law of the County of Nevada.

## SECTION IV: Nuisance Declaration.

All COVID-19 Orders issued by the Public Health Officer for the County of Nevada and all executive orders issued by the Governor of the State of California relating to COVID-19 are mandatory and enforceable within the County of Nevada. Violation of any COVID-19 Order hereby constitutes a violation of the Nevada County Code and a public nuisance subject to enforcement as a misdemeanor, except when the District Attorney or County Counsel shall elect to charge such violation as an infraction; as a civil violation through imposition of administrative penalties as provided herein; by revocation or suspension of any County-issued permit; or by any other remedy available at law.

## SECTION V: Enforcement.

COVID-19 Orders may be enforced by Enforcing Officers of the County of Nevada.

## SECTION VI: Issuance of Notice or Citation; Penalty Amounts; Permit Revocation.

A. Each and every day a violation of a COVID-19 Order exists constitutes a separate and distinct offense, each of which may be subject to a separate Administrative Citation or civil penalty.

B. An Enforcing Officer may immediately issue an Administrative Citation to any Responsible Party violating any provision of a COVID-19 Order.

C. When an Enforcing Officer discovers, or otherwise determines that a violation of a COVID-19 Order occurred, such Enforcing Officer, in his or her discretion, may issue a Notice of Violation to the Responsible Party that provides 24 hours to abate the violation. Nothing in this section shall be construed to prohibit an Enforcing Officer from immediately issuing an Administrative Citation if the Enforcing Officer determines such action is necessary to prevent further or continued violation.

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

D. The civil penalty for each violation of a COVID-19 Order involving a Business Activity shall be

1. One thousand dollars (\$1,000) for a first violation.
2. Five thousand dollars (\$5,000) for a second violation of a COVID-19 Order within one year of the first violation.
3. Ten thousand dollars (\$10,000) for each additional violation of a COVID-19 Order within one year of the first violation.

E. The civil penalty for a violation of a COVID-19 Order involving a non-Business Activity shall not exceed \$500.00.

F. 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.

G. The administrative penalty, or any portion thereof, may be waived by the Enforcing Officer for good cause.

H. In addition to the issuance of an administrative penalty, the County may suspend or revoke any County-issued permit whenever it finds that the permittee has violated any COVID-19 Order.

I. Pursuant to Government Code section 25132, subdivision (d), if the County levies a penalty pursuant to this section, the County shall establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by the Responsible Party that the Responsible Party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the Responsible Party.

J. In the event the Responsible Party fails to pay the administrative penalty and costs when due, the County may take any action permitted by law to collect the unpaid administrative penalty. Such action may include, but is not limited to, recordation of a lien on the subject property, including lien pursuant to Government Code section 54988, or a small claims action for a civil money judgment. The County shall provide the owner of the property with a minimum of thirty (30) days written notice of intent to commence collection of the administrative penalty, including the intended method of collection. Notice shall be deemed to have been received by The Responsible Party five (5) days after it was sent by certified mail to the Responsible Party's last known address, upon which the Responsible Party will have forty-five (45) days to pay the penalty. If the Responsible Party fails to pay the penalty within forty-five (45) days of notice of intent to commence collection proceedings, the County is authorized to commence collection proceedings. If the method of collection is by lien, the Responsible Party may request to appear before the Board of Supervisors to be heard regarding the amount of the proposed lien.

K. Pursuant to section 54988 of the Government Code, and pursuant to any other applicable state law, the County shall be entitled to recover fees, costs, and charges that have been incurred as a result of civil enforcement activity. Such fees and costs include, but are not limited to, administrative costs and attorney fees.

**SECTION VII:** 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;
2. the date and address or description of the location where the violation occurred;
3. reference to the applicable COVID-19 Order;
4. a brief description of the violation should be included if greater specificity is required to identify the violation;
5. the amount of the penalty (Citation only);
6. identification of appeal rights and a description of how to appeal;
7. the signature of the Enforcing 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 may be served upon the Responsible Party by:

1. personal service;
2. first-class mail; or
3. posting the citation on any real property within the County in which County records indicate the Responsible Party has a legal interest.

Service shall be complete at the time of personal service, or one day after posting, or three days after service by mail.

**SECTION VIII:** Appeals Process.

An individual who is issued an Administrative Citation or who has a permit suspended or revoked pursuant to this Ordinance may request an administrative hearing to contest the citation by notifying the Clerk of the Board of Supervisors within five (5) calendar days of the service of the citation. The administrative hearing procedures located in Nevada County Land Use and Development Code section L-II 5.23 (G) – (J) shall govern all requests for appeals of any notice or citation issued under this ordinance and all hearings conducted thereafter. For purposes of the hearing procedures, the reference to the individual cited pursuant to this Ordinance and “property owner” under L-II 5.23 (H) shall be interchangeable.

**SECTION IX:** Effective Date.

Pursuant to Government Code section 25123, this Ordinance shall take effect and be in force immediately upon its adoption by a four-fifths (4/5ths) vote of this Board, and it shall become operative on the 28th day of July 2020.

**SECTION X:** Ordinance Expiration.

This urgency ordinance shall continue in effect from the date of its adoption until rescinded by the Board of Supervisors, or until all COVID-19 Orders expire or are rescinded by the County of Nevada Public Health Officer, the State of California, and the federal government, and shall thereafter be of no further force and effect unless otherwise extended by the Board of Supervisors.

SECTION XI: Ordinance Filing.

This Ordinance shall be filed in the office of the Clerk of the Board of Supervisors, posted at the County of Nevada Eric Rood Administrative Center located at 950 Maidu Ave., Nevada City, California 95959, on the County of Nevada website, published in a local newspaper and posted in public spaces as practicable, and provided to any member of the public requesting a copy of this Ordinance.

SECTION XII: Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

Before the expiration of fifteen (15) days after its passage, this Ordinance shall be published once, with the names of the Supervisors voting for and against same in The Union, a newspaper of general circulation printed and published in the County of Nevada.