



**COUNTY OF NEVADA  
COMMUNITY DEVELOPMENT AGENCY**

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**NEVADA COUNTY BOARD OF SUPERVISORS  
Board Agenda Memo**

**MEETING DATE:** August 11, 2020

**TO:** Board of Supervisors

**FROM:** Sean Powers, Director of Community Development Agency

**SUBJECT:** AN UNCODIFIED TEMPORARY URGENCY ORDINANCE AUTHORIZING CERTAIN ENFORCEMENT ACTIONS RELATED TO ORDERS ISSUED BY THE COUNTY ENVIRONMENTAL HEALTH DIRECTOR, STATE AND LOCAL PUBLIC HEALTH OFFICERS, AND THE GOVERNOR OF CALIFORNIA REGARDING THE NOVEL CORONAVIRUS (COVID-19) (4/5 AFFIRMATIVE VOTE REQUIRED)

**RECOMMENDATION:** Adopt the Ordinance.

**FUNDING:** These services will be paid for from the Community Development Agency Code Compliance Program budget.

**BACKGROUND:**

**COVID-19.** A novel coronavirus known as SARS-CoV-2 that is causing outbreaks of the coronavirus disease (“COVID-19”) that has now spread globally. On March 4, 2020, Governor Gavin Newsom declared a state of emergency to exist in California as a result of COVID-19. 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 on March 10, 2020, the Board of Supervisors of the County of Nevada ratified the existence of a local emergency as proclaimed by the County Health Officer. As of August 5<sup>th</sup>, over 300 Nevada County residents have tested positive for COVID-19 and one resident died from the virus.

**Shelter in Place Orders.** 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”).

On May 4, 2020, the Governor issued Executive Order N-60-20, directing all residents to continue complying with all statewide public health orders. As the pandemic continues, subsequent public health guidance from State and local officials has dialed up and down various restrictions related to indoor and outdoor activities to try to contain the spread of the virus. The State uses extensive public health data to

determine what restrictions to impose or lift, either statewide or on a county by county basis. These changing orders have forced the closing, opening, and reclosing of some activities and businesses across the state and in Nevada County. Most Nevada County residents and businesses have adjusted to this “new normal” and have complied with the state’s restrictions. However, a small number of businesses, property owners, and event organizers have blatantly ignored the orders, putting our whole community at greater risk of spreading the virus.

Violations of the orders of the California or Nevada County Health Officers, County Environmental Health Director and/or the Governor of California’s Executive Orders related to controlling 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 in a manner that may overwhelm our healthcare systems and may lead to illness and death that otherwise would likely be substantially reduced through adherence with the orders. Therefore, public understanding and compliance with the Orders is critical to the health and safety of our community. Enforcement of the orders is a necessary action for controlling the spread of COVID-19 in Nevada County and, moreover, to ensure fair business competition for businesses who are complying with the orders for the betterment of all.

**Tools for Enforcement.** A violation of the Governor’s Executive Orders (N-25-20, N-33-20, and N-60-20) is already a misdemeanor pursuant to Government Code section 8665. Further, Health and Safety Code sections 120275 and 120295 make it a misdemeanor to violate certain sections of the Health and Safety Code including those the County Environmental Health Director is assigned by the State to enforce. However, the County would prefer not to enforce the orders through the criminal justice system.

Nevada County recognizes the impacts the Shelter in Place Order has had, and continues to have, on local businesses. The County, Cities, and Town have provided support to local businesses to help weather this economic hardship including grant programs through the Nevada County Relief Fund, supporting outdoor activities by closing streets, and by putting on the Car Hop events. The businesses that have adapted and accepted losses by complying with the orders intended to protect the community deserve fair competition with their neighboring businesses. Other than criminal infractions, the County’s tools to enforce the orders are limited to the authority of existing ordinances, which are not adequate to ensure adherence to the orders.

**Urgency Ordinance.** A different and additional administrative tool, in the form of a local ordinance is being proposed to enforce the orders of the California and County Health Officers, the Environmental Health Director, and the Governor of California as related to the COVID-19 pandemic. This ordinance would leverage civil penalties rather than criminal sanctions to enforce the orders. The ordinance would be implemented mainly by Code Compliance Officers and Environmental Health Inspectors, with County Counsel support and would sunset when the Statewide Shelter in Place Order is lifted.

This ordinance was agendized on July 28, 2020 for consideration by the Board of Supervisors but postponed to August 11, 2020. Minor revisions were made from the July 28, 2020 version including adding language addressing unfair business competition with compliant businesses, combining the fine structure into one category for “business” and “non-business” activity, revising the second violation amount from \$5,000 to \$2,500, allowing reasonable time but no more than 48 hours to correct and voluntarily comply, clarifying fines are civil penalties, and allowing the County to scale resources to enforce as needed. A redlined version of these changes is included with the agenda item.

Government Code section 53069.4 authorizes the Nevada County Board of Supervisors to set administrative fines and penalties for violation of any ordinance enacted by the Nevada County Board of Supervisors. Establishing administrative fines and penalties as a mechanism to enforce the orders on an urgency basis is necessary for such remedy to be effective and useful. Such administrative fines and penalties will provide an alternative enforcement mechanism to augment the County's ability to protect the community from the negative effects of the COVID-19 pandemic.

The purpose of the County's COVID-19 enforcement program is to achieve compliance with the orders. The proposed urgency ordinance provides for the issuance of administrative fines and penalties ranging from \$1,000 to \$10,000 for violations of existing COVID-19 orders. These penalties would be imposed after initial attempts fail to educate and collaborate with the local businesses or individuals found to be in violation or when it is necessary to prevent further or continued violations. Fines and penalties are intended to apply to organized activities where in the presence of COVID-19, spread is likely to occur. In addition, the ordinance authorizes the County to suspend or revoke any County-issued permit whenever it finds that the permittee has violated any COVID-19 order.

Additionally, this urgency ordinance seeks to prohibit unfair competition practices created by local businesses that continue their operation in violation of COVID-19 orders. Such unauthorized operations unfairly impact and take advantage of those similar situated businesses that remain compliant with the same orders, while also threatening the health and safety of the public through unauthorized activities that are determined to create a risk of significant spread of COVID-19.

The intent of this ordinance is not to enlarge the COVID-19 orders already in place or to penalize individuals for not wearing a face covering in public or exercising their rights to free speech unless the individual is found to be intentionally endangering others by their action.

Investigation and enforcement of this ordinance would be initiated by the receipt of a complaint by a member of the public via email, phone, and/or the County's AskNevadaCounty app. County staff will investigate each complaint and contact the business or individual to discuss the situation. An education first approach will provide the violator the opportunity to comply without penalties; however, if compliance is not achieved, penalties can be imposed as described above. The ordinance applies only where the County has jurisdiction to enforce the related Health and Safety codes, meaning in food facilities countywide and in the unincorporated areas for non-food facilities. Complaints received outside of the County's jurisdiction are forwarded to the appropriate enforcement entity in Grass Valley, Truckee and Nevada City.

The Ordinance also contains an appeal process including an administrative hearing to contest the imposition of penalties.

Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction. A 4/5ths affirmative vote is required.

**Item Initiated and Approved by:** Sean Powers