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July 21, 2020

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Request from the Office of County Counsel to consider an Urgency Ordinance adopting administrative penalties for the violation of the County Public Health Officer's orders pertaining to the COVID-19 pandemic

RECOMMENDATION: Adopt the attached Ordinance

Dear Supervisors,

Background

In an effort to curtail the spread of COVID-19, State and County public officials have restricted the activities and operations of businesses and individuals through various Shelter-in-Place/Stay-at-Home orders ("Public Health Orders"), which have been amended several times in accordance with State mandates and local conditions. More recent State orders permitted a staged process for allowing some business operations to reopen, based on epidemiological indicators such as new case rates, hospitalization capacity, testing rates, and ICU hospitalization/ventilator capacity.

On July 3, 2020, the Governor announced that the County of Marin had been added to a "watch list" of California counties being closely monitored for COVID-19 activity due to a spike in confirmed cases, increased evidence of community transmissions, increased hospitalizations, and other epidemiological indicators. On July 13, 2020, the State Public Health Officer issued orders restricting the operations of certain businesses and activities statewide due to increasing concern over community spread of COVID-19, based on epidemiological markers reflecting increased community transmission and strain on health care resources. Counties on the state monitoring list, including Marin County, were directed to restrict a broader scope of businesses and activities.

As of July 19, 2020, Marin County has 2,234 diagnosed cases of COVID-19, including 30 deaths.

Enforcement of Public Health Orders

The majority of Marin County residents and businesses have complied with Public Health Orders during this challenging time. However, there is an increasing need for the County to address businesses and activities conducted in a

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manner contrary to Public Health Orders. Violations of Public Health Orders not only create a serious and immediate risk to public health and safety, they also jeopardize social and economic welfare by increasing the potential for renewed curtailment of business operations, school closures, and activity restrictions.

Currently, violations of Public Health Orders are enforceable as criminal misdemeanors pursuant to Health and Safety Code sections 120275 and 120295. State licensing agencies may enforce Public Health Orders as to certain licensed businesses through existing regulatory schemes. Civil actions for injunction/temporary restraining order may be pursued through the Superior Court process. While these enforcement mechanisms can be effective, they may be too slow, resource-intensive, overly punitive, and/or lack local control.

As the COVID-19 pandemic persists in Marin County and throughout the State, there is an increasing need for counties to expand the tools available to enforce Public Health Order violations. Of note, Governor Newsom has also threatened to withhold federal CARES Act stimulus allocations from local governments that do not follow recommended guidelines to address the spike in coronavirus cases, including improved local enforcement of Public Health Orders. The County of Marin is expected to receive \$26.5 million related to its pandemic emergency response efforts since March.

The proposed Urgency Ordinance adds an additional enforcement tool by creating an administrative framework to address Public Health Order violations. Informal intervention and education will be the initial strategy to encourage voluntary compliance. A task force including Community Development Agency Code Enforcement, Environmental Health Services, the Sheriff, and County Counsel will collaborate with city and town personnel to focus on business violations throughout the county.

If adopted, the new enforcement tool will supplement—not replace—the current enforcement methods available. In addition to enforcing compliance where needed, administrative citations will deter violations, thereby decreasing the adverse impact of violations upon the community.

Legal Authority

Under Cal. Const., art. XI, § 7, a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. Government Code § 53069.4 allows counties to “make any violation of any ordinance...subject to an administrative fine or penalty.” Section 53069.4 further allows the County to “set forth by ordinance the administrative procedures that shall govern the imposition, enforcement,

collection, and administrative review by the local agency of those administrative fines or penalties.”

Features of the Proposed Ordinance

The proposed ordinance includes the following elements:

- Allows designated County, City, and Town personnel—in addition to Peace Officers—to enforce Public Health Orders, thereby relieving law enforcement and expanding enforcement capabilities.
- Provides the ability for an Enforcement Officer to impose on-the-spot citation/penalty or to permit a grace period of up to 72 hours for a violation to be abated.
- Allows for development of a fine schedule by the County, City, and Town entities enforcing this Ordinance.
- Allows for sliding-scale fines based on nature of violation, commercial/non-commercial status of the violating entity, and number of prior violations.
- Allows for significant penalties to be imposed where appropriate, based on circumstances of violation.
 - The civil penalty for each non-commercial violation shall be a fine not to exceed \$500, with a minimum fine amount of \$25.
 - The civil penalty for each violation involving a commercial activity shall be a fine not to exceed \$10,000, with a minimum fine amount of \$250.
- Provides the cited party access to appeal, pursuant to Government Code §53069.4.
- Allows County, City, and Town entities to recover costs of the appeals process in successful cases.
- Allows Enforcement Officers to focus on violations of particular concern to Marin County, based on local conditions.

Wherever appropriate, informal intervention and education will be utilized initially to encourage voluntary compliance in the community with public health orders.

Fiscal Impact

The new enforcement program is intended to have no impact to net city or county costs. Adoption of the ordinance will allow payment of citation fines to a single collection entity, likely the County of Marin. Fine revenues will be used to offset the costs of enforcement, including costs related to any appeals. The ordinance allows for recovery of appeals costs by the County in cases where the County, City or Town prevails. Conversely, the ordinance requires all parties to bear their own attorney costs and fees, where applicable, regardless of outcome.

Respectfully submitted,

/s/ Renee Giacomini Brewer

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