

City of Scotts Valley CITY COUNCIL STAFF REPORT

DATE: August 5, 2020

TO: Honorable Mayor and City Council

FROM: Kirsten Powell, City Attorney

SUBJECT: URGENCY ORDINANCE NO. 196 PROVIDING REMEDIES FOR VIOLATION OF PUBLIC HEALTH ORDERS

SUMMARY OF ISSUE

On March 3, 2020, Governor Newsom proclaimed a State of Emergency related to the COVID-19 pandemic, effective throughout the State of California. On March 4, 2020, the Santa Cruz County Public Health Officer (“Health Officer”) declared a local health emergency related to the COVID-19 pandemic, which remains in effect. On March 18, 2020, the Scotts Valley City Council proclaimed a local emergency related to the COVID-19 pandemic, which remains in effect. On March 12, 2020, Governor Newsom issued Executive Order N-25-20, ordering Californians to heed any order issued by local public health officials, “including but not limited to the imposition of social distancing measures” to control the spread of COVID-19. On March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home or at their place of residence, except to obtain or perform essential public services, and subsequent orders have set forth a staged process for reopening business sectors with appropriate health measures to reduce the risk inherent in resuming activities during the pandemic.

On June 12, 2020, the State of California allowed the re-opening of particular uses, subject to Statewide guidance and regulations. Since then, cases of COVID-19 have been on the rise. On July 13, 2020, the California Department of Public Health issued a Statewide Public Health Order and Guidance on Closure of Sectors in Response to COVID-19, which explain that community spread of infection is of increasing concern across the state, and continues to grow in Santa Cruz County. The number of hospitalized patients with COVID-19 has increased between 50-100% in California since June 12, 2020, and the number of counties with case rates over 100 per 100,000 residents has gone from three to 38 counties, confirming statewide increased transmission of COVID-19. This rise in infections and community spread in both Santa Cruz County and statewide demonstrates the necessity for more effective enforcement of public health orders to prevent further spread of COVID-19. The California Public Health Officer and the Santa Cruz County Public Health Officer have released a number of public health orders designed to address the pandemic, including orders termed as “guidance” for business sectors that are enforceable as orders.

Pursuant to State law, violations of a Health Officer’s orders are misdemeanors punishable by fines or jail confinement, and generally constitute public nuisances in that they are injurious to health. Violations of the Health Officers’ orders 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 County health care systems and lead to injury and death that might otherwise be substantially reduced through adherence to the orders of the Health Officers. The immediate enforcement of the Health Officers’ orders related to, for example, physical distancing and the wearing of face coverings, is necessary for the purpose of controlling the spread of COVID-19 in Santa Cruz County. By adopting an urgency ordinance to make the violation of the Health Officers’ orders an infraction punishable pursuant to the City’s municipal code or subject to an Administrative Citation pursuant to the City’s municipal code, the City Council is taking action to provide enforcement measures that are less severe than a misdemeanor but still meaningful in that it will allow City enforcement officers to take swift action against violators in an efficient way that will influence conduct and lead to greater compliance with the Health Officers’ orders.

An infraction and the Administrative Citation penalty will not exceed: (1) \$100 for the first violation; (2) \$200 for a second violation within a one year period; and (3) \$500 for each additional violation within a one year period.

ENVIRONMENTAL REVIEW

The action being considered is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15305 as it is a minor alteration in land use limitations.

FISCAL IMPACT

This ordinance will give the City the ability to charge people with an infraction or issue an administrative citation for failure to comply with Public Health Orders. This will result in some revenue to the General Fund.

STAFF RECOMMENDATION

It is recommended that the City Council approve Urgency Ordinance No. 196 by a 4/5 vote, adding Chapter 8.16 to the Scotts Valley Municipal Code to provide remedies for violation of public health orders.

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ORDINANCE NO. 196

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SCOTTS VALLEY ADDING CHAPTER 8.16 TO THE SCOTTS VALLEY MUNICIPAL CODE TO PROVIDE REMEDIES FOR VIOLATION OF PUBLIC HEALTH ORDERS

The City Council of the City of Scotts Valley hereby finds and declares the following:

WHEREAS, on March 3, 2020, Governor Newsom proclaimed a State of Emergency related to the COVID-19 pandemic, effective throughout the State of California; and

WHEREAS, on March 4, 2020, the Santa Cruz County Public Health Officer (“Health Officer”) declared a local health emergency related to the COVID-19 pandemic, which remains in effect; and

WHEREAS, on March 18, 2020, the Scotts Valley City Council proclaimed a local emergency related to the COVID-19 pandemic, which remains in effect; and

WHEREAS, on March 12, 2020, Governor Newsom issued Executive Order N-25-20, ordering Californians to heed any order issued by local public health officials, “including but not limited to the imposition of social distancing measures” to control the spread of COVID-19; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home or at their place of residence, except to obtain or perform essential public services, and subsequent orders have set forth a staged process for reopening business sectors with appropriate health measures to reduce the risk inherent in resuming activities during the pandemic; and

WHEREAS, on June 12, 2020, the State of California allowed the re-opening of particular uses, subject to Statewide guidance and regulations; and

WHEREAS, on July 13, 2020, the California Department of Public Health issued a Statewide Public Health Order and Guidance on Closure of Sectors in Response to COVID-19, which explain that community spread of infection is of increasing concern across the state, and continues to grow in Santa Cruz County. The number of hospitalized patients with COVID-19 has increased between 50-100% in California since June 12, 2020, and the number of counties with case rates over 100 per 100,000 residents has gone from three to 38 counties, confirming statewide increased transmission of COVID-19. This rise in infections and community spread in both Santa Cruz County and statewide demonstrates the necessity for more effective enforcement of public health orders to prevent further spread of COVID-19; and

WHEREAS, the California Public Health Officer and the Santa Cruz County Public Health Officer have released a number of public health orders designed to address the pandemic, including orders termed as “guidance” for business sectors that are enforceable as orders; and

WHEREAS, pursuant to State law, violations of a Health Officer’s orders are misdemeanors punishable by fines or jail confinement, and generally constitute public nuisances in that they are injurious to health; and

WHEREAS, violations of the Health Officers’ orders 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 County health care systems and lead to injury and death that might otherwise be substantially reduced through adherence to the orders of the Health Officers; and

WHEREAS, the immediate enforcement of the Health Officers’ orders related to, for example, physical distancing and the wearing of face coverings, is necessary for the purpose of controlling the spread of COVID-19 in Santa Cruz County; and

WHEREAS, the City Council has determined that urgent action must be taken to protect the health, safety, and welfare of individuals in the City of Scotts Valley; and

WHEREAS, by adopting an urgency ordinance to make the violation of the Health Officers’ orders an infraction punishable pursuant to the City’s municipal code or subject to an Administrative Citation pursuant to the City’s municipal code, the City Council is taking action to provide enforcement measures that are less severe than a misdemeanor but still meaningful in that it will allow City enforcement officers to take swift action against violators in an efficient way that will influence conduct and lead to greater compliance with the Health Officers’ orders.

NOW, THEREFORE, the City Council of the City of Scotts Valley hereby ordains as follows:

SECTION 1. Chapter 8.16 is hereby added to the Scotts Valley Municipal Code to read as follows:

**“Chapter 8.16
ENFORCEMENT OF PUBLIC HEALTH ORDERS**

Sections:

8.16.010 Purpose.

8.16.020 Definitions.

8.16.030 Violation of public health orders prohibited.

8.16.040 Enforcement.

8.16.050 Penalties.

8.16.060 Severability.

8.16.010 Purpose.

The purpose of this chapter is to establish that violation of public health orders is prohibited under the Scotts Valley Municipal Code and constitutes an infraction. The purpose of this chapter is to also detail the enforcement methods that may be utilized to address such a violation.

8.16.020 Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section.

(A) "County Public Health Officer" means the Santa Cruz County Public Health Officer designated by the Santa Cruz County Board of Supervisors pursuant to Health and Safety Code section 101000.

(B) "Enforcement Officer" means the following officers or employees or their designated assistants or deputies:

- (1) The Police Chief, and any other law enforcement officer authorized to enforce the California Penal Code and the Scotts Valley Municipal Code in the City of Scotts Valley;
- (2) Community Development Director and his or her designated subordinates; and
- (3) Building Official and his or her designated subordinates; and
- (4) Finance Director and his or her designated subordinates; and
- (5) Public Works Director and his or her designated subordinates.

(C) "Public Health Order(s)" means any order issued by the County Public Health Officer under authority granted by State law, any order issued by the State Public Health Officer, any state guidance and directives issued by the State Public Health Officer containing mandatory, binding, or enforceable obligations applicable to the public, or any site-specific or industry-specific protocols mandated as a part of such orders.

8.16.030 Violation of Public Health Orders prohibited.

Violation of a Public Health Order is unlawful and is hereby prohibited.

8.16.040 Enforcement.

(A) Violation of this chapter constitutes an infraction punishable as set forth in Scotts Valley Municipal Code Chapters 1.12 and 4.04.

(B) As an alternative enforcement measure, an Enforcement Officer may issue a person violating this chapter an administrative citation pursuant to Scotts Valley Municipal Code Chapter 4.14. The procedures for issuing and appealing such citations, and the monetary penalties associated therewith, are those set forth in Scotts Valley Municipal Code Chapter 4.20, the relevant portions of which are incorporated herein by reference.

8.16.50 Penalties.

(A) Any person convicted of an infraction under the provisions of this Chapter shall be punishable by fine only as follows: (i) upon a first conviction, by a fine of not exceeding one hundred dollars (\$100); (ii) for a second conviction within a period of one year, by a fine of not exceeding two hundred dollars (\$200); and (iii) for each additional violation of the same section of the Municipal Code within a period of one year, by a fine not exceeding five hundred dollars (\$500).

(B) The penalties assessed for each administrative citation issued in accordance with Section 8.16.040 shall not exceed the following amounts: (i) first violation, One Hundred Dollars (\$100); (ii) second violation within a one year period, Two Hundred Dollars (\$200); and (iii) for each additional violation within a one year period, Five Hundred Dollars (\$500).

8.16.060 Severability.

If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.”

SECTION 2. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.)

SECTION 3. Effective Date. This ordinance shall take effect immediately as an urgency ordinance. This is based on the City Council finding that this ordinance is adopted in compliance with Government Code Section 25123, that it is necessary for the protection of the public peace, health and safety for the reasons contained in the findings set forth at the beginning of this ordinance, which are incorporated by reference herein, and that it is a necessary measure to prevent the spread of COVID-19.

PASSED AND ADOPTED this 5th day of August 2020, by the City Council of the City of Scotts Valley by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: _____
Randy Johnson, Mayor

ATTEST:

Tracy A. Ferrara, City Clerk

APPROVED AS TO FORM:

Kirsten Powell, City Attorney