

To: Mendocino County Board of Supervisors

From: Laura Diamondstone, Boonville

Date: 7/7/20

Re: Special meeting regarding Public Health Officer (PHO) orders enforcement

It is past time to be intentional and directive to protect the community at large. The following are comments I would like to see addressed during the special meeting for which agenda, public access link, or and ecomments are not as yet available).

**County/taxpayer dollars should not be spent on deputies walking** around "educating". We are four months in since the pandemic was declared. Every English-speaking person in this county has had ample time to be informed of mandatory masking since the public health officer order was issued in April. Every English-speaking person, including tourists in CA are under the same orders issued 6/18 by the governor.

If county officials have evidence that there is an education gap, then use the wireless emergency alert system in English and Spanish to inform residents of social distancing and mask requirements<sup>[1]</sup>.

**County/taxpayer dollars should be spent on**

- 1) Clear and prevalent messaging to tourists
- 2) Clear signage on all road entrances into the county INCLUDING 128 requiring social distancing and mask requirements.
- 3) Better outreach and minimally, Spanish translation of educational materials posted in accessible places (e.g. post offices and winery/ag places of biz) for people without internet access.
- 4) Masks offered as 1st interaction with non-compliant people. Masks could be offered also for a donation to restock supplies or to fund PPE for front line workers and first responders.

It is recognized that unfortunately much of the burden of "enforcement" of public health orders falls on businesses and that businesses should not be put in the position of having to deal with escalating confrontations with non-compliant people. With that in mind:

### **The Role of Businesses - attestation**

A re-attestation cycle should include business requirements to:

- Submit what messaging they are providing in *all* advertising and posted signage about PHO orders. Mendocino like, Marin County, could post in the public health orders downloadable information graphics for businesses and individuals in English and Spanish. County-produced graphics and posters for download is preferable as orders will change over time and messaging will be standardized.
- Submit a deterrence plan. How they will deter non-compliance by refusal of service for non-compliance. For most stores and entries, this could be instituted as a dedicated door monitor that operates the door for masked individuals only and to keep numbers of people reduced for social distancing.

### **Tourists and Tourist Economy Businesses**

All PHO orders that apply to this county must be applied to tourists.

Tourists and tourist economy businesses should be subject to fines if they cannot (exceptions being age younger than two years and those with ADA issues) comply with PHO orders.

### **Enforcement Target Priorities**

Prioritize indoor settings (restaurants and bars, stores with long aisles, grocery stores, locally essential places of businesses, public and private -e.g. Uber transportation, gyms/studios, and

unventilated buildings). Also prioritize tourist economy businesses inviting out of county patronage.

### **Enforcement of PHO orders - Penalties**

Offering a mask to non-compliant people should be first option.

Refusals should be handled with fines that are ear-marked to replenish mask supplies and PPE for vulnerable people and/or high-risk workers.

Fines could be hierarchical –highest for repeatedly non-compliant businesses (one county imposes \$5000 fines<sup>[2]</sup>); higher for tourist economy and big box businesses and tourists; lowest for community essential businesses.<sup>[3]</sup>

It is noted that fines may not change behavior, but at minimum could provide some reimbursement for free masks, outreach with Spanish translation, and possibly PPE for front line workers.

### **The Role of Citizens**

In addition to the offered phone number, for those with internet connection the county could offer a website template for citizen reports – both good and bad. These reports could be tabulated and issued weekly with the COVID-19 update graphic (now thankfully in Spanish as well). The tabulation could be similar to a yelp review with actual reviews readable by clicking on stars. This could gather (the call in reports could be transferred into the template), formalize, and standardize the numerous reports on businesses that have been casually interspersed on social media. Businesses will then be impacted by loss of or favored for community support.

### **The Role of Law Enforcement Officers and Deputies**

When there is a conflict between a county public health order and enforcement refusal or reluctance from sheriffs or police departments, these conflicts may end up in court ultimately costing the county. We need to avoid that and therefore should not rely on refusing, reluctant, or self-selecting enforcement from these entities. We do not want law enforcement to accrue overtime for “enforcement” that is simply education. We also do not want to criminalize our most marginalized and vulnerable citizens.

However, law enforcement should be directed to issue citations for non-compliant businesses and individuals in targeted priority settings for those that do not comply with PHO orders after first request and/or offered masks. For those that have entered places of businesses against the will of the business and who refuse to leave, law enforcement should be directed to enforce trespass laws. However, these incidents would be minimized when businesses refuse entry to those refusing masks.

### **Enforcement and the "constitutional" law enforcement entities and the freedom grievances of individuals**

There is no need to discuss relevance to arguments extolling individual freedom. Precedent and constitutional law has been set:

Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905). When those officials “undertake to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U. S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people. – Chief Justice Roberts

Thank you for your attending to the health and safety of the people of this county.

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<sup>[1]</sup> <https://patch.com/texas/sanantonio/san-antonio-bexar-county-uses-wireless-emergency-alert-system-inform-residents>

<sup>[2]</sup> <https://www.wfaa.com/article/news/health/coronavirus/san-antonio-orders-businesses-to-enforce-mask-wearing-rules-is-north-texas-next/287-a9fb9f01-00d1-4e60-8391-478c3b52f3ef>

<sup>[3]</sup> An example from Marin County: “violation of or failure to comply with the order is a misdemeanor punishable by fine, imprisonment, or both.” Violators could face fines ranging from \$50 to \$1,000