

ORDINANCE NO. 4464

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS AMENDING ORDINANCE NO. 4461, REGARDING ADMINISTRATIVE PENALTIES FOR RELATED VIOLATIONS, AND ESTABLISHING AN INFRACTION VIOLATION REGARDING COVID-19 RELATED FACIAL COVERING REQUIREMENTS

WHEREAS, on March 4, 2020, Governor Newsom issued a Proclamation of a State of Emergency in the State of California related to the COVID-19 pandemic; and

WHEREAS, the County of Mendocino Health Officer declared a local health emergency related to the COVID-19 on March 4, 2020; and

WHEREAS, the County of Mendocino Director of Emergency Services proclaimed the existence of a local emergency related to COVID-19 on March 4, 2020; and

WHEREAS, on March 10, 2020, the Board of Supervisors of the County of Mendocino ratified the local emergency related to COVID-19 as proclaimed by the Chief Executive Officer/Director of Emergency Services and Ratifying the Existence of a local emergency as proclaimed by the Health Officer; and

WHEREAS, in light of the COVID-19 pandemic and Governor Newsom's state of emergency proclamation, on March 12, 2020, the Governor issued Executive Order N-25-20, ordering residents to heed any order 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, California Government Code section 25132 makes it a misdemeanor to violate any county ordinance unless by ordinance it is made an infraction; and

WHEREAS, the Board of Supervisors of the County of Mendocino desires to establish certain acts prohibited herein as misdemeanors and others as infractions; and

WHEREAS, on March 31, 2020, the Board of Supervisors adopted Ordinance 4461, establishing administrative penalties and enforcement procedures for violations of the local health officer orders; and

WHEREAS, the Mendocino County Public Health Officer has issued a series of orders, beginning in April of 2020, requiring all persons in Mendocino County to wear facial coverings in certain public settings, the most recent of which was issued July 2, 2020; and

WHEREAS, on June 18, 2020, the California Department of Public Health released guidance which requires all persons in California to wear facial coverings in certain public settings; and

WHEREAS, widespread use of facial coverings in public settings can limit the release of droplets that transmit COVID-19; and

WHEREAS, the Board of Supervisors wishes to amend Ordinance 4461 in order to require the wearing of facial coverings in specified public settings, and provide appropriate administrative and criminal mechanisms for the willful or negligent failure to do so; and

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

WHEREAS, the immediate enforcement of the orders of the County Health Officer is necessary for the effective implementation of such orders for the purpose of controlling the spread of COVID-19 in Mendocino County; and

NOW, THEREFORE, The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

SECTION 1. Findings and Purpose.

The Board of Supervisors of the County of Mendocino finds and declares all of the following:

- A. The above recitals are true and correct, and are incorporated herein.
- B. In order to address the immediate threat to the public peace, health, safety and welfare, this ordinance helps to ensure that the orders of the County Health Officer, issued for the purpose of controlling the spread of the COVID-19 virus, are followed by providing an administrative enforcement mechanism as an alternative to the mechanisms already available.
- C. Issuance of administrative penalties provides a significant deterrent to violating the County Health Officer's orders respecting COVID-19, will help promote social distancing through a process designed to minimize person-to-person contact.
- D. This alternative enforcement mechanism is also designed to provide some relief to law enforcement, to enable additional County staff to assist with enforcing the Health Officer's orders, and to enhance the County's ability to control the spread of COVID-19.
- E. Pursuant to Section 53069.4 of the California Government Code, the Board of Supervisors elects to create an administrative penalty and hearing process for the purpose of enforcing the orders of the County Health Officer that are issued for the purpose of controlling the spread of the COVID-19 virus.
- F. The potential damage caused by a violation of an order of the Health Officer demands a substantial penalty so as to provide an effective and significant deterrent to violating such orders.
- G. For violations of the orders of the Health Officer involving activities designed to make a profit, the administrative penalties must be extremely substantial so as not to be relegated as "the cost of doing business".

SECTION 2. Citation.

This ordinance may be referred to as the "COVID-19 Admin Penalties Ordinance."

SECTION 3. Definitions.

- A. "Board" means the Mendocino County Board of Supervisors.
- B. "Citation" or "Administrative Citation" means a civil citation issued pursuant to this ordinance.
- C. "County" means the County of Mendocino.
- D. "COVID-19 Order" means an order of the County Health Officer 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 order to all residents to heed the orders of local public health officials, as stated in paragraph 1 of Executive Order N-25-20 that was issued by the Governor of California on March 12, 2020.
- E. "Days" means calendar days.
- F. "Enforcement Officer" means the Health Officer of the County, or anyone designated by the Health Officer, any County employee, contractor or other person designated by the Chief Executive Officer, any Code Enforcement Officer from the Division of Code Enforcement in the Department of Planning and Building Services, any peace officer with jurisdiction in the unincorporated territory of Mendocino County, or anyone identified by resolution of the Board.
- G. "Facial Covering" means any worn garment, mask or device without holes that simultaneously covers both the nose and mouth, such as a bandana, a scarf, a neck gaiter, or a homemade cover, which can be secured to the head with ties or straps or wrapped around the lower-face, including but not limited to a face shield (i.e. a piece of rigid, clear plastic attached to a headband which covers the entire face extending from the forehead to below the chin).
- H. "Non-Distancing Stable Group" means a Stable Bubble as defined in the July 3, 2020 Shelter in Place Order, or any other defined group specifically excepted from social distancing requirements under the present or future COVID-19 related Health Officer Orders.
- I. "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 4. Adoption of County Health Officer Orders as County Law.

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

SECTION 5. Violation and Enforcement.

- A. A violation of a COVID-19 Order of the County Health Officer shall be a misdemeanor, a public nuisance, and a violation of this ordinance, and as such, a violation of this ordinance may be enforced as a misdemeanor, as a nuisance,

or as a civil violation through imposition of administrative penalties as detailed in this ordinance.

- B. It shall be a violation of this ordinance and the Law of the County of Mendocino, enforceable as an infraction, nuisance, or civil penalty by way of an Administrative Citation, for any individual person to willfully or negligently refuse to wear a Facial Covering after an Enforcement Officer has informed the person that a Facial Covering is required by this section, as described below, unless the individual articulates a truthful, valid reason for not wearing a facial covering that is also one of the exceptions provided below.
- a. All individual persons must wear a Facial Covering before they enter, and at all times while inside an indoor facility or any enclosed space, besides their residence, and outdoors when unable to maintain a six-foot distance from other persons outside of their own household or Non-distancing Stable Group.
 - b. The following individual persons are exempt from the requirements of this Section 5.B:
 - i. Children under the age of two (2) years;
 - ii. Children older than 2-years of age who are exempt by state guidelines related to the COVID-19 pandemic for specific settings (e.g. school or childcare center);
 - iii. Any person who is not an employee or other worker engaged in contact with the public or engaged in commercial food preparation, AND such person:
 - 1. is advised by a licensed medical professional not to wear a Facial Covering for health-related reasons or if the wearing of a Facial Covering would create a risk to the person related to their work as determine by local, state, or federal regulations or workplace safety guidelines;
 - 2. is unconscious, incapacitated, or otherwise unable to remove the Facial Covering without assistance; or
 - 3. is having trouble breathing or wearing a mask, but only to the extent necessary to enter a medical facility or otherwise seek treatment or diagnosis of the condition causing that trouble;

- iv. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;
 - v. Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
 - vi. Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence;
 - vii. Persons who are incarcerated.
 - viii. Persons who are driving a vehicle, either alone or with members of their households, unless the windows in the vehicle are lowered to interact with any person who are not members of their households.
- c. Any person asserting an exemption from the facial covering requirements under Section 5.B shall bear the burden of proving, through appropriate and admissible evidence, the factual basis for the exemption in any proceedings related to a violation of this ordinance.
 - d. None of the exceptions listed in subsection b, is intended to require any business to serve a person who is not wearing a facial covering, even if such person is exempted from the facial covering requirement.
- C. This ordinance may be enforced by an Enforcement Officer.
 - D. Use of this ordinance shall be at the sole discretion of the County, its officers, agents and employees.

SECTION 6. Nonexclusivity and Election of Proceedings.

This ordinance provides for enforcement proceedings that are supplemental to all other enforcement proceedings provided by local, state or federal law, whether administrative, civil or criminal in nature. As such, the provisions of this ordinance may be utilized alone or in conjunction with other remedy. Election to employ one or more proceedings provided by this ordinance shall be at the sole discretion of the County, and shall be without prejudice to the County choosing to also proceed simultaneously or subsequently by pursuing different enforcement proceedings with respect to the same violation.

SECTION 7. Issuance of Notice or Citation; Penalty Amounts.

- 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 Citation.
- B. Any Responsible Party violating any provision of a COVID-19 Order may be issued an Administrative Citation by an Enforcement Officer.
- C. The Enforcement Officer may issue a Citation for a violation not committed in their presence, if they determine through investigation, including but not limited to credible input from County staff, that the Responsible Party did commit or is otherwise responsible for the violation.
- D. When an Enforcement Officer discovers, or otherwise determines that a violation of a COVID-19 Order occurred, such Enforcement Officer may issue a Notice of Violation to the Responsible Party that provides 24 hours to abate the violation, or may proceed with issuing an administrative citation for either a violation involving non-commercial activity or for any violation of Section 5.B. of this Ordinance, without providing 24 hours to abate the violation.
- E. After the passage of 24 hours from the service of the Notice of Violation, when such Notice has been given, 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 Enforcement Officer may then issue an Administrative Citation that imposes a civil penalty.
- F. The civil penalty for each violation of Section 5.A. of this Ordinance involving a non-commercial activity shall be a fine not to exceed \$500.00.
- G. The civil penalty for each violation of Section 5.A. of this Ordinance involving a commercial activity shall be a fine not to exceed \$10,000.00.
- H. The civil penalties for each violation of Section 5.B. of this Ordinance shall be a fine not exceeding: one hundred dollars (\$100.00) for the first violation; two hundred dollars (\$200.00) for the second violation; and five hundred dollars (500.00) for a third or subsequent violations if the subsequent violations occur within one year of the first violation.
- I. 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.

- J. The administrative penalty, or any portion thereof, may be waived by the Director of Emergency Services, or their designee, for good cause.

SECTION 8. 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 COVID-19 Order that constituted the violation, including reference to the paragraph number containing the provision violated and the date of issuance of the COVID-19 Order; a brief description of the violation should be included if greater specificity is required to identify the violation;
 - 4. The amount of the penalty (Citation only);
 - 5. Identification of appeal rights and a description of how to appeal;
 - 6. The signature of the Enforcement 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 shall be served upon the Responsible Party pursuant to Section 9.

SECTION 9. Service Procedures.

An Administrative Citation may be served on the Responsible Party as follows:

- A. Personal service: personal service may be accomplished without violating the COVID-19 Orders by setting the Citation documents down near the Responsible Party and stating, in a voice loud enough to be heard by the Responsible Party, that the documents are for the Responsible Party, if the Responsible Party subsequently either picks up the documents or makes an indication that they understand that the documents are intended for them; or
- B. Posting and Mailing: posting and mailing requires both of the following:
 - 1. Posting the Citation on any real property within the County in which the County has knowledge that the Responsible Party has a legal interest, or at the location at which the violation occurred; posting shall be placed in a position that is likely to catch the attention of a person entering the property, including but not limited to a front door, gate, or near a mailbox; and
 - 2. Mailing the Citation by overnight mail, postage prepaid, to the address that the citation was posted, or to any other mailing address of the Responsible

Party that is known to the County if the County reasonably believes that such mailing address will be at least as effective at reaching the Responsible Party, including but not limited to an address provided by a Responsible Party in a request for appeal of a Citation. If overnight mail becomes unavailable during the COVID-19 pandemic, first class regular mail shall suffice, and shall not affect the date on which service is deemed complete; or

- C. By Mail: service by mail may be accomplished by sending the Citation by both first class mail and overnight mail, postage prepaid, to the location that the violation occurred, or to any other mailing address of the Responsible Party that is known to the County if the County reasonably believes that such mailing address will be at least as effective at reaching the Responsible Party, including but not limited to an address provided by a Responsible Party in a request for appeal of a Citation.

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

SECTION 10. Procedure to Appeal an Administrative Citation.

- A. Any recipient of a Citation who is identified as a Responsible Party may contest that he or she was responsible for violating the COVID-19 Order as cited by appealing the citation to the County.
- B. To appeal the Citation, the recipient must give notice to the County within ten (10) days from the date of service of the Citation that they are appealing the Citation. The notice to the County may be made by either completing and returning a form created by the County for appealing Citations, or by providing a document, in writing, bearing the title, "Appeal of Administrative Citation", containing the following:
 - 1. the name, address and phone number of the appellant; and
 - 2. sufficient information to identify the Citation; and
 - 3. the grounds on which the Citation is being contested; and
 - 4. all information, including copies of any exhibits, that supports the grounds for appealing the Citation.
- C. Upon receipt of a timely requested appeal, the County will present the matter to the County Health Officer, or their designee, so that they can make an initial determination about whether the appellant violated a COVID-19 Order as stated in the citation being appealed.
 - 1. The County Health Officer, or designee, will consider the appeal by reviewing any or all of the associated documents presented by the appellant or the County;
 - 2. The County Health Officer, or designee, may choose to consult the appellant, or any other person they believe may offer relevant information;

3. If the County Health Officer, or designee, determines that a violation did not occur, the County will withdraw its citation along with the associated penalty;
 4. If the County Health Officer, or designee, determines that a violation occurred, the County will give notice to the appellant, pursuant to Section 9, of the determination along with instructions on how to continue pursuing their appeal if desired.
- D. If appellant does not submit a timely request to County for a hearing by a Hearing Officer after appellant is served the notice of determination of the County Health Officer, such determination shall become the final administrative order.
 - E. If the appellant wishes to have a hearing after determination by the County Health Officer, the appellant must provide written notice to the County within ten (10) days of service of the notice of the County Health Officer's determination, at which point the County will arrange for the matter to be heard by a Hearing Officer as detailed below.
 - F. The Board of Supervisors authorizes the appointment and use of Hearing Officers pursuant to Mendocino County Code Chapter 2.76 for the purpose of hearing appeals pursuant to this ordinance.
 - G. If the matter is sent to a Hearing Officer, the County through County Counsel will coordinate with the Hearing Officer to cause the matter to be set for hearing at the earliest practicable date after the lifting of all shelter-in-place and/or other social distancing orders of the Health Officer that were issued to control the spread of COVID-19.
 - H. The Office of the County Counsel will provide notice to the appellant that specifies the date, time and location of the hearing. Notice may be given by regular, first class mail at the mailing address listed in the request for appeal. If by mail, such notice shall be placed in the mail no later than fifteen (15) days prior to the hearing.
 - I. Prior to the hearing in front of the Hearing Officer, the County will provide the Hearing Officer with all the documents provided by the appellant, along with any additional documents that the County believes are relevant and supportive of its case. If the Hearing Officer communicates with either side for the purpose of seeking additional documents, asking questions, or for any other purpose that is relevant to the hearing proceedings, the party that is contacted should make reasonable efforts to inform the opposing party of such contact, and substance thereof, no later than the commencement of the hearing.

SECTION 11. Hearing Procedure.

The hearing procedures specified in Mendocino County Code section 1.08.120 shall apply to hearings by Hearing Officer requested pursuant to this ordinance.

SECTION 12. Administrative Order.

- A. At the conclusion of the hearing by the Hearing Officer, the Hearing Officer shall determine whether the Responsible Party violated a Covid-19 Order as specified in the Citation being contested, and shall state the reasons for that decision in a written order.
- B. If the Hearing Officer determines that the Responsible Party violated a COVID-19 Order as detailed in the appealed Citation, then the penalty amount identified in the Citation, or as otherwise adjusted by the Hearing Officer, shall be immediately due and payable to the County upon service of the notice of determination.
- C. If the Hearing Officer determines that the Responsible Party did not violate a COVID-19 Order as detailed in the appealed Citation, the Hearing Officer shall order the Citation dismissed, and the Citation will be deemed withdrawn by the County.
- D. The Hearing Officer shall provide a copy of the written decision and administrative order to County, and County shall serve the Hearing Officer's decision and order to appellant either personally or by first class United States mail, postage prepaid.
- E. The Hearing Officer's written decision and order shall become the final administrative order of the County.

SECTION 13. Right to Judicial Review.

Any Responsible Party aggrieved by an administrative decision of a Hearing Officer or by the decision of the Hearing Officer may obtain further review by filing a petition for review with the Mendocino County Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4.

SECTION 14. Failure to Pay Fines.

The County may pursue any remedy authorized by law to collect administrative penalties that are not timely paid, including but not limited to a civil action for collection of civil penalties.

SECTION 15. Notices.

- A. The Administrative Citation and all notices to be given or served pursuant to this ordinance shall be given or served on the Responsible Party in accordance with the provisions of this ordinance.
- B. If a notice is required by this ordinance, including but not limited to a notice of Citation, and the notice is properly given or served pursuant to the provisions of this ordinance, the failure to receive such notice shall not affect the validity of proceedings conducted pursuant to this ordinance.

SECTION 16. Severability.

The provisions of this ordinance are separate and severable. If any provision of this ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would

have passed this ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

SECTION 17. Effective Date.

This ordinance shall take effect immediately as an urgency ordinance, and shall be applicable as of July 8, 2020, the date of approval of this ordinance. This is based on the Board of Supervisors 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, safety and welfare. This ordinance amends and supersedes Ordinance 4461, adopted on March 31, 2020.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 8th day of July, 2020, by the following roll call vote:

AYES:	Supervisors Brown, McCowen, Haschak, Gjerde and Williams
NOES:	None
ABSENT:	None

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
CHRISTIAN M. CURTIS,
County Counsel

JOHN HASCHAK, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy