

ORDINANCE NO. 2020-20

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEVADA CITY TO ADOPT THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH'S GUIDANCE FOR THE USE OF FACE COVERINGS TO BE ENFORCEABLE BY ADMINISTRATIVE CITATION WITHIN THE CITY OF NEVADA CITY

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes has been named "coronavirus disease 2019," abbreviated COVID-19 ("COVID-19"); and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19, and on March 4, 2020, the Nevada County Board of Supervisors and the Department of Public Health Officer declared a public health emergency in Nevada County due to COVID-19. On March 5, 2020, the Director of the Civil Defense and Disaster Council of Nevada City declared a local emergency due to COVID-19, which was ratified by the City Council at its March 11, 2020 City Council meeting. On March 12, the President of the United States declared a state of national emergency; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, ordering all individuals in the State of California to stay home or at their place of residence, except as outlined by the California Department of Public Health, during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery systems is capable of serving all, including those at higher risk and the most vulnerable. Executive Order N-33-20 requires all Californians to heed the state public health directives;

WHEREAS, the County and the State have issued orders relaxing restrictions and allowing restaurants, retail, and other businesses to reopen, with modifications and pursuant to COVID-19 Industry Guidance issued by the California Department of Public Health;

WHEREAS, according to the Nevada County Department of Public Health, as of December 1, 2020, there are 1,414 total confirmed cases of COVID-19, 20 active hospitalizations, 10 fatalities, and 1,023 released from isolation in the County;

WHEREAS, on November 16, 2020, due to the increase in COVID-19 cases in our County and the positivity rate, Nevada County was reclassified as in the Purple "Widespread" Tier

in the state rating system, subject to the strictest restrictions;

WHEREAS, on June 18, 2020, the California Department of Public Health (CDPH) released Guidance for the Use of Face Coverings (Guidance), which was updated on June 29, 2020, and most recently updated on November 16, 2020. According to the CDPH Guidance, "...we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre- symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing."

WHEREAS, the CDC, CDPH, and NCHD are in agreement that based on scientific studies wearing a face covering, when combined with physical distancing of at least 6 feet and frequent hand washing, may reduce the risk of transmitting coronavirus when in public by reducing the spread of respiratory droplets;

WHEREAS, "Research shows masks can significantly mitigate the spread of the virus and UCSF professor and coronavirus expert Dr. Bob Wachter believes it's the "most important thing we can do right now." (<https://www.sfgate.com/bayarea/slideshow/Why-California-coronavirus-cases-going-up-204645.php>.)

WHEREAS, under California law, the state public health officer's orders are enforceable by local police agencies, and people who fail to comply may be charged with a misdemeanor;

WHEREAS, the City of Nevada City has received numerous complaints from City residents that the public is not heeding the Guidance, and the number of infected persons in Nevada County is rapidly rising;

WHEREAS, the intent of this urgency ordinance is to provide a tool, in addition to education, to compel compliance with the Guidance by authorizing enforcement of the Guidance through the issuance of administrative citations pursuant to Nevada City Municipal Code Chapter 1.22.

WHEREAS, Government Code section 36937 authorizes an urgency ordinance to take effect immediately if the ordinance is for the immediate preservation of the public peace, health, or safety, containing a declaration of the facts constituting the urgency and if the ordinance is passed by a four-fifths (4/5) vote of the Council; and

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the

immediate threat to public peace, health, and safety, as failure to adopt this urgency ordinance would impede efforts to stem the local transmission of COVID-19. The City has a compelling interest to stop the spread of this communicable disease, and authorizing an administrative enforcement tool for failure to comply with CDPH's Guidance is a narrowly tailored means of achieving that objective.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF NEVADA CITY DOES ORDAIN AS FOLLOWS:

SECTION 1: The recitals set forth above are incorporated herein as if fully set forth, are true and correct, and are adopted as findings of the City Council.

SECTION 2: The CDPH Guidance and exemptions, attached hereto as Exhibit A, and as may be amended from time to time, is hereby expressly acknowledged and declared to be enforceable within the City of Nevada City as if directly enacted by the City. The failure to comply with the CDPH Guidance is a public nuisance.

SECTION 3. Enforcement. Any person who violates the Guidance is in violation of this urgency ordinance and is subject to administrative citations under Nevada City Municipal Code Chapter 1.22. The fine amount for the first violation is \$100, the second violation is \$150, and the third violation is \$200.

SECTION 4. Severability. If any section, subsection, clause or phrase of this urgency ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the ordinance. The Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 5. This ordinance shall be effective immediately upon adoption. This ordinance shall sunset when the Guidelines are terminated by the CDPH or by the City Council, whichever occurs first.

PASSED, APPROVED AND ADOPTED this 9th day of December 2020 by the following vote:

AYES: MINETT, STRAWSER, FLEMING, FERNÁNDEZ, PETERSEN

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Erin Minett, Mayor

Niel Locke, City Clerk

APPROVED AS TO FORM

Crystal V. Hodgson, City Attorney

I, Niel Locke, City Clerk of Nevada City, do hereby certify that the foregoing urgency ordinance was introduced and adopted at a meeting thereof on the 9th day of December 2020.

Niel Locke, City Clerk