

ORDINANCE NO. _____

**ORDINANCE ADOPTING CIVIL PENALTIES FOR
VIOLATION OF HEALTH OFFICER ORDERS**

WHEREAS on January 21, 2020, the Washington State Department of Health confirmed the first case of the novel coronavirus (COVID-19) in the United States in the State of Washington, and, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person; and

WHEREAS the United States Centers for Disease Control and Prevention (CDC) identifies the potential public health threat posed by COVID-19 both globally and in the United States as "very high," and has advised that person-to-person spread of COVID-19 will continue to occur globally, including within the United States; and

WHEREAS on January 31, 2020, the United States Department of Health and Human Services secretary Alex Azar declared a national public health emergency arising from COVID-19; and **WHEREAS** on March 11, 2020, the World Health Organization declared COVID-19 a pandemic with global spread, impacts, and health risks; and

WHEREAS in March, 2020, Whatcom Unified Command (WUC) was activated to provide an integrated, coordinated, multi-jurisdictional response to the threat of COVID-19 locally, in partnership with the Whatcom County Health Department; and

WHEREAS on May 22, 2020, Whatcom County Health Officer Dr. Greg Stern issued a directive that those in shared workplaces and public spaces should wear cloth face masks, and Whatcom County Health Department Director Erika Lautenbach said, "Masks are a proven strategy to reduce transmission of the virus;" and

WHEREAS effective June 26, 2020, a new statewide requirement was established that all Washingtonians and visitors to the State wear facemasks or coverings in indoor public places such as stores, offices and restaurants and requires that face coverings be used in outdoor settings where people cannot stay six feet apart from people of their household; and

WHEREAS on September 2, 2020, the Whatcom County Health Department reported a total of 1,121 confirmed cases of COVID-19 in Whatcom County since the first case in early March; and

WHEREAS on November 23, 2020, Whatcom County Health Officer Dr. Greg Stern said people should not be traveling or gathering with others outside their immediate households while there is so much virus activity in the community, and asked that Whatcom County residents stay home; and

WHEREAS Director Lautenbach reported the highest case count ever seen in Whatcom County with 838 cases in December 2020 and 1,111 in the first 14 days of January, 2021; and

WHEREAS Director Lautenbach indicated that January 2021 increases in COVID-19 cases are occurring throughout the County and affecting all age ranges, and cases in Whatcom County are rising faster than any other county in the state; and

WHEREAS contact tracing revealed that 80% of people contracting the virus at the end of the year were a result of social events, gatherings, and household contact; and

WHEREAS on January 13, 2021, Director Lautenbach urged citizens to stop gathering and said, "We have to protect our hospital capacity, and we have to be able to get these rates down so we can move forward...Our businesses cannot reopen until we discontinue the gatherings;" and

WHEREAS the Whatcom County Health Board deems it in the best interests of the health, safety and welfare of all citizens, residents and visitors to the County to reinforce the personal responsibility of individuals who put others in the community at risk by violating the public health orders and proclamations in effect during the global, national, and state declared COVID-19 public health emergency by imposing personal penalties on such persons for the creation of a public health risk and public nuisance; and

WHEREAS Whatcom County Code (WCC) [24.01.060](#) *Powers and duties of the health board*, provides the County Council in its capacity as the Health Board with legislative powers including to enact local rules and regulations necessary in order to preserve, promote and improve the public health and provide enforcement thereof; and

WHEREAS WCC [24.01.060](#) states, "All issues to be addressed under the powers of the health board shall be processed through the county council under the forms and procedures established for the normal conduct of county business as established by the Charter, ordinance or administrative procedure. All ordinances, resolutions, and other actions taken by the county council relating to issues under the jurisdiction of the health department, or as otherwise specified in this title, are made under the joint authorities of both general county powers and specific health department authorities contained in RCW [Title 70](#);" and

WHEREAS there has been a recent surge in cases of COVID-19 in Whatcom County, which requires prompt legislative intervention to assure appropriate enforcement tools are available, and it reasonably appears that prompt action is required; and

WHEREAS the Whatcom County Council held a public hearing on the adoption of a chapter of the Health Code to provide for civil penalties for violations of Health Officer Orders related to control of contagious diseases; and

WHEREAS the Whatcom County Executive, Health Department Director, Health Officer, Public Health Advisory Board, and Sheriff, and members of the public were invited to provide comments on the proposal prior to and at the public hearing; and

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as finding of fact in support of its action; and

BE IT FINALLY ORDAINED by the Whatcom County Council that the Whatcom County Code 24.16 is hereby established, creating Violation of Health Officer Orders as detailed in Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**

Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____

EXHIBIT A

24.16 Violation of Health Officer Orders

Sections:

- 24.16.010 Authority, applicability, and purpose.**
- 24.16.020 Definitions and local supplemental definitions.**
- 24.16.030 Publication and Effective Date of Health Officer Orders**
- 24.16.040 Violation of Health Officer Orders Prohibited.**
- 24.16.050 Enforcement Procedures.**
- 24.16.060 Requests for reconsideration and appeals.**

24.16.010 Authority, applicability, and purpose.

- (1) The statutory authority for the adoption of this Chapter is under RCW 70.05.060(3) to preserve, promote, and improve the public health.
- (2) The purpose of this Chapter is to protect and promote the health, safety, and welfare of the public by providing for the control and prevention of any dangerous, contagious or infectious disease, reducing the impact of communicable diseases and authorizing the issuance of civil fines to support enforcement.

24.16.020 Definitions and local supplemental definitions.

The following specific definitions shall apply:

- (1) "Chapter" means a chapter in Whatcom County Code.
- (2) "County" means Whatcom County.
- (3) "Health Officer" means the Health Officer of Whatcom County as defined by [Whatcom County Code 24.01.030](#), or the Health Officer's designee.
- (4) "Health Officer Order" means an order issued by the Health Officer of Whatcom County, or the Health Officer's designee which is determined to be necessary to maintain health and control and prevent the spread of any dangerous, contagious or infectious disease in Whatcom County. Orders are issued under authority of RCW 70.05.070 and may be issued as to indoor public places or outdoor public places.
- (5) "Indoor public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State of Washington, or other public entity. Public places include, but are not limited to: schools, elevators, public conveyances or transportation facilities, taxis, buses, for hire conveyances, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, State legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, bars, clubs, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than 75 percent of the sleeping quarters within a hotel or motel that are rented to guests. "Indoor public place" also means any public or private place that is open to the

general public regardless of whether dues, cover charges or a fee is charged or there are restrictions such as an age requirement for the privilege of admission, and includes any place used by a membership association or club at which nonmember guests are present or permitted.

- (6) "Outdoor public place" means a social space that is open and accessible to the public, but located outside of buildings.

24.16.030 Publication and Effective Date of Health Officer Orders

- (1) Health Officer Orders issued pursuant [Whatcom County Code 24.01.040](#) shall be published in a newspaper of general circulation in Whatcom County and shall be effective the day after publication. Health Officers Orders shall also be made publicly available on the website for the Whatcom County Health Department.
- (2) Health Officers Orders shall be effective for a period of ninety (90) days unless otherwise specified in the Order.
- (3) Health Officer Orders may be renewed upon the expiration of the ninety (90) day period upon publication pursuant to subsection (1) or upon the expiration of any subsequent ninety (90) day renewal period.
- (4) The Health Officer may rescind a Health Officer Order issued pursuant to this Chapter at any time. Notice of rescinded Orders will be published on Whatcom County Health Department publicly available website and notice to local law enforcement officials.

24.16.40 Violation of Health Officer Orders Prohibited.

- (1) No person may violate the terms of a Health Officer Order which requires the wearing of masks, use of other personal protective equipment, or other requirements deemed necessary for the control and prevention of contagious diseases as specified in the order,
 - (a) in indoor public places in Whatcom County.
 - (b) in outdoor public places in Whatcom County in a concentration of individuals in a designated area as set by the Health Officer or the Health Officer's designee.
- (2) It is an affirmative defense to WCC 24.16.040 (1) (a) or (b) that an individual is unable to comply with the ordinance as determined by a licensed medical professional prior to the time of the incident.
- (3) No business or organization may permit members of the public to enter or remain in any indoor public place or outdoor public place who is in violation of a Health Officer Order issued under this chapter. Such violation may be shown by lack of enforcement of the terms of a Health Officer Order or by at least three individuals shown to be violation of a Health Officer Order.

24.16.50 Enforcement Procedures.

- (1) The Health Officer and law enforcement officers of duly established law enforcement agencies in Whatcom County are authorized to administer and enforce this Chapter. The Health Officer may issue a notice of violation to an individual, business or organization based upon a sworn statement from a law enforcement officer or Whatcom County Department of Public Health Staff.

- (2) The Health Officer or his/her duly authorized representative, and law enforcement officers of duly established law enforcement agencies in Whatcom County, shall have the authority to seek entry and inspect any building, structure, property or portion thereof which are indoor public places, at reasonable times for the purpose of determining compliance with and enforcing the provisions of this Chapter.
- (3) Violations. All violations of the requirements and restrictions imposed under the authority of this Chapter are hereby declared to be detrimental to the public health, safety and welfare and are hereby declared to be public nuisances.
 - (a) Each violation of this Chapter shall be a separate and distinct offense and, in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.
 - (b) A notice of violation or order shall be served on the person or persons responsible for the violation either personally or by mailing via certified mail, return receipt requested, to the last known address of the violator. Service by certified mail is effective upon receipt or five days after the date of mailing, whichever occurs first.
- (4) Penalty. Civil penalties for violations of shall be imposed pursuant to the following schedule:
 - (a) Individuals:
 - (i) First Violation: \$50 (Fifty dollars)
 - (ii) Second Violation within a year: \$100 (One hundred dollars)
 - (iii) Third Violation with a year: \$250 (Two-hundred and fifty dollars)
 - (b) Businesses or Organizations:
 - (i) First Violation: \$250 (Two-hundred and fifty dollars)
 - (ii) Second Violation within a year: \$500 (Five-hundred dollars)
 - (iii) Third Violation with a year: \$1,000 (One thousand dollars)
- (5) Under the authority of [RCW 70.05.070 \(7\)](#), penalties imposed and collected under the authority of the Health Officer shall be remitted to the Whatcom County Health Department.

24.16.050 Requests for reconsideration and appeals.

- (1) Requests for Reconsideration.
 - (a) Persons named in a notice of violation and issued a civil penalty may request reconsideration by filing a request for reconsideration, on a form provided by Whatcom County Health Department and accompanied by the required filing fee, to Whatcom County Health Department within 10 business days of service of the notice of violation.
 - (b) Requests for reconsideration shall identify alleged errors in the notice of violation, including statements and photographs as applicable, and by a written explanation. An aggrieved person may request a meeting with the Health Officer, which may be granted at the Health Officer's discretion. The Health Officer may rule on the request for reconsideration without a hearing.
 - (c) The Health Officer has the discretion to reduce the civil penalty.
 - (d) The Health Officer shall issue a written decision within thirty (30) days of receipt of the request for reconsideration unless additional time is justified by

good cause. Service of the decision shall be effective upon personal service on the person(s) requesting the reconsideration, or five days after mailing the decision, via certified mail return receipt requested, to the address provided in the request for reconsideration.

(2) Appeals of Health Officer's Decision on a Request for Reconsideration.

(a) Persons aggrieved by the Health Officer's decision on a request for reconsideration may appeal by filing a notice of appeal, on a form provided by Whatcom County Health Department, accompanied by the required filing fee, to Whatcom County Health Department within 10 business days of service of the Health Officer's decision.

(b) The request for appeal must be served to the Whatcom County Health

(c) Department with a copy to the Whatcom County Health Board.

A fee in the amount listed in the most current Whatcom County Health Department Schedule of Charges is due and payable to the Whatcom County Health Department when an appeal of the Health Officer's reconsideration decision is made to the Health Board. Such fee may be waived upon documentation by the individual showing income below federal poverty guidelines.

(d) The Health Board will hear the appeal within sixty (60) days of receipt of the application to appeal the Health Officer's decision.

(3) The filing of a request for reconsideration or appeal pursuant to this Section shall operate as a stay of the civil penalty. There shall be no stay from a Health Officer order for immediate compliance with this Chapter when a public health threat exists.