

## **ORDINANCE NO. 2020-21**

### **AN URGENCY ORDINANCE OF THE CITY OF NEVADA CITY, CALIFORNIA, PROHIBITING VIOLATION OF ANY EMERGENCY ORDER ISSUED BY THE STATE OR COUNTY OF NEVADA AND AMENDING CHAPTER 8.04.025 OF THE NEVADA CITY MUNICIPAL CODE DECLARING SUCH VIOLATIONS TO BE PUBLIC NUISANCES**

**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**, during the COVID-19 emergency, the Governor has made various orders to protect public health and safety, including the May 19, 2020 Executive Order N-33-20 which ordered closure of all non-essential retail businesses (subject to certain exceptions), indoor malls and shopping centers, playgrounds for children, and prohibits all public and private group events and gatherings and requires people to stay home (except for essential activities like buying groceries and obtaining medication) in an effort to stem or slow the spread of this communicable virus. Order N-33-20 has been modified to allow for limited business activity for non-essential businesses, but the Governor is expected to reinstate a similar order within the next few days due to the rapid increase in COVID-19 cases and hospitalizations over the past few weeks; and

**WHEREAS**, the Governor’s health orders are made in two capacities, in the Governor’s emergency authority under the California Emergency Services Act (Government Code sections 8550–8669.7) and in his authority as State Public Health Officer; and

**WHEREAS**, the City’s only means to enforce an order of the Governor made under the Emergency Services Act or an order of the State Department of Public Health or Nevada County Health Officer is criminal enforcement by local peace officers and the District Attorney, pursuant to Government Code section 8665 and Health and Safety Code sections 101029 and 120155.

**WHEREAS**, the City desires to supplement its ability to enforce State and County emergency orders by adopting local regulations necessary to allow the City to utilize code enforcement procedures and remedies related to civil, administrative, or criminal available for enforcing Municipal Code violations; and

**WHEREAS**, Section 36937 of the Government Code provides that an ordinance takes effect immediately if it is for the preservation of the public peace, health or safety, containing a declaration of the facts constituting the urgency, and is passed by a four-fifths vote of the city council; and

**WHEREAS**, the City Council finds that this Ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City of Nevada City and find an urgency to approve said Ordinance immediately based on the facts described above.

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

SECTION 1. Incorporation of Preamble. The City Council finds that all the facts, findings, and conclusions set forth above in this Ordinance are true and correct.

SECTION 2. Urgency Findings. The City Council finds and declares that the adoption of this Ordinance is necessary for the immediate preservation of the public peace, health, and safety. Currently, the City is severely limited in its ability to address violations of emergency orders issued by the State or County. The proposed Ordinance addresses this gap and creates a framework for local enforcement. COVID-19 has prompted the declaration of a statewide state of emergency by the Governor of California. Therefore, the City Council finds and determines that the immediate preservation of the public peace, health, and safety requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption. Based on the foregoing, the City Council declares this Ordinance is necessary for the immediate preservation of the public peace, health, and safety.

SECTION 3. Municipal Code Amendment. The City Council of Nevada City hereby adds Section 8.04.025 of the Nevada City Municipal Code, to read as follows:

**“8.04.025 - Emergency Order Enforcement**

- A. Violation Unlawful. It is unlawful and declared a public nuisance for any person to violate any emergency order made by the Governor of the State of California under the Emergency Services Act or any order of the State Department of Public Health or Nevada County Health Officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease.
- B. Remedies. The City may enforce this Ordinance using any remedy available under the law, Including:
  - 1. Issuance of an administrative citation under Chapter 1.22 of this Code.
  - 2. Suspension or revocation of any conditional use permit under this Code, revocation of legal nonconforming status under this Code, or suspension or revocation of other land use approval under Title 17 of this Code.
  - 3. Criminal prosecution by the city prosecutor under Chapter 1.12 of this Code, either as a criminal infraction or misdemeanor at the discretion of the city prosecutor.
  - 4. Punishable as provided under Section 2.44.070 of this Code.

5. Filing of a civil or equitable action to seek abatement of any violation.
- C. Violations Ongoing. Each and every day a violation is maintained, caused, aided, abetted, concealed, suffered, or permitted is a separate offense.
- D. Remedies Cumulative. The remedies, procedures, and penalties provided by this Section are cumulative to each other and to any other available under City, State, or federal law.”

SECTION 4. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. The City Council of the City of Nevada City declares that it would have adopted all the provisions of this ordinance that remain valid if any provisions of this ordinance are declared invalid.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon its adoption.

SECTION 6. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

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

**AYES: MINETT, STRAWSER, FLEMING, FERNÁNDEZ, PETERSEN**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

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**Erin Minett, Mayor**

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**Niel Locke, City Clerk**

**APPROVED AS TO FORM**

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**Crystal V. Hodgson, City Attorney**