

RESTATED ORDINANCE NO. 2020-38

AN ORDINANCE TO ESTABLISH INCREMENTAL CIVIL FINES
FOR VIOLATIONS OF THE COVID-19 MITIGATION DIRECTIVES

WHEREAS Indiana Code § 36-1-3-1 et seq. permits any unit in the State of Indiana to exercise any power or to perform any function necessary to the public interest in the context of its governmental or internal affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or pre-empted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS Indiana Code § 36-8-2-1 et seq. permits for the preservation of public safety and health, among other things, any unit in the State of Indiana to (1) regulate use of property to protect public health; (2) impose restrictions upon persons that might cause others to contract diseases; (3) regulate public gatherings; and (4) regulate the operations of businesses and entities;

WHEREAS the Elkhart County Commissioners joined city mayors, local government council members, superintendents, public safety officials, health officials, chambers of commerce, and business leaders by executing a letter dated November 13, 2020, to all Elkhart County residents declaring their support for additional mitigation directives to be issued by the Elkhart County Health Officer and pledging — along with the Mayors — to enforce the new directives in a reasonable manner;

WHEREAS the Elkhart County Health Officer issued Public Health Order 05-2020 and 06-2020 effective November 19, 2020, to address the urgent necessity for action to combat the spread of COVID-19;

NOW, THEREFORE, BE IT ORDERED, ESTABLISHED, AND ORDAINED by the Board of Commissioners of the County of Elkhart as follows:

1. Incorporation of COVID-19 Mitigation Directives. The directives set forth in Section III, IV, V, and VI of Public Health Order 06-2020, as amended, are incorporated herein as if fully set forth in this Section 1 of this Ordinance.
2. Geographical Territory Governed by this Ordinance. Pursuant to Indiana Code § 36-1-3-9 — providing countywide territorial jurisdiction — this Ordinance applies to all businesses and

entities located inside the boundaries of Elkhart County and applies equally to the incorporated and unincorporated parts of Elkhart County.

3. Enforcement Authorization for County Officials. The Elkhart County Health Department, Health Officer, Emergency Management Director, or a group designated by the Health Officer or Emergency Management Director may enforce the terms and provisions of this Ordinance in accordance with Indiana law.

4. Enforcement Authorization for Municipalities. All cities and towns within the boundaries of Elkhart County may select or otherwise designate a group within the city or town to enforce, in accordance with Indiana law, the terms and provisions of this Ordinance within the geographical boundaries of their respective city or town.

5. Incremental Enforcement Procedures. To the extent an individual authorized to enforce this Ordinance initiates enforcement measures, they must comply with the following incremental enforcement steps:

a. **First Violation:** Issue a written warning — to educate and encourage — by completing the COVID-19 Inspection Assessment attached hereto as Exhibit 1 and providing, to the inspected business or entity, a copy, showing any noncompliance and required action steps for compliance.

b. **Second Violation.** Complete another COVID-19 Inspection Assessment and provide a copy, showing any areas of compliance and noncompliance, to the inspected business or entity. If areas of non-compliance remain, issue a civil citation by completing the Citation Order attached hereto as Exhibit 2 and provide the inspected business or entity with a copy showing the civil fine issued as a result of the violation(s). The civil fine will be subject to the following schedule with the total amount owed for this second violation not to exceed \$2,500.00:

- | | | |
|------|---|----------|
| i. | Failure to post the Face Covering Sign at every entrance: | \$ 50.00 |
| ii. | Failure to create a COVID-19 Response Plan: | \$100.00 |
| iii. | Failure to maintain Sanitation Measures: | \$250.00 |
| iv. | Failure to maintain Social Distancing Measures: | \$250.00 |
| v. | Failure to implement Staff and Volunteer Screening: | \$250.00 |

- vi. Failure to ensure compliance with the Face Covering Directive: \$250.00
- vii. Conducting or hosting an unauthorized Gathering or Meeting or Special or Seasonal Event (e.g. too many attendees without an approved COVID-19 Safety Plan; continuing with a denied/revoked COVID-19 Safety Plan): \$250.00
- viii. Other violations of Public Health Order 06-2020: \$250.00

c. **Third Violation and Subsequent Violations.** Complete another COVID-19 Inspection Assessment and provide a copy, showing any areas of compliance and noncompliance, to the inspected business or entity. If areas of non-compliance remain, issue a civil citation by completing the Citation Order attached hereto as Exhibit 2 and provide the inspected business or entity with a copy showing the civil fine issued as a result of the violation(s). The civil fine will be subject to the following schedule with the total amount owed for this second violation not to exceed \$5,000.00:

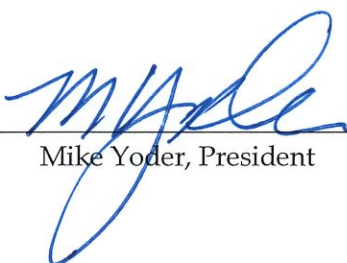
- i. Failure to post the Face Covering Sign at every entrance: \$100.00
- ii. Failure to create a COVID-19 Response Plan: \$200.00
- iii. Failure to maintain Sanitation Measures: \$500.00
- iv. Failure to maintain Social Distancing Measures: \$500.00
- v. Failure to implement Staff and Volunteer Screening: \$500.00
- vi. Failure to ensure compliance with the Face Covering Directive: \$500.00
- vii. Conducting or hosting an unauthorized Gathering or Meeting or Special or Seasonal Event (e.g. too many attendees without an approved COVID-19 Safety Plan; continuing with a denied/revoked COVID-19 Safety Plan): \$500.00
- viii. Other violations of Public Health Order 06-2020: \$500.00

Every individual performing an inspection must retain a copy of the completed COVID-19 Inspection Assessment and any Citation Order for the period of time required by Indiana law. Each day a violation continues constitutes a new and separate violation.

6. Additional Remedies. The penalties outlined by this Ordinance are in addition to, and not to the exclusion of, all other remedial measures available to those individuals or units pursuing enforcement of this Ordinance. For example, the Health Officer may pursue additional relief as outlined in Section VII of Public Health Order 06-2020.

7. Scope and Duration. This Ordinance will take effect on December 17, 2020, a day following publication of the adopted Ordinance for two consecutive weeks. This Ordinance will remain in full force and effect until (1) it is rescinded by the Board of Commissioner of Elkhart County or (2) Public Health Order 06-2020 is rescinded by the Elkhart County Health Officer. Prior to rescinding this Ordinance, the Commissioners intend to examine the applicable COVID-19 data impacting Elkhart County and the surrounding areas and the status of alternative efforts to combat the spread of COVID-19. This Order is independent of and may continue beyond the current Indiana State Executive Orders addressing similar matters. If any provision of this Ordinance, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Ordinance, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Ordinance are hereby declared severable.

ORDAINED AND ADOPTED December 1, 2020.

By: 
Mike Yoder, President

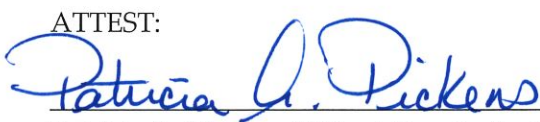
ATTEST:

Patricia A. Pickens, Elkhart County Auditor

EXHIBIT 1

COVID-19 Inspection Assessment Enforcement of the COVID-19 Mitigation Directives

Entity performing the inspection: _____ Date of inspection: _____

Individual performing inspection: _____ Time of inspection: _____

Entity being inspected: _____ Person in charge: _____

Address of inspected site : _____

This is the ☐ first inspection, ☐ second inspection, ☐ third inspection, ☐ fourth inspection, ☐ other _____.

Directive:	Compliance?	Action(s) required for compliance:
Face covering sign posted at every entrance	☐ Yes ☐ No	
COVID-19 Response Plan has been created (retain a copy)	☐ Yes ☐ No	
Sanitation Measures properly implemented and maintained	☐ Yes ☐ No	
Social Distancing Measures properly implemented and maintained	☐ Yes ☐ No	
Staff and Volunteer Screening measures were created and properly implemented	☐ Yes ☐ No	
Face Covering Directive is implemented, maintained, and complied with by all staff, volunteers, and the public	☐ Yes ☐ No	

Complete the following additional information if the inspection involved a Gathering or Meeting (outside of a single household, living unit, or religious service) or a Special or Seasonal Event:

A final COVID-19 Safety Plan was ☐ approved by, ☐ denied by, or ☐ not submitted to the Health Department.
Did more than 25 people attend? ☐ Yes ☐ No

Action required for compliance:

Other notes:

I acknowledge that I have completed the above COVID-19 Inspection Assessment after reviewing all matters identified above.

Signature: _____

Printed Name: _____

Title: _____

EXHIBIT 2

Uniform Civil Citation Order – Violation Notice Enforcement of the COVID-19 Mitigation Directives

Entity issuing the citation: _____ Date of citation: _____
 Individual issuing citation: _____ Time of citation: _____
 Entity being cited: _____ Person in charge: _____
 Address of cited site: _____

On _____, the cited entity received a written warning with action required for compliance upon receipt of a completed COVID-19 Inspection Assessment outlining its first violation of the COVID-19 Mitigation Directives outlined in Elkhart County Public Health Order 06-2020.

This is the ☐ second violation, ☐ third violation, ☐ fourth violation, ☐ fifth violation, ☐ other _____.

Citation	Violation of COVID-19 Mitigation Directive:	Fine Amount:
☐ Yes ☐ No	Failure to post the Face Covering Sign at every entrance	☐ \$ 50.00 ☐ \$ 100.00
☐ Yes ☐ No	Failure to create a COVID-19 Response Plan	☐ \$ 100.00 ☐ \$ 200.00
☐ Yes ☐ No	Failure to properly implement or maintain Sanitation Measures	☐ \$ 250.00 ☐ \$ 500.00
☐ Yes ☐ No	Failure to properly implement or maintain Social Distancing Measures	☐ \$ 250.00 ☐ \$ 500.00
☐ Yes ☐ No	Failure to create and properly implement Staff and Volunteer Screening measures	☐ \$ 250.00 ☐ \$ 500.00
☐ Yes ☐ No	Failure to implement, maintain, and ensure compliance by all staff, volunteers, and the public with the Face Covering Directive	☐ \$ 250.00 ☐ \$ 500.00
☐ Yes ☐ No	Conducting or hosting an unauthorized Gathering or Meeting or Special or Seasonal Event (e.g. too many attendees without an approved COVID-19 Safety Plan continuing with a denied/revoked COVID-19 Safety Plan)	☐ \$ 250.00 ☐ \$ 500.00
☐ Yes ☐ No	Other violations of Public Health Order 06-2020 Mitigation Directives: _____ _____ _____	☐ \$ 250.00 ☐ \$ 500.00

All fines assessed in this Citation Order are due within 14 days. Failure to settle this Citation Order will result in the account becoming delinquent. Mail payments to: _____
 _____, Enclose this Citation Order with your payment.

I acknowledge that I have completed the above COVID-19 Inspection Assessment after reviewing all matters identified above.

Signature: _____
 Printed Name: _____
 Title: _____