

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	<input type="checkbox"/> Yes <input type="checkbox"/> No	
COVID-19 Response Plan has been created (retain a copy)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Sanitation Measures properly implemented and maintained	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Social Distancing Measures properly implemented and maintained	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Staff and Volunteer Screening measures were created and properly implemented	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Face Covering Directive is implemented, maintained, and complied with by all staff, volunteers, and the public	<input type="checkbox"/> Yes <input type="checkbox"/> 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:
<input type="checkbox"/> Yes <input type="checkbox"/> No	Failure to post the Face Covering Sign at every entrance	<input type="checkbox"/> \$ 50.00 <input type="checkbox"/> \$ 100.00
<input type="checkbox"/> Yes <input type="checkbox"/> No	Failure to create a COVID-19 Response Plan	<input type="checkbox"/> \$ 100.00 <input type="checkbox"/> \$ 200.00
<input type="checkbox"/> Yes <input type="checkbox"/> No	Failure to properly implement or maintain Sanitation Measures	<input type="checkbox"/> \$ 250.00 <input type="checkbox"/> \$ 500.00
<input type="checkbox"/> Yes <input type="checkbox"/> No	Failure to properly implement or maintain Social Distancing Measures	<input type="checkbox"/> \$ 250.00 <input type="checkbox"/> \$ 500.00
<input type="checkbox"/> Yes <input type="checkbox"/> No	Failure to create and properly implement Staff and Volunteer Screening measures	<input type="checkbox"/> \$ 250.00 <input type="checkbox"/> \$ 500.00
<input type="checkbox"/> Yes <input type="checkbox"/> No	Failure to implement, maintain, and ensure compliance by all staff, volunteers, and the public with the Face Covering Directive	<input type="checkbox"/> \$ 250.00 <input type="checkbox"/> \$ 500.00
<input type="checkbox"/> Yes <input type="checkbox"/> 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)	<input type="checkbox"/> \$ 250.00 <input type="checkbox"/> \$ 500.00
<input type="checkbox"/> Yes <input type="checkbox"/> No	Other violations of Public Health Order 06-2020 Mitigation Directives: _____ _____ _____	<input type="checkbox"/> \$ 250.00 <input type="checkbox"/> \$ 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: \_\_\_\_\_