

EMERGENCY ORDINANCE NO. 2020-004

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, EXTENDING THE RESTRICTION SET FORTH IN EMERGENCY ORDINANCE NO. 2020-001 PROHIBITING THE ISSUANCE OF ANY NEW SHORT TERM LODGING PERMIT PURSUANT TO NEWPORT BEACH MUNICIPAL CODE CHAPTER 5.95 AND REQUIRING A MINIMUM NIGHT STAY FOR ALL SHORT TERM LODGING RENTALS

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("City") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services announced a nationwide public health emergency, in response to the COVID-19 outbreak;

WHEREAS, on March 4, 2020, Governor Gavin Newsom 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 the broader spread of COVID-19 ("State of Emergency");

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic;

WHEREAS, on March 15, 2020, Governor Newsom called for all bars, wineries, nightclubs and brewpubs to close throughout the state, urged all seniors and people with chronic health conditions to isolate themselves at home, and for restaurants to reduce occupancy by half to keep people farther away from each other;

WHEREAS, on March 15, 2020, in response to the COVID-19 outbreak, Newport Beach City Manager Grace Leung, who is the Director of Emergency Services ("Director of Emergency Services") for the City, issued a Proclamation of Local Emergency ("Proclamation");

WHEREAS, on March 18, 2020, the Newport Beach City Council ratified the Proclamation and authorized the Director of Emergency Services to take certain actions to protect the health, safety, and welfare of the public;

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operations of the federal critical infrastructure sectors (“Stay at Home Order”);

WHEREAS, on March 19, 2020 the Federal Cybersecurity and Infrastructure Security Agency issued guidance identifying 14 critical infrastructure sectors whose workers provide services and functions that are essential to support a strong response to the COVID-19 outbreak;

WHEREAS, COVID-19 has been detected in millions of people worldwide, including, as of April 30, 2020, 97 cases in the City, and is primarily spread from person to person;

WHEREAS, COVID-19 is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety;

WHEREAS, this worldwide outbreak of COVID-19 is emerging and rapidly evolving;

WHEREAS, since the declaration of the State of Emergency, issuance of the Proclamation and issuance of the Stay at Home Order, owners of lodging units in the City of Newport Beach have continued to rent lodging units for short durations;

WHEREAS, the rental of lodging units for a short term jeopardizes the health, safety, and welfare of the public and residents of the City because: (a) there are over 1,500 lodging units in the City that have short term lodging permits; (b) the short term lodging units, which have permits, are interwoven throughout the City’s residential districts; (c) the Stay at Home Order provides that “. . . all individuals living in the State of California [are] to stay home or at their place of residence, except as needed to maintain continuity of operations of the federal critical infrastructure”; and (d) the continuous turnover of persons occupying short term lodging units, which are interwoven throughout the residential districts, has the potential to create a risk that COVID-19 will spread throughout the City and beyond;

WHEREAS, Charter Section 412 provides that an ordinance necessary to preserve the public peace, health or safety, may be introduced and adopted at one and the same meeting if passed by at least five affirmative votes;

WHEREAS, in furtherance of Governor Newsom's Stay at Home Order and to help prevent the spread of COVID-19 throughout the residential areas of Newport Beach and beyond, on April 3, 2020, the City Council adopted Emergency Ordinance 2020-001, which prohibits the issuance of new short term lodging permits and/or the rental of units for a short term to any person other than those medical professionals and emergency responders coming to the City of Newport Beach to aid with the COVID-19 outbreak;

WHEREAS, there is a need to extend the restrictions set forth in Emergency Ordinance No. 2020-001 prohibiting the issuance of new short term lodging permits and to require a minimum night stay for all short term lodging rentals to help protect the community from the spread of COVID-19; and

WHEREAS, this emergency ordinance extending the restriction prohibiting the issuance of new short term lodging permits set forth in Emergency Ordinance No. 2020-001 and to require a minimum night stay for all short term lodging rentals is the least restrictive way to help ensure that the health, safety, and welfare of the public is protected.

NOW, THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council for the City of Newport Beach hereby finds and declares that this emergency ordinance is necessary to help limit the spread of COVID-19 and to protect the health, safety and welfare of the public, including, but not limited to, the residents of the City of Newport Beach because there are over 1,500 short term lodging units in the City of Newport Beach, which are interwoven throughout the residential districts, and the continuous turnover of occupants at these short term lodging units creates a potential risk that COVID-19 will spread throughout the City of Newport Beach and beyond. The City Council also finds and declares that there are over 1,500 units in the City of Newport Beach that have been issued short term lodging permits, which exceeds the demand for short term lodging units in the City of Newport Beach that are necessary to provide temporary housing to medical professionals and emergency responders coming to Newport Beach to help aid with the COVID-19 outbreak.

Section 2: As long as this emergency ordinance is in effect, no new permits for a short term lodging unit, which permit is required prior to renting a lodging unit on a short term basis by Chapter 5.95 of the Newport Beach Municipal Code ("NBMC"), shall be issued by the City of Newport Beach. For purposes of this emergency ordinance, the definition of "short term" shall have the same meaning as Section 5.95.010 (C) of the NBMC; and the definition of "lodging unit" shall have the same meaning as Section 5.95.010 (A) of the NBMC.

Section 3: Except as provided in Emergency Ordinance 2020-003, as long as this emergency ordinance is in effect, it shall be unlawful for any owner, as defined in Section 5.95.010 (B) of the NBMC, or agent of an owner, to rent, let, advertise for rent, or enter into an agreement for the rental of any lodging unit for less than three consecutive nights, where the occupancy would take place during the time period the local or statewide emergency related to COVID-19 is in effect. Nothing in this section shall be construed, however, to bar or preclude an existing permit holder from renting a lodging unit for a short term to a medical professional or emergency responder coming to the City of Newport Beach to aid with the COVID-19 outbreak for any length of time. The owner of the short-term lodging unit or units is responsible for compliance with the provisions of this section and the failure of an agent, or any other person or entity to comply with this section shall be deemed non-compliance by the owner.

Section 4: Any person occupying a lodging unit as of April 3, 2020, may continue such occupancy.

Section 5: A first violation of this emergency ordinance shall be enforceable in accordance with Chapter 1.05 of the NBMC and the fine shall be one thousand dollars. A second violation of this emergency ordinance, as determined by a hearing officer in accordance with Chapter 1.05 of the NBMC, shall be punishable by the suspension of the short term lodging permit for one year from the date of decision by the hearing officer. A third violation of this emergency ordinance, as determined by a hearing officer in accordance with Chapter 1.05 of the NBMC, shall be punishable by the revocation of the short term lodging permit, and the short term lodging permit holder shall not be eligible to reapply for a short term lodging permit for one year. For any suspension or revocation referred to in this section, the City shall conduct the hearings in accordance with Sections 1.05.080, 1.05.090 and 1.05.110 of the NBMC except that the City shall set the hearing for consideration by a hearing officer without requiring a request for hearing to be filed or fine to be paid or deposited and all notices shall be sent to the holder of the short term lodging permit.

Section 6: The City Manager shall take any and all action to ensure that this emergency ordinance and the provisions contained herein are given widespread publicity.

Section 7: The City Manager and Director of Emergency Services is hereby authorized to issue orders and regulations and take such other actions as may be necessary or appropriate to respond to the COVID-19 outbreak.

Section 8 The recitals provided in this emergency ordinance are true and correct and are incorporated into the substantive portion of this emergency ordinance.

Section 9: If any section, subsection, sentence, clause or phrase of this emergency ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this emergency ordinance. The City Council hereby declares that it would have passed this emergency ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 10: The City Council finds and determines that the introduction and adoption of this emergency ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15269(c) (the activity is necessary to prevent or mitigate an emergency), 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 11: This emergency ordinance shall become effective on May 20, 2020, and shall continue in full force and effect until: (a) the State of Emergency is terminated by proclamation of the Governor of California; (b) the local emergency proclaimed on March 15, 2020 and ratified by the City Council on March 18, 2020, is terminated by proclamation of the City Council; or (c) such time as this emergency ordinance is repealed in whole, or in part, by the City Council.

Section 12: The Mayor shall sign, and the City Clerk shall attest to the passage of this emergency ordinance. The City Clerk shall cause the emergency ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This emergency ordinance was introduced and adopted at a regular meeting of the City Council of the City of Newport Beach held on the 12th day of May 2020, by the following vote, to-wit:

AYES: Mayor O'Neill, Mayor Pro Tem Avery, Council Member Brenner, Council Member Dixon, Council Member Duffield, Council Member Herdman

NAYS: Council Member Muldoon

ABSENT: _____



WILL O'NEILL, MAYOR

ATTEST:



LEILANI I. BROWN, CITY CLERK



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH }

ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Emergency Ordinance No. 2020-004, was duly introduced and adopted at a regular meeting of the City Council on the 12th day of May, 2020, by the following vote, to wit:

AYES: Mayor Will O'Neill, Mayor Pro Tem Brad Avery, Council Member Joy Brenner, Council Member Diane Dixon, Council Member Duffy Duffield, Council Member Jeff Herdman
NAYS: Council Member Kevin Muldoon

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 13th day of May, 2020.



Leilani I. Brown
Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH }

ss.

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Emergency Ordinance No. 2020-004 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following date:

Published Date: May 16, 2020

In witness whereof, I have hereunto subscribed my name this 26th day of May, 2020.



Leilani I. Brown
Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California