

ATTACHMENT C

EMERGENCY ORDINANCE NO. 2020-006

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, PROHIBITING THE RENTAL OF ANY LODGING UNIT ON NEWPORT ISLAND FOR A PERIOD OF FOUR CONSECUTIVE NIGHTS OR LESS, TO ANY PERSON OTHER THAN A MEDICAL PROFESSIONAL OR EMERGENCY RESPONDER COMING TO THE CITY OF NEWPORT BEACH TO AID WITH THE COVID-19 OUTBREAK

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 April 14, 2020, Governor Newsom outlined six factors that the State of California would consider when modifying the Stay at Home Order including: (1) the ability to test, contact trace, isolate, and support the exposed; (2) the ability to protect those at high risk for COVID-19; (3) the surge capacity for hospital and health systems; (4) the therapeutic development to meet the demand; (5) the ability of businesses, schools, and childcare facilities to support physical distancing; and (6) a determination of when to reinstitute measures like Stay at Home;

WHEREAS, on April 28 2020, Governor Newsom announced four “Resilience Roadmap Stages” that the State of California would use to guide its gradual re-opening process, which consists of the following four stages: Stage 1, Safety and Preparedness; Stage 2, Lower Risk Workplaces; Stage 3, Higher Risk Workplaces; and Stage 4, End of Stay at Home Order;

WHEREAS, on May 4, 2020, Governor Newsom announced that, beginning May 8, 2020, the State of California would move from Stage 1, which had been in place statewide since the issuance of the Stay at Home Order, to Stage 2, which is the gradual re-opening of some lower risk workplaces;

WHEREAS, COVID-19 has been detected in millions of people worldwide, including, as of June 10, 2020, 163 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, 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 Newport Beach have continued to rent lodging units for short durations;

WHEREAS, as the City moves through the stages of re-opening, the rental of lodging units for short durations 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; and (b) 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, 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 prohibited 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 Newport Beach to aid with the COVID-19 outbreak;

WHEREAS, on May 12, 2020 the City Council adopted Emergency Ordinance 2020-003, which extended the restrictions in Emergency Ordinance 2020-001, limiting the rental of short term lodging units on Newport Island;

WHEREAS, after considering the current status of the re-opening of businesses in Newport Beach and the unique circumstances applicable to Newport Island, such as the high density of units, the location of short term rental units, lack of parking, and narrow streets and sidewalks, it is appropriate to modify the restriction prohibiting the rental of short term lodging units on Newport Island from a complete ban to a restriction requiring all rentals be for at least four consecutive nights; and

WHEREAS, this emergency ordinance modifying the restrictions on the rental of short term lodging units on Newport Island, 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, because the short term lodging units on Newport Island are interwoven throughout the island, which has a high density of units, narrow streets and sidewalks, and a lack of parking, which increases contacts between persons and could lead to the spread of COVID-19.

Section 2: 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 Newport Beach Municipal Code ("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 four 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 shorter term to a medical professional or emergency responder coming to the City of Newport Beach to aid with the COVID-19 outbreak. 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 3: Emergency Ordinance No. 2020-003 is hereby repealed; provided, however, that the repeal of Ordinance No. 2020-003 shall not affect any offense or act committed or done, or any punishment, penalty or forfeiture incurred, prior to the effective date of this emergency ordinance, nor any suit, prosecution or proceeding for violation of Emergency Ordinance No. 2020-003, which is pending at the time this emergency ordinance is adopted. The reference in Emergency Ordinance No. 2020-004, Section 3, to Emergency Ordinance No. 2020-003 is hereby modified to reference Emergency Ordinance No. 2020-006.

Section 4: 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 Section 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 5: 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 6: The recitals provided in this emergency ordinance are true and correct and are incorporated into the substantive portion of this emergency ordinance.

Section 7: 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 8: 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 9: This emergency ordinance shall become effective June 23, 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 10: 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 23rd day of June, 2020, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY