

EMERGENCY BILL NO. 20-06
Hearing Date: 08/24/2020

CITY OF NEWARK
DELAWARE

EMERGENCY ORDINANCE NO. 20-06

An Emergency Ordinance Concerning COVID-19 Precautionary Measures

THE COUNCIL OF THE CITY OF NEWARK HEREBY ORDAINS:

WHEREAS, to meet a public emergency affecting life, health, property or the public peace, Article IV, Section 402.3 of the Charter of the City of Newark authorizes Council to adopt emergency ordinances that may be adopted with or without amendment at the meeting at which it is introduced by the affirmative vote of at least five (5) members of Council; and

WHEREAS, Article IV, Section 402.3 provides that any such emergency ordinance may become effective immediately upon adoption and shall automatically stand repealed as of the sixty first (61st) day following the date on which it was adopted, unless extended by regular ordinance action by Council; and

WHEREAS, the President of the United States of America has declared a National State of Emergency due to the public health threat caused by the coronavirus disease ("COVID-19"); and

WHEREAS, Governor John C. Carney has declared a State of Emergency for the State of Delaware due to the public health threat caused by COVID-19; and

WHEREAS, on August 5th, 2020, Governor Carney extended the State of Emergency for thirty (30) days, effective immediately; and

WHEREAS, the Centers for Disease Control and Prevention has determined that COVID-19 presents a serious threat; and

WHEREAS, Council has determined a State of Emergency due to COVID-19 exists in the City of Newark, and has further determined it is in the best interests of the State of Delaware and the citizens of Newark to protect them from a potential public health emergency that could threaten the lives of those that live and work in the City of Newark by continuing to take appropriate action to avoid transmission of the disease by limiting social contact of persons within Newark; and

WHEREAS, in order to limit social contact upon persons within Newark, on March 16, 2020 Council adopted Emergency Ordinance No. 20-01, which limited social gatherings to ten (10) persons, and limited restaurants, taverns and bars within the City of Newark to providing food and beverage service through take-out, drive through and off premises delivery; and

WHEREAS, in May of 2020, Governor Carney commenced steps for the gradual reopening of Delaware, and in conjunction with this, Council did repeal the restrictions set forth in Emergency Ordinance No. 20-01; and

WHEREAS, implementation of Governor Carney's reopening plan is contingent upon key COVID-19 indicators trending downward; and

WHEREAS, with the University of Delaware fall semester commencing, with students coming to Newark from all corners of the world, including COVID-19 hot spots, Council has expressed a desire to take additional steps to prevent a surge in cases similar to what is presently occurring within numerous other college towns throughout the nation due to social distancing protocols not being followed; and

WHEREAS, in college towns throughout the country, in the past several weeks, there have been numerous COVID-19 outbreaks following the return of college students to campus, in many cases due to students not following social distancing protocols at large social gathering events; and

WHEREAS, in recent years, the University of Delaware has received national recognition as being one of the preeminent "party schools" among colleges in the United States; and

WHEREAS, with said return of University of Delaware students to Newark, in order to minimize the spread of COVID-19, restrictions need to be put into place to minimize the threat of spreading said virus at large social gatherings at or in private residences within the City of Newark; and

WHEREAS, Council has determined that it is in the best interests of the Citizens of Newark for the following restrictions to be imposed to limit the transmission of the COVID-19 virus within Newark.

That Chapter 22, Police Offenses, and Chapter 23, Parades and Public Assemblies, Code of the City of Newark, Delaware, be Amended in the Following Respects by Creating Civil and Criminal Violations for Unlawful Social Gathering in or at a Private Residence During the COVID-19 State of Emergency:

Effective immediately:

AMENDMENT 1: Create Section 22-74.4, Unlawful Social Gathering in or at a Private Residence During the COVID-19 State of Emergency, by adding the underscored text as follows:

"Sec. 22-74.4 – Unlawful Social Gathering in or at a Private Residence During the COVID-19 State of Emergency.

- A. *An indoor social gathering is defined as a social gathering at a privately-owned residence at which there are attendees who do not reside therein that gather or congregate inside of a private residence;*

- B. Unlawful indoor social gathering in a private residence: Unless a permit allowing more attendees at an indoor social gathering has been issued by the City Manager or his designee, all indoor social gatherings at any private residence within the City of Newark shall be strictly limited to no more than twelve (12) attendees, including residents of the premises.
- C. An outdoor social gathering is defined as a social gathering at a private residence at which there are attendees that do not reside therein that gather or congregate outside, in the yard or on a porch/deck of a private residence;
- D. Unlawful outdoor social gathering at a private residence: Unless a permit allowing more attendees at an outdoor social gathering has been issued by the City Manager or his designee, all outdoor social gatherings at any private residence within the City of Newark shall be strictly limited to no more than twenty (20) attendees, including residents of the premises and any persons inside the premises;
- E. A violation of Section 22-74.4 (b) will occur if there are more than twelve (12) attendees that are inside of the premises at an outdoor social gathering unless otherwise permitted by the City Manager;
- F. The City Manager or his designee is hereby authorized to consider and approve applications for indoor social gatherings of more than twelve (12) attendees, and for outdoor social gatherings of more than twenty (20) attendees.
- G. Exemptions: Persons aged sixteen (16) and younger are exempt from this ordinance and shall not be included when counting attendees.
- H. Civil Penalties for persons hosting or attending an unlawful social gathering in or at a private residence:
- (1) For a first offense, such persons shall be assessed a civil penalty of \$100 to \$500 and 0 to 20 hours of Community Service directly benefiting the City of Newark, with said Community Service to be fully performed at the time the violator submits his or her voluntary assessment, or within 60 days of adjudication of said charge;
- (2) For a second offense, such persons shall be assessed a civil penalty of \$500 to \$1,000 and 20 to 32 hours of Community Service directly benefitting the City of Newark, with said Community Service to be fully performed at the time the violator submits his or her voluntary assessment, or within 60 days of adjudication of said charge;

- I. Criminal Penalty for persons hosting or attending an unlawful social gathering in or at a private residence:
 - (1) Any third offense and each subsequent offense shall be an unclassified misdemeanor, and such persons shall be assessed a criminal fine of \$1,000 to \$1,500.
- J. If any clause, sentence, part, section, or portion of this Ordinance is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Ordinance and the remaining parts of this Ordinance shall be fully valid, binding and enforceable.
- K. Nothing in this section shall be construed to preclude or otherwise limit the prosecution of or the conviction for a violation of this chapter or any other provision of the law.
- L. Information concerning a civil offense classified in this section shall not appear on a person's certified criminal record.
- M. The entire period of community service shall be assigned by and performed under the supervision of a designee of the Chief of Police of the City of Newark. Reasonable effort shall be made to assign the individual to a type of community service that is reasonably expected to have the most rehabilitative effect on such person.
- N. Unless otherwise specified herein, nothing contained herein shall be construed to repeal or modify any existing laws or ordinances of the City of Newark.
- O. For first and second violations of this section, the violator will be provided an arraignment date, and such person may pay the civil penalty prescribed and provide suitable documentation of completed community service as a voluntary assessment, in lieu of a Court appearance, either in person or by mailing the citation, the fine and the community service documentation to the Alderman's Court.
- P. Any person cited under this section who wishes to appeal any civil citation shall appear in Alderman's Court at the time listed in the citation. Upon appeal, should the Court uphold the issuance of the citation and find that a violation has occurred, court costs, in addition to the applicable civil penalty, shall be imposed by the Alderman or Deputy

Alderman. The standard of proof needed for a finding that a civil violation has occurred is by a preponderance of the evidence. If the person to whom a civil citation has been issued fails to appear in answer to the citation, or to pay the civil penalty and/or perform the applicable community service within the time specified, he or she may be found in contempt of the Alderman's Court, and a warrant for his or her arrest may be issued."

AMENDMENT 2: As long as this Ordinance remains in effect, the provisions in Sections 23-14 through 23-20, as apply to private social gatherings in or at private residences within the City of Newark shall be suspended.

AMENDMENT 3: This Emergency Ordinance shall sunset upon the earlier of the following dates: 1) as of the sixty first (61st) day following the date on which this Emergency Ordinance was adopted; or 2) upon the date Governor Carney declares the State of Emergency has ended.

The City Secretary is directed to provide notification of this Emergency Ordinance to all media outlets and to the University of Delaware. Amendment 1 shall be enforced by the City of Newark Police Department.

Hearing and Date of Passage: August 24, 2020

VOTE: 5 to 2.



Mayor

Attest:



City Secretary

Approved as to Legality & Form:



City Solicitor