

April 6, 2020

AN EMERGENCY ORDINANCE TO PREVENT CONTAGION OF THE COVID-19 VIRUS IN PUBLIC PLACES UNDER THE JURISDICTION OF THE CITY OF NEWBURYPORT

Be it ordained by the City Council of the City of Newburyport as follows:

EMERGENCY PREAMBLE:

WHEREAS on March 10, 2020, due to the worldwide COVID-19 virus pandemic and pursuant to the Chapter 639 of the Acts of 1950, as amended, and Section 2A of Chapter 17 of the Massachusetts General Laws, Governor Charles D. Baker issued a proclamation that there exists in the Commonwealth of Massachusetts a state of emergency, and followed by the Governor's order issued on March 23, 2020, extended on March 31, 2020, that, among other things, prohibits through May 4, 2020, gatherings of more than ten (10) people;

WHEREAS notwithstanding such proclamation and orders, and an advisory issued on March 17, 2020, by Mayor Donna D. Holaday closing to group activities all city playgrounds and athletic and sports facilities, it is manifest that such prohibited gatherings and group activities have continued at public properties under the jurisdiction of the city, including, without limitation, at public parks, playgrounds, and beaches;

WHEREAS as of April 5, 2020, the Massachusetts Department of Public Health reported 12,500 cases of COVID-19 in the Commonwealth confirmed through laboratory testing, including 1,506 confirmed cases within Essex County;

WHEREAS there may, at present, be many thousands more cases of COVID-19 in the Commonwealth, including within Essex County, that are unconfirmed through laboratory testing;

WHEREAS public properties under the jurisdiction of the city, including, without limitation, some of parks, playground, and beaches located within the city, are regional resources that attract visitors from beyond Newburyport and the Commonwealth;

WHEREAS Anna Jaques Hospital, an affiliate of the Beth Israel Lahey Health, is the only licensed hospital located within the City of Newburyport, and had, as of December 31, 2018, a capacity of approximately 140 beds, including approximately eight (8) beds in its intensive care unit;

WHEREAS the virulence of the COVID-19 virus is such that if its spread is not mitigated significantly and immediately it could overwhelm health care facilities serving the City of Newburyport, including Anna Jaques Hospital, with more patients than those facilities and their personnel can treat effectively at the same time;

WHEREAS the City Council finds that these conditions create an emergency, specifically the immediate and present danger to the health and well-being of the people of Newburyport posed by contagion of the COVID-19 virus;

WHEREAS Section 2-5 of the Newburyport Charter provides that, except as otherwise provided by general law or by such charter, all powers of the City shall be vested in the City Council which shall provide for their exercise and for the performance of all duties and obligations imposed upon the City by law;

WHEREAS Section 2-9(b) of the Newburyport Charter provides that an emergency measure shall be introduced in the form and manner prescribed for measures generally except that it shall be plainly designated as an emergency measure and shall contain statements after the enacting clause declaring that an emergency exists and describing its scope and nature in clear and specific terms; and

WHEREAS Section 1-17 of the Newburyport Code provides that any ordinance of the City, the violation of which is subject to a specific penalty, may, in the discretion of the City official who is the appropriate enforcing person or persons, as designated by the City Council, be enforced by way of the method provided in Section 21D of Chapter 40 of the Massachusetts General Laws;

NOW, THEREFORE:

(a) *Banned activities and required personal distances at city property.*

- (1) No Group of more than 10 people shall gather in or upon any public way or upon any way to which the public has a right of access, or any place which members of the public have access as invitees or licensees, in any park, playground, or recreation area, or on school grounds owned by the City of Newburyport. This prohibition does not prevent 10 or more people from being present, but not gatherings, at any time on public land, provided they are more than 6 feet in distance from each other at all times. Emergency personnel, any personnel performing emergency services, and/or employees of the City of Newburyport in the course of their duties are exempt.
- (2) It shall be unlawful for any person to use for active recreation any playground or play equipment, or any athletic or sports equipment. or field or court, including, without limitation, a tennis court, basketball court, baseball field, or soccer field, however, notwithstanding the foregoing, passive recreation, including, without limitation, walking, hiking, biking, jogging, and running do not constitute a violation of this section.
- (3) It shall be unlawful for any person to gather in a group of any size to be located within six (6) feet of another other person, excepting solely those persons responding to an emergency in an official capacity and in accordance with applicable law, such as personnel of the City's Fire Department, Police Department or Department of Public Services, physicians, nurses or emergency medical technicians, and repair personal for public utilities

- (b) *Suspension of licenses and permits to use public properties for events.* Any license or permit issued by the City Council, or by any City officer, board, or commission, is hereby suspended for any event, including, without limitation, any parade, road race, or block party, to take place or otherwise occur at, upon, or within any public building, right of way, park,

playground, or beach under the jurisdiction of the City, including, without limitation, those public parks and playgrounds identified in Section 11-2 of the Newburyport Code, scheduled to occur through Monday, May 4, 2020.

- (c) *Violations and penalties.* The Health Director, the City Marshal, and their respective designees, including, without limitation, police officers, are expressly authorized to enforce the provisions of this order by penalizing violators by noncriminal disposition as provided in Section 21D of Article 40 of the Massachusetts General Laws, as follows.
- (1) *First violation.* Upon the first violation of this ordinance, the enforcing officer shall issue a warning.
- (2) *Subsequent violations.* Upon any subsequent violations of this ordinance by the same violator after a first violation, the enforcing officer shall impose upon and provide the violator with written notice of the accrual of a monetary penalty, as follows:
- (A) Twenty-five dollars (\$25) for the second violation;
- (B) Fifty dollars (\$50) for the third violation; and
- (C) One Hundred dollars (\$100) for the fourth and any subsequent violation.
- (3) *Use of Revenues.* All revenues collected through payments of a monetary penalty under this ordinance shall be used only to defray costs to the City incurred due to the COVID-19 declared state of emergency, including, without limitation, any administrative costs to enforce this ordinance.
- (d) *Effective date.* Effective immediately through May 4, 2020, or unless terminated earlier by the Newburyport Board of Health.
- (e) *Severability.* The City Council intends that each separate provision of this ordinance shall be deemed independent of all other provision herein, and that if a court of competent jurisdiction declares that any provision of this ordinance is invalid, then the remaining provisions of this ordinance shall remain valid and enforceable.

Councillor Byron J. Lane

Councillor Jared J. Eigerman

Councillor Charles F. Tontar