ORDINANCE NO. 2014-493

AN ORDINANCE AMENDING ARTICLES I OF CHAPTER 90 OF THE CODE OF THE CITY OF NEW CASTLE REGARDING ALCOHOLIC BEVERAGES

WHEREAS, Chapter 90 of the Code of the City of New Castle generally restricts the use and possession of open containers of alcoholic beverages on parks, public streets, avenues and sidewalks in the City of New Castle; and

WHEREAS, the Council desires to establish a licensing process to permit the use and possession of open containers of alcoholic beverages on parks, public streets, avenues and sidewalks in a limited and socially responsible manner;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of New Castle, as follows:

SECTION 1. **Amendment of Section 90-3.** Section 90-3 of the Code of the City of New Castle is hereby amended so that such section shall read, in its entirety, as follows:

§90-3. Possession of open containers.

A. **Open containers near taverns and package stores:** Unless otherwise authorized by this Article, no person shall possess out of doors any open container containing spirits, wine or beer within 150 feet of the outside of any tavern or package store licensed to dispense alcoholic beverages.

B. **Open containers on public streets, sidewalks and parks.** Unless otherwise authorized by this Article, no person shall possess out of doors any open container containing spirits, wine or beer or consume any spirits, wine or beer on any public street, avenue, sidewalks, parkland or other City owned property ("City Lands") within the corporate limits of the City.

C. **Open containers on private property**. Unless otherwise authorized by this Article, no person shall possess out of doors any open container containing spirits, wine or beer or consume any spirits, wine or beer on any property not their own unless permission to possess said container or to consume has been granted by the owners, lessor or lessee, or their authorized agent. That such permission has been granted shall be an affirmative defense which the defendant may establish by adequate proof.

D. **Alcoholic beverage permit**. The sale and consumption of alcoholic spirits, wine and/or beer on City Lands shall be permitted on a case-by-case basis for events. Events must be sponsored or co-sponsored by the City or a nonprofit organization and must be approved by City Administrator. Issuance of a permit shall be subject to the following terms and conditions:

1. All applications must be submitted in writing to the City Administrator on a City approved form at least 90 days in advance of the proposed event.

2. The City Administrator shall collect an application fee for the alcohol beverage permit when the application is filed. Such application fee shall be set from time to time by resolution of City Council.

3. The serving or sale of alcoholic liquors and beverages shall strictly comply with all rules, regulations, laws and requirements of the State of Delaware, Division of Alcohol and Tobacco, the Delaware Code and all other applicable governmental laws, ordinances, rules and regulations.

4. The City Administrator is authorized to develop and implement application forms, policies and procedures associated with applications for the sale and consumption

of alcoholic spirits, wine and beer on City Lands and may condition the grant of a permit as he deems reasonable and appropriate under the circumstances presented.

5. All applicants for a alcohol beverage permit must also apply for a parade or public assembly permit. *See, City Code, Ch. 171*

6. In evaluating an application to sell or consume alcoholic spirits, wine or beer on City Lands, the City Administrator shall consider:

(a) The number of people expected to attend the event which number may be limited as a condition of the permit;

(b) The likelihood that minors under the age of twenty-one years will be present;

(c) The proposed location of the event;

(d) The provision of sanitary facilities and trash receptacles;

(e) Police and security arrangements for the event. Events expected to draw more than 100 persons must be monitored by a suitable number of off-duty New Castle City police officers or other private security personnel acceptable to the City's Police Chief and the City Administrator;

(f) Traffic and parking considerations;

(g) The existence of other public or private events ongoing at or about the same time as the applicant's event;

(h) The frequency of events sponsored or held by the same applicant. No single nonprofit applicant shall be eligible for more than two (2) permits in any calendar year;

(i) The need, availability, amount and type of public liability insurance protecting the interests of the City and provided by the applicant. No permit shall be issued unless an insurance certificate naming the City as additional insured and

providing for a minimum of $2,000,000 public liability coverage is provided. Greater insurance limits may be required for events involving more than 100 persons.

(j) The need or advisability of indemnity agreement(s) from the applicant and/or participants in the event in favor of the City;

(k) Objections of City residents; and

(l) Such other factors as the City Administrator deems relevant and appropriate.

7. Any applicant who is denied a permit to sell or consume alcoholic spirits, wine and/or beer on City Lands by the decision of the City Administrator may appeal such decision to the City Council by providing written notice of such appeal to the City Administrator within ten (10) days of the disputed decision. Such procedure shall be the sole and exclusive remedy from the decision of the City Administrator.

SECTION 2: Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Mayor and Council hereby declare that they would have passed this Ordinance and each section, subsection, sentence, clause or phrase irrespective of the fact that any one or more thereof is declared unconstitutional or invalid.

SECTION 3. Repealer. Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided that any such repeal shall not abate a right of action already accrued under any repealed Ordinance.

SECTION 4. Effective Date. This Ordinance shall become effective immediately upon passage.

BE IT FURTHER ORDAINED that the ordinance shall take effect after approval of the City Council and the Mayor.

First Reading February 11, 2014

Second Reading February 19, 2014

Signed this 19th day of February, 2014

Linda Ratchford

President of Council

I hereby certify that the foregoing Ordinance was duly approved by the Council of the Mayor and Council of New Castle upon the dates above set forth and signed by the President of Council.

Janet E. Wurtzel, City Clerk

Approved this 19th day of February, 2013

Donald A. Reese, Mayor