



CITY COUNCIL AGENDA REPORT

MEETING DATE: December 3, 2013

ITEM NUMBER:

SUBJECT: FIRST READING OF THE EXCESSIVE USE OF RESOURCES ORDINANCE

DATE: NOVEMBER 25, 2013

FROM: CHIEF EXECUTIVE OFFICE

PRESENTATION BY: RICHARD FRANCIS, ASSISTANT CHIEF EXECUTIVE OFFICER

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RECOMMENDATION:

Staff recommends that the City Council introduce for first reading, Ordinance 13-xx, to be read by title only, and waive further reading, regarding the excessive use of resources.

BACKGROUND:

On November 5, 2013, staff requested input and direction from City Council regarding a proposed ordinance relating to the excessive use of City resources by certain lodging establishments. Staff has made revisions to the proposed ordinance based on comments received from Council, and is now presenting the proposed ordinance for first reading.

Certain lodging establishments within the City utilize a substantial amount of City resources, including code enforcement and emergency police services; as a result, these establishments are threatening the peace, health, safety, and/or general welfare of the public. The proposed ordinance will establish a notification and enforcement process designed to collaboratively work with lodging establishment owners, tenants, and those who manage problem properties to address chronic nuisances of a criminal nature. It will also deter lodging establishment owners and occupants from repeating nuisance activities and hold them accountable for the excessive cost to the City of repeated nuisance activities.

ANALYSIS:

The proposed ordinance will be Chapter XI (Cost Recovery for Excessive Use of Resources) of Title 14 (Police and Law Enforcement) of the Costa Mesa Municipal Code. The purpose of this proposed ordinance is to allow the city to obtain reimbursement from responsible lodging establishment owners whose property utilizes an excessive amount of police resources because of recurring nuisance activities.

Nuisance activities as defined in the proposed ordinance are summarized as follows (full definitions in proposed Section 14-81):

Disturbing the peace (violations of Penal Code Section 415); noise/sound issues; illegal use or sale of fireworks; exceeding maximum occupancy rules; gang-related crime; illegal use of a firearm; illegal use, sale, or manufacturing of a firearm; underage drinking; illegal use, sale, or possession of controlled substances; loud parties; criminal activity; commission or attempted commission of any serious/violent felony; and commission or attempted commission of prostitution.

The proposed ordinance will be applied to any lodging establishment within the City. A lodging establishment would be invoiced under the Proposed Ordinance for excessive police calls above a certain threshold.

The ordinance has been amended as follows since November 5, 2013, per Council's direction:

- The November 5, 2013 proposed ordinance applied only to motels.
 - The term “motel” has now been replaced by the term “lodging establishment” in the proposed ordinance, which is defined as any motel, hotel, bed and breakfast, or boarding house within the City of Costa Mesa.
- Definitions for each type of lodging establishment have been added.
- The November 5, 2013 proposed ordinance contemplated monthly invoicing of establishments.
 - In the current version of the ordinance, costs will be billed to lodging establishments on an invoice period basis as opposed to a monthly basis (in an effort to lessen a potentially burdensome administrative process). Staff anticipates that the most efficient invoice period, as directed by City Council, is likely to be a quarterly or biannual invoice period. The invoice period shall be set by City Council resolution.
- The November 5, 2013 proposed ordinance did not provide for any notice to establishment owners that they are approaching the threshold of nuisance activity. In some cases, this may make it more difficult for establishment owners to quickly address problems.
 - In the current version of the ordinance, written notice may be given to the owner of the lodging establishment as it approaches its allotted calls for service threshold for nuisance activity for the designated invoice period. Notice to an establishment that they are approaching their threshold of allotted calls for nuisance activities shall be provided pursuant to City Council resolution.

- The November 5, 2013 proposed ordinance provided for a fee amount per call.
 - In the current version of the ordinance, the cost recovery fee shall be set by City Council resolution.
- The November 5, 2013 proposed ordinance provided that appeals should be filed pursuant to the general appeal provisions in the Code.
 - In the current version of the ordinance, an appeal of the cost recovery invoice can be filed within 10 days of receipt and a hearing by an independent hearing officer will be scheduled within 45 days of the appeal. The ordinance now has its own appeal provisions that are better suited for these procedures;
 - The amount invoiced must be submitted to the City along with the appeal request;
 - If an appeal is denied, the lodging establishment owner must pay the administrative costs required for the hearing along with the original cost recovery bill.

Staff is requesting that City Council provide direction regarding the method to establish the threshold, provide notice, set the invoice period and any other procedure necessary to recover costs. Staff will return to City Council with a proposed resolution.

Threshold

Before the City can issue a cost recovery fee invoice based on excessive police calls for nuisance activities, pursuant to proposed Section 14-85, each lodging establishment shall be entitled to a periodic allotment of calls. Two options for determining the total allotment of calls for a year are as follows:

- An allotment of one-half (0.5) of a call for service per room for the crimes listed in proposed Section 14-81(p) annually.

or

- An allotment of one-quarter (0.25) of a call for service per room for the crimes listed in proposed Section 14-81(p) annually.

Under the first scenario, each lodging establishment would be permitted to have one-half (0.5) of a call for service per room for the crimes listed in proposed Section 14-81(p) of the ordinance on an annual basis. The number of rooms for each location shall be divided by 12 to determine the monthly allotment of calls if the invoice period is monthly, or divided by four (4) if the invoice period is quarterly, etc.

- Monthly example (0.5 method): If a lodging establishment has 100 rooms, it can incur five (5) calls for service per month ($100 \times 0.5/12$, rounding decimals up) for the offenses listed in proposed Section 14-81(p).
- Quarterly example (0.5 method): If a lodging establishment has 100 rooms, it can incur 13 calls for service per quarter ($100 \times 0.5/4$, rounding decimals up) for the offenses listed in proposed Section 14-81(p).

Under the second scenario, each lodging establishment would be permitted to have one-quarter (0.25) of a call for service per room for the crimes listed in proposed Section 14-81(p) of the ordinance on an annual basis. The number of rooms for each location shall be divided by 12 to determine the monthly allotment of calls if the invoice period is monthly, or divided by four (4) if the invoice period is quarterly, etc.

- Monthly example (0.25 method): If a lodging establishment has 100 rooms, it can incur three (3) calls for service per month ($100 \times 0.25/12$, rounding decimals up) for the offenses listed in proposed Section 14-81(p).
- Quarterly example (0.25 method): If a lodging establishment has 100 rooms, it can incur seven (7) calls for service per quarter ($100 \times 0.25/4$, rounding decimals up) for the offenses listed in proposed Section 14-81(p).

See Attachment 3 for a detailed analysis of all calls for service for all city lodging establishments and their respective call allotment.

Cost Recovery Methodology

The Council must decide whether to implement the flat fee methodology for cost recovery that was discussed at the introduction of the proposed ordinance on November 5, 2013, or some other methodology. The discussed flat fee methodology assumes dividing the total police department budget (2013-14 = \$40,248,392) by the average number of annual calls for service (3-year average = 95,300). Using this methodology will yield a cost recovery of approximately \$422 per call; however, it would be prudent to offset this amount by 30% in order to counteract charges for services not likely attributed to lodging establishment enforcement. As such, a fine in the amount of \$295 seems appropriate.

The Council may choose to consider alternative cost recovery methodologies that seek to recover true costs for more complex calls for service that require an inordinate amount of city resources. Such an approach should be reserved only for those cases where multiple city resources, and in some cases, regional resources, are utilized for a protracted period of time. Examples of the types of calls that could fit this particular threshold would be the dismantling of a drug lab within a guest room or large parties that grow violent in which substantial resources are required to quell such a disturbance.

ALTERNATIVES CONSIDERED:

The City Council can choose not to further explore imposition of this ordinance at this time. The Council may also direct staff to create an alternative call for service threshold and/or cost recovery methodology.

FISCAL REVIEW:

The City will incur costs for any appellate proceedings that are lost. Independent Hearing Officers currently charge the City \$100 per hour for Code Enforcement appeals. Property owners will bear responsibility for payment of administrative costs for appeals in which they do not prevail. Staff expects costs to enact this ordinance to be minimal, as revenues will likely offset expenses.

LEGAL REVIEW:

The City Attorney has reviewed this report and has prepared a draft ordinance for further consideration based on Council direction.

CONCLUSION:

Adoption of an Excessive Use of Resources ordinance would allow the City to identify certain properties for repeating nuisance activities and hold them accountable through police service fines.

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- ATTACHMENTS:
- 1 [Proposed Excessive Use of Resources Ordinance](#)
 - 2 [Proposed Excessive Use of Resources Ordinance – Redlined Version](#)
 - 3 [Call Allotment Analysis for Lodging Establishments](#)