



CITY COUNCIL AGENDA REPORT

MEETING DATE: JANUARY 7, 2014

ITEM NUMBER:

SUBJECT: SECOND READING OF THE EXCESSIVE USE OF RESOURCES ORDINANCE

DATE: DECEMBER 24, 2013

FROM: CHIEF EXECUTIVE OFFICE

**PRESENTATION BY: RICHARD FRANCIS, ASSISTANT CHIEF EXECUTIVE OFFICER
ELENA GERLI DEPUTY CITY ATTORNEY**

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RECOMMENDATION:

Staff recommends that the City Council give second reading to Ordinance 14-__, regarding 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.

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.

On December 3, 2013, staff presented the ordinance for first reading. The City Council requested the addition of some language defining what constitutes calls for service, and decided that the threshold number of calls for service for lodging establishments is 0.4 calls per room per year.

On December 18, 2013, the Mayor and City staff hosted a meeting for lodging establishment owners/managers to answer any questions the owners/managers may have about any of the City's recent business items. The meeting also allowed owners/managers to share difference management practices to help one another with better managing their properties. Attachment 4 is a recap of that meeting.

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 is summarized as follows:

- Definitions include each type of lodging establishment, what constitutes a call for service; and the type of activity that constitutes nuisance activity that would trigger the provisions of the ordinance.
- Costs will be billed to lodging establishments on an invoice period basis. 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.
- Written notice shall 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 amount of the cost recovery fee shall be set by City Council resolution.
- 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 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.

Revisions of the Proposed Ordinance from December 3, 2013 Council Meeting

The following are revisions made after the December 3, 2013 Council Meeting:

- Addition of a definition for “call for service” (Section 14-81 (d)).
- Addition of a definition for “officer-initiated calls for service” (Section 14-81 (e)).
- Clarification by providing some guidelines to what would be considered “criminal activity” (Section 14-81 (r)(6)).
- Revising the methodology for calculating thresholds from 0.5 calls for service per room per year to 0.4 calls for service per room per year for nuisance activities. (Section 14-81 (x)).

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 were presented to the City Council on December 3, 2013, for determining the total allotment of calls for a year 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(r) 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(r) annually.

On December 3, 2013, the City Council directed staff to provide that each lodging establishment has an allotment of 0.4 calls for service per room per year for the crimes listed in proposed Section 14-81(r). City Council also directed staff to include additional definitions for “nuisance activity”. After reviewing the proposed ordinance and contemplating additional definitions, staff believes there are no additional definitions that would be appropriate. However, staff reexamined the call data for each lodging establishment and found that there were additional calls that fall within the “nuisance activity” definition that were not included in the original analysis. See Attachment 3 for an updated 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 or some other methodology.

- Flat Fee (All Calls Included): The 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.
- Flat Fee (Revised Total Calls): Staff also looked at revising the number of calls for service and Cost Recovery Methodology by removing 911 and wireless 911 calls that were unnecessary to log, unfounded, or cancelled from the total calls for service. Patrol checks have also been removed from this methodology. The revised total number of calls for service is approximately 78,200. Using the flat fee methodology will yield a cost recovery of approximately \$515 per call. After offsetting this amount by 30%, the revised fine per call comes out to be \$360.

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 made the requested changes to the 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.

RICHARD FRANCIS
Assistant Chief Executive Officer

THOMAS GAZSI
Chief of Police

THOMAS DUARTE
City Attorney

- ATTACHMENTS:
- 1 [Proposed Excessive Use of Resources Ordinance](#)
 - 2 [Proposed Excessive Use of Resources Ordinance – Redlined Version](#)
 - 3 [Call Allotment Analysis for Lodging Establishments](#)
 - 4 [Recap of December 18, 2013 Meeting with Lodging Establishment Owners/Managers](#)



**Costa Mesa Police Department
Calls For Service by Address for Calendar Year 2012
January 6, 2014**

Process:

Using BI Web, a report was run in CAD for the calendar year 2012.

A total of 96892 CFS were documented as being received.

CFS were sorted by address and then sub-totaled to provide the number of CFS to each location.

A threshold of 50 or more CFS to a location was used as a baseline for inclusion in this report.

Of those included, there were 45 locations where more than 200 CFS were logged

It should be noted:

Included in, but removed from, the top 45 were:

99 Fair Drive (PD Headquarters) = 3700 CFS

79 Fair Drive (Communications) = 1126 CFS

And a few Apartment Complexes are defined by more than a single street address

Of those combined, the following complexes fell into the 200 or more CFS category:

Pinebrook Villas (1555 and 2775 Mesa Verde Dr E)

The Enclave (400 to 450 Enclave Cir)

Villa Sienna (1250 Adams and 2885 Fairview Rd)



Costa Mesa Police Department Locations with more than 200 CFS during 2012

3333 BRISTOL ST (SCPL) =	1552
570 W 18TH ST (Lions Park) =	1086
2300 HARBOR BLVD (Harbor Center) =	877
1555 E MESA VERDE DR (Pinebrook Village) =	614
2775 E MESA VERDE DR (Pinebrook Village) =	614
2277 HARBOR BLVD (Motor Inn) =	568
1835 NEWPORT BLVD (Courtyards) =	559
2855 PINECREEK DR (Villa Martinique) =	554
360 W WILSON ST (Wilson Park) =	538
2701 FAIRVIEW RD (OCC) =	437
2200 HARBOR BLVD (K-Mart Center) =	424
2501 PLACENTIA AV (Estancia Park) =	415
1250 ADAMS AV (Villa Sienna) =	410
2885 FAIRVIEW RD (Villa Sienna) =	410
901 SOUTH COAST DR (Metro Point) =	410
3030 HARBOR BLVD (Costa Mesa Square) =	393
360 OGLE ST (Pinkley Park) =	376
1441 GISLER AV (Motel 6) =	352
2700 PETERSON PL (Harbor Greens) =	333
3143 BEAR ST (Shiffer Park) =	329
970 ARLINGTON DR (Tewinkle Park) =	329
3400 AV OF THE ARTS (The Lakes) =	320
257 E 16TH ST (Heller Park) =	317
3333 BEAR ST (Plaza West) =	313
3400 SMALLEY RD (Smalley Park) =	312
1870 HARBOR BLVD (The Triangle) =	297
2602 NEWPORT BLVD (Arco/Jack in the Box) =	275
2205 HARBOR BLVD (New Harbor Inn) =	261
2180 HARBOR BLVD (Albertsons Center) =	241
1780 HUMMINGBIRD DR (Tanager Park) =	234
655 W BAKER ST (Oakwood Apts) =	229
1250 GISLER AV (Gisler Park) =	227
425 E 18TH ST (Harper Park) =	222
265 MONTE VISTA AV (MVHS) =	221
900 ARLINGTON DR (Skate Park) =	220
1830 NEWPORT BLVD (Goat Hill Tavern) =	219
400-450 ENCLAVE CIR (The Enclave) =	216
2544 NEWPORT BLVD (Regecy Inn) =	214
2701 HARBOR BLVD (Mesa Verde Center) =	210
1855 PARK AV (Library) =	207
220 23RD ST (Lindbergh Park) =	203
970 ARBOR ST (Canyon Park) =	202

99 FAIR DR (Main Station) = 3700

79 FAIR DR (Communications) = 1126