

ORDINANCE NO. 13-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA ADDING CHAPTER VI (COST RECOVERY FOR EXCESSIVE USE OF RESOURCES DUE TO NUISANCE ACTIVITIES AT LODGING ESTABLISHMENTS) OF TITLE 14 (POLICE AND LAW ENFORCEMENT) OF THE COSTA MESA MUNICIPAL CODE REGARDING COST RECOVERY FOR EXCESSIVE USE OF POLICE SERVICES

WHEREAS, the City of Costa Mesa has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the city, Cal. Const. art. XI, § 7; and

WHEREAS, the City Council of the City of Costa Mesa has determined that a significant number of lodging establishment owners in the City have, for a number of years, consistently allowed their property to be used for illegal purposes and such establishments have created a significant impact upon the living conditions in the City's neighborhoods and have raised justifiable concerns about public safety; and,

WHEREAS, the City Council finds that certain chronic nuisance activities at or generating from poorly managed lodging establishments can constitute a threat to the peace, health, safety, or general welfare of the public, as police officers have been required to make many return calls to such establishments; and

WHEREAS, the City Council finds that such lodging establishments interfere with the comfort, health, safety, quality of life, and general welfare of the individuals residing in the neighborhood and lower the value of surrounding properties; and,

WHEREAS, the City Council finds that requiring lodging establishment property owners to reimburse the City for the excessive use of City resources will provide such establishment property owners with additional incentives to ameliorate the problems that their property is creating; and,

WHEREAS, the City Council finds that chronic nuisance lodging establishments create a negative financial impact upon City services by numerous calls for service from various City departments, especially law enforcement; and,

WHEREAS, the City Council finds that holding lodging establishment owners financially responsible for excessive police responses will deter future

incidents that require repeated responses, and will offset the cost of the repeated responses; and

WHEREAS, Sections 36901, 38771 and 38773.5(a) of the California Government Code authorize the City of Costa Mesa to enact ordinances declaring what constitutes a nuisance, the procedures for abating nuisance conditions, providing for the recovery of costs and attorney fees to abate the nuisance, and providing for the collection of civil penalties.

WHEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter VI (Cost Recovery for Excessive Use of Resources Due to Nuisance Activities) of Title 14 (Police and Law Enforcement) is hereby added as follows:

14-80 Purpose.

The purpose of this chapter is to provide administrative and civil remedies against responsible persons who permit, allow, or fail to prevent recurring nuisance activities to occur at lodging establishments within the City of Costa Mesa that compromise the public health, safety or welfare.

14-81 Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings given herein:

- (a) "Administrative costs" shall include, but not be limited to, any or all of the following:
 - (1) All costs associated with any hearings before a hearing officer.
 - (2) City's personnel costs, direct and indirect, incurred in enforcing this chapter and in preparing for, participating in or conducting any hearings subject to this chapter, including, but not limited to, attorney's fees.
 - (3) The cost incurred by the City in documenting the nuisance activity, including, but not limited to, the actual expense and costs of the City responding to calls reporting nuisance activity; investigating and enforcing statutory offenses related to the nuisance activity, including, but not limited to, court appearances; conducting inspections; attending hearings; and preparing notices, civil citations, and orders.

- (b) "Bed and breakfast" shall mean a small establishment that offers overnight accommodation and breakfast for compensation, but usually does not offer other meals. Typically, bed and breakfasts are private homes with fewer than ten bedrooms available for commercial use.
- (c) "Boarding house" shall mean a dwelling that is designed or used to accommodate guests, where guestrooms are provided in exchange for an agreed payment of a fixed amount of money or other compensation based on the period of occupancy.
- (d) "Chief of police" shall mean the Chief of Police and shall include his/her designee.
- (e) "City" shall mean the City of Costa Mesa.
- (f) "City manager" shall mean the City Manager or Chief Executive Officer of the City of Costa Mesa, and shall include his/her designee.
- (g) "Enforcement officer" shall mean any person authorized by the chief of police to enforce violations of this Chapter.
- (h) "Excessive police call" shall mean any call for service for nuisance activity occurring at or in a lodging establishment above the threshold amount of nuisance activity.
- (i) "Finance department" means the Finance Department of the City of Costa Mesa or any person or entity that the finance department designates to perform any of its functions and duties.
- (j) "Gang-related crime" means any crime motivated by gang membership in which the perpetrator, victim, or intended victim is a known member of a gang.
- (k) "Hearing officer" shall mean any person appointed to preside over a hearing pursuant to this chapter. The hearing officer shall not be a city employee and his/her compensation shall not be dependent on any particular outcome of the hearing.
- (l) "Hotel" means a building of many rooms chiefly for overnight accommodation of transient residents and several floors served by elevators, usually with a large open street-level lobby containing easy chairs, with a variety of compartments for eating, drinking, dancing, exhibitions, and group meetings (for example, of convention attendants), with shops having both inside and street-side entrances and offering for sale items (as clothes, gifts, candy, theater tickets, travel tickets) of particular interest to a traveler, or providing personal services (as

hairdressing, shoe shining), and with telephone booths, writing tables and washrooms freely available.

- (m) "Lodging establishment" or "establishment" shall mean any motel, hotel, bed and breakfast, or boarding house within the City of Costa Mesa.
- (n) "Lodging establishment owner" means the owner or operator of record of the subject lodging establishment, as shown on the most recent business license application for the establishment. Establishment ownership may also be demonstrated through government records, and any other publicly available records that have indicia of reliability.
- (o) "Motel" means an establishment that provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area.
- (p) "Nuisance activity" means the occurrence of any of the following activities, behaviors, or conduct occurring at a lodging establishment:
 - (1) Disturbing the peace in violation of Penal Code Section 415.
 - (2) Manufacturing, giving away, selling, offering for sale, soliciting the sale of, possessing, purchasing, using, igniting, exploding, firing or otherwise discharging any fireworks within the City in violation of Article 8 (Fireworks Sales) of Chapter II (Regulation of Certain Businesses) of Title 9 (Licenses and Business Regulations), any applicable provisions of the California Fire Code, as adopted by reference by Section 7-14, and Section 7-19.
 - (3) The occurrence or attempted occurrence of any gang-related crime.
 - (4) Unlawfully discharging a firearm, whether a handgun, long gun, and/or shotgun on lodging establishment property.
 - (5) Parties or gatherings at which alcohol or controlled substances are illegally consumed or used by minors.
 - (6) The occurrence or attempted occurrence of any other criminal activity that threatens the life, health, safety, or welfare of residents of the lodging establishment, the neighborhood, or the public.
 - (7) The commission or attempted commission of any serious felony or violent felony as defined in Penal Code Sections 1192.7(c) and 667.5(c), respectively.
 - (8) The manufacture, cultivation, sale, use, or possession of a controlled substance in violation of the Uniform Controlled

Substances Act (Health & Safety Code §§ 11000 et seq.), or in violation of federal law.

- (9) The commission or attempted commission of any act of prostitution as defined in Penal Code Section 647(b).
- (10) The manufacture, sale, possession, or use of a firearm in violation of the Dangerous Weapons Control Law (Penal Code § 12000 et seq.).
- (q) “Person” means any individual, entity, corporation, association, partnership, limited liability company, trustee, lessee, agent representative and assignee.
- (r) “Property” shall mean the lot or parcel(s) of land where the lodging establishment is located within the City of Costa Mesa.
- (s) “Property owner” shall mean the owner of record of the property where the subject lodging establishment is located, as shown on the latest equalized tax assessment role of Orange County.
- (t) “Responsible person” shall mean the property owner, the lodging establishment owner, or both.
- (u) “Subsequent police response” means any police response to a specific property in response to nuisance activity, which is made within ninety (90) days after the chief of police has given a written warning to the responsible person notifying the responsible person that administrative costs will be imposed for any subsequent response to abate the nuisance.
- (v) “Threshold amount of nuisance activity” means any calls for service for nuisance activity beyond a particular lodging establishment’s allotment per invoice period, which shall be based on an annual allotment of more than 0.5 calls for service per room per year for nuisance activities. The invoice period shall be set by City Council resolution.

14-82 Authority.

The chief of police shall be responsible for administering and enforcing the provisions of this chapter. The chief of police shall have the authority to designate city employees as enforcement officers in conformance with this chapter to assist with enforcement responsibilities, including, but not limited to, the issuance of civil citations.

14-83 Scope of application.

- (a) A criminal conviction is not required for establishing the occurrence of nuisance activity pursuant to this chapter. The occurrence of nuisance activity may be established by documented evidence that the nuisance activity was witnessed by a peace officer or other witness willing to testify.
- (b) The remedies set forth in this chapter are cumulative and in addition to any and all other legal and equitable remedies.

14-84 Chronic nuisances at lodging establishments prohibited.

It shall be unlawful and a public nuisance for any responsible person to cause or allow a threshold amount of nuisance activity at or in any lodging establishment owned or occupied by him or her.

14-85 Cost recovery for excessive use of police resources for nuisance activities.

- (a) When the chief of police determines that for any invoice period within which law enforcement has been dispatched to the same lodging establishment in response to a threshold amount of nuisance activity at or in that establishment, the chief of police shall review the incident reports for that establishment and shall impose a cost recovery fee for all nuisance activity calls for service above the threshold amount of nuisance activity for that invoice period.
- (b) Prior to the issuance of the cost recovery fee invoice, the chief of police shall provide the lodging establishment owner with notice that the establishment is approaching its nuisance activity threshold.
- (c) The invoice for the cost recovery fee invoice shall:
 - (1) Identify the lodging establishment and the threshold amount of nuisance activity for that establishment;
 - (2) Summarize the evidence of the nuisance activity occurring at or in the lodging establishment (including the documented observations of the peace officer or a witness willing to testify) for which the responsible person is being imposed a fee;
 - (3) Provide the dates on which the nuisance activity was reported to the police department and the dates of any prior responses by the police department to nuisance activity at or in the lodging establishment for the invoice period at issue; and
 - (4) Notify the property owner and the lodging establishment owner of the required corrective actions, including but not limited to

conditions of operation, if any, and the date by which such corrective actions must be completed.

- (d) A subsequent and separate invoice for cost recovery fee shall be issued pursuant to this chapter each invoice period that the threshold amount of nuisance activity occurs at or in a lodging establishment.

14.86 Notice.

Written notice to the responsible person shall be provided as follows:

- (a) Notice served upon a property owner by certified or registered mail, to the mailing address indicated on the last equalized assessment roll of the Orange County Assessor's Office.
- (b) Notice served upon a lodging establishment owner by certified or registered mail, to the mailing address provided on the establishment's most recent business license application.
- (c) Notice shall be deemed served on the date the notice is received by the recipient, pursuant to the records of the U.S. Postal Service. In the event the notice is refused by the recipient, notice shall be deemed served five business days following mailing of the notice by certified or registered mail.

14-87 Billing.

- (a) The responsible person may be notified in writing for every month that the establishment generates excessive police calls, including the date, time and type of nuisance activities that generated the calls, and the total amount that those calls will be invoiced.
- (b) On a periodic basis, as determined by City Council resolution, the responsible person shall be billed a cost recovery fee for each and every excessive police call. Such fee is to be paid by the responsible person.
 - (1) On a periodic basis, the chief of police shall notify the finance department in writing of the name and address of the responsible person, the date and time of the nuisance activity, the services performed and the police services required, and such other information as may be necessary. The finance department shall thereafter cause appropriate billing of the administrative costs to be made to the responsible person, and shall serve such invoice to the responsible owner in accordance with Section 14-86.
 - (2) The invoice shall become final within ten (10) days of being served,

unless appealed pursuant to Section 14-88. Once a cost recovery invoice becomes final, payment shall be due to the City within 30 (thirty) days. The invoice shall make reference to the appeal procedures in Section 14-88, and shall specify that an unsuccessful appellant shall also be invoiced for all administrative costs of the appeal.

- (3) Notice of the assessment of administrative costs shall be provided to the responsible person. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

- (c) The cost recovery fee shall be set by City Council resolution.

14-88 Appeal.

- (a) Appeals pursuant to this chapter shall be heard by an independent hearing officer.
- (b) Any appeal shall be filed with the city manager within ten (10) calendar days following the service of the invoice on the responsible person. The appeal shall be in writing and shall state the grounds for the appeal. The appeal shall be accompanied by the amount owed under the invoice, as well as the fee required for the taking of the appeal, which fee shall be set by city council resolution. The city manager shall have the discretion to waive or modify the amount to be deposited prior to the appeal if the responsible person demonstrates by clear and convincing evidence that depositing the full amount would result in a substantial hardship.
- (c) The city manager shall set the matter for a *de novo* hearing before the hearing officer at a date and time not less than ten (10), nor more than

forty-five (45) calendar days following the filing of the appeal. The city manager shall then notify the appellant by mail of the date and time of the hearing on appeal. The city manager may, in his/her discretion, continue the hearing date for good cause.

- (d) To allow appellants the opportunity to fully present their arguments, the formal rules of evidence shall not apply and all relevant evidence may be considered. However, the hearing officer shall have the discretion to exclude irrelevant evidence, i.e., evidence that does not pertain to the issue(s) on appeal. The hearing officer also has the discretion to exclude evidence it deems needlessly repetitive.
- (e) The hearing officer's decision shall issue in writing within five (5) business days of the hearing, and shall be final. The decision shall include reference to Sections 1094.5 and 1094.6 of the Code of Civil Procedure.

Section 2. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 3. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 4. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____, 2013.

Mayor of the City of Costa Mesa

ATTEST:

City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Brenda Green, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 13-__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2013, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2013, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the

Seal of the City of Costa Mesa this ____ day of _____, 2013.

City Clerk and ex-officio Clerk of the City Council
of the City of Costa Mesa