

STAFF REPORT
City of Lancaster, California

NB 2
10/14/08
MVB

Date: October 14, 2008

To: Mayor Parris and City Council Members

From: David R. McEwen, City Attorney

Subject: **Introduce Ordinance No. 908 amending the Lancaster Municipal Code to add Chapter 8.52 Relating to the Chronic Nuisance Properties**

Recommendation:

Introduce Ordinance No. 908, an Ordinance of the City Council of the City of Lancaster, California, amending Title 8 of the Lancaster Municipal Code by adding Chapter 8.52 relating to the Chronic Nuisance Properties.

Fiscal Impact:

Approval of the ordinance will result in an undetermined amount of new administrative costs to the City, which will be reimbursed through the Abatement Fee. There would be minimal new costs to the Sheriff's department in development of the weekly reports, also to be reimbursed by the fee. Long term, the program should result in a reduction of Sheriff responses to chronic nuisance properties. The resolution to establish the Abatement Fee will return to the City Council at a Public Hearing at its December 9, 2008 City Council meeting.

Background:

In connection with the adoption of the LANCAP program in 2003, evidence was presented to the City Council which demonstrated that areas with a high concentration of rental housing also consumed a disproportionate number of calls for law enforcement services. The purpose of this ordinance is to further identify those properties that are using a disproportionate level of law enforcement services for certain specified crimes. The ordinance provides that any property that produces four (4) calls for service within a twelve-month period will receive a nuisance incident notice. If a fifth call for service is made within the same twelve-month period, a nuisance abatement notice will be sent to the owner and the owner will be charged for the cost of law enforcement services for the fifth and each subsequent call.

With respect to rental housing, the issuance of a notice of abatement for the sixth call for services will result in the commencement of proceeding to revoke the owner's rental housing business license. The owner can avoid the charge and the revocation proceedings by providing evidence that eviction proceedings have been completed against any tenant responsible for the conduct that resulted in such calls for service.

Owner shall not re-let any portion of the property to such evicted tenant.

The proposed ordinance is loosely based on an ordinance adopted by the City of Norwalk to deal with gang and graffiti issues. The proposed ordinance deals with a broader range of criminal conduct. The following crimes are covered by the Ordinance:

- (1) Disturbing the peace in violation of Section 415 of the California Penal Code.
- (2) Making, causing or suffering any unnecessary noises or sounds in violation of Chapter 8.24 of this Code.
- (3) Any form of assault as defined in Section 240 of the California Penal Code and/or battery as defined in Section 242 of the California Penal Code; provided, however, that a violation of Section 273.5 of the California Penal Code shall not be considered a nuisance activity for purposes of this section.
- (4) Littering in violation of Chapter 8.20 of this Code.
- (5) 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 Chapter 8.44 of this Code.
- (6) Discharging a weapon within the city in violation of Section 9.04.060 of this Code.
- (7) Conducting or maintaining a special event in violation of Chapter 9.40 of this Code.
- (8) Loitering in violation of Chapters 9.12, 9.16 or 9.18 of this Code.
- (9) The committing of any serious felony as defined in Penal Code Section 1192.7(c).
- (10) The committing of any violent felony as defined in Penal Code Section 667.5(c).
- (11) Anything which is injurious to health, or is indecent, or offensive to the senses, or is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, as provided in Penal Code Sections 370 and 371.

Attachment(s):
Ordinance No. 908

ORDINANCE NO. 908

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, AMENDING TITLE 8 OF THE LANCASTER MUNICIPAL CODE TO ADD A NEW CHAPTER 8.52 RELATING TO CHRONIC NUISANCE PROPERTIES

WHEREAS, a city “may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws” (Cal. Const., art. XI § 7);

WHEREAS, there are properties within the City that utilize and require a disproportionate share of law enforcement services;

WHEREAS, pursuant to the foregoing authority, the City of Lancaster has determined that it is in the public interest and welfare to establish regulations that regulate ambulance service within the City of Lancaster.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 8 of the Lancaster Municipal Code is hereby amended by adding a new Chapter 8.52 thereto, to read as set forth in Exhibit “A” attached hereto and incorporated herein by reference.

Section 2. That any provision of the Lancaster 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 effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance, including Exhibit “A”, is held for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Lancaster hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage or on January 1, 2009, whichever comes first.

I, Geri K. Bryan, CMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the _____ day of _____, 2008, and placed upon its second reading and adopted at a regular meeting of the City Council on the _____ day of _____, 2008 by the vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

GERI K. BRYAN, CMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss
CITY OF LANCASTER }

CERTIFICATION OF ORDINANCE
CITY COUNCIL

I, _____, _____ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 908, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)

**EXHIBIT “A”
ORDINANCE NO. 908**

CHAPTER 8.52

CHRONIC NUISANCE PROPERTY

Sections:

8.52.010	Short Title.
8.52.020	Purpose.
8.52.030	Definitions.
8.52.040	Chronic Nuisance Prohibited.
8.52.050	Nuisance Incident Notice.
8.52.060	Abatement Notice.
8.52.070	Cost Recovery.
8.52.080	Property Owner’s Affirmative Defense.
8.52.090	Appeal.
8.52.100	Severability.

8.52.010 Short Title.

This Chapter shall be known as and may be cited as the “Chronic Nuisance Property Ordinance.”

8.52.020 Purpose.

The purpose of this Chapter is to impose on and collect from the owner and/or occupant of real property the cost for law enforcement services that are over and above the cost of providing normal law enforcement services city-wide, if such excess costs are spent to abate a nuisance that has occurred, or is maintained and permitted, on the property. Nothing contained in this Chapter shall be construed to prevent the city from exercising the authority and procedures authorized under any other section of local, state or federal law.

8.52.030 Definitions.

For the purpose of this Chapter, the following definitions shall apply:

“Call for law enforcement service” means any reporting of criminal activity that is reasonably likely to, and that actually does, result in a response by the Los Angeles County Sheriff’s Department.

“Chronic nuisance property” means property that has generated five (5) or more nuisance service calls during any twelve (12) month period.

“City” means the City of Lancaster.

“City manager” means the city manager of the city or his or her duly authorized representative.

“Nuisance activity” means any of the following activities, behaviors, or conduct whenever engaged in by property owners, operators, tenants, occupants, or persons associated with a property:

- (1) Disturbing the peace in violation of Section 415 of the California Penal Code.
- (2) Making, causing or suffering any unnecessary noises or sounds in violation of Chapter 8.24 of this Code.
- (3) Any form of assault as defined in Section 240 of the California Penal Code and/or battery as defined in Section 242 of the California Penal Code; provided, however, that a violation of Section 273.5 of the California Penal Code shall not be considered a nuisance activity for purposes of this section.
- (4) Littering in violation of Chapter 8.20 of this Code.
- (5) 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 Chapter 8.44 of this Code.
- (6) Discharging a weapon within the city in violation of Section 9.04.060 of this Code.
- (7) Conducting or maintaining a special event in violation of Chapter 9.40 of this Code.
- (8) Loitering in violation of Chapters 9.12, 9.16 or 9.18 of this Code.
- (9) The committing of any serious felony as defined in Penal Code Section 1192.7(c).
- (10) The committing of any violent felony as defined in Penal Code Section 667.5(c).
- (11) Anything which is injurious to health, or is indecent, or offensive to the senses, or is an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, as provided in Penal Code Sections 370 and 371.

“Nuisance service call” means a call for law enforcement service that is a verifiable event and that is for nuisance activity.

“Person associated with” means any person who, whenever engaged in a nuisance activity, enters, patronizes, visits or attempts to enter, patronize or visit, a property including any officer, director, customer, agent, employee or independent contractor of a property owner, tenant, or occupant.

“Property” means any parcel of land or structure, regardless of zoning, residential or business classification.

“Verifiable event” means any of the following: (i) an event that is initially observed by a peace officer as defined in the California Penal Code; (ii) a call for law enforcement service to the Los Angeles County Sheriff’s Department by a known person who is identifiable to support the event; or (iii) a call for service to the Los Angeles County Sheriff’s Department by an unknown person if the event is substantiated by a peace officer as defined by the California Penal Code or a witness.

8.52.040 Chronic Nuisance Prohibited.

It shall be unlawful for any property owner, tenant, or person associated with a property to allow the establishment of, keep, maintain, or fail to abate a chronic nuisance property.

8.52.050 Nuisance Incident Notice.

A. When the city manager determines that the Los Angeles County Sheriff's Department has been dispatched to the same property on four (4) or more nuisance service calls within any twelve month period, the city manager may, but shall not be required to, issue a written nuisance incident notice to the owner of the property and tenant, if applicable. The nuisance incident notice may be served upon the owner of said property by regular mail, to the mailing address indicated on the last equalized assessment roll of the Los Angeles County Assessor's Office. The nuisance incident notice may be served upon a tenant by regular mail, to the tenant's last known address. The service of a nuisance incident notice, as provided in this section, shall be prima facie evidence that the owner or tenant served is the person in control of the property and has knowledge of and has permitted subsequent conduct or behavior at or upon the property.

B. The nuisance incident notice authorized by this section shall: (i) identify the type and specific location of nuisance service call(s), including tenant or lessee names where applicable; (ii) summarize the evidence of the nuisance occurring on the property; (iii) provide the dates on which the nuisance calls for service were made and the dates of any prior responses by the Los Angeles County Sheriff's Department to nuisance incidents on the property; and (iv) warn the owner of the property and any tenant that future nuisance service calls may subject them jointly and severally to liability for the cost associated with any response to such nuisance service call, based upon the actual cost of the response.

8.52.060 Notice of Abatement.

A. When the city manager, or his designee, determines that Los Angeles County Sheriff's Department has been dispatched to five (5) or more nuisance service calls, as defined in Section 8.52.030 and of this Code, at the same property within any twelve (12) month period, a written notice of abatement will be issued to the owner of the property and to all tenants. The notice of abatement may be served upon the owner of said premises by regular mail, to the mailing address indicated on the last equalized assessment roll of the Los Angeles County Assessor's Office. The notice of abatement may be served upon a tenant by regular mail, to the tenant's last known address. The service of a notice of abatement, as provided in this Section 8.52.060, shall be prima facie evidence that the owner or tenant served has knowledge of and has permitted subsequent conduct or behavior at or upon the property.

B. The notice of abatement required by this Section 8.52.060 may be in a form substantially similar to that set forth in Section 8.28.110, but at a minimum shall: (i) state that the property constitutes a chronic nuisance property in violation of this Chapter; (ii) identify the type and specific location of nuisance service calls, including tenant or lessee names, where applicable; (iii) summarize the evidence of the nuisance occurring on the property; (iv) provide the dates on which the nuisance service calls were made and the dates of any prior responses by the Los Angeles County Sheriff's Department to nuisance incidents on or at the property; and (v) warn the owner of the property and any tenant that future nuisance service calls will subject them jointly and severally to liability for the cost associated with any response to such nuisance service call, based upon the actual cost of the response.

C. A subsequent and separate notice of abatement shall be issued pursuant to this section for each and every nuisance service call received after the first notice of abatement is issued.

8.52.070 Cost Recovery.

A. When an abatement notice has been properly served as set forth in Section 8.52.060, the owner of the property and any tenant shall be jointly and severally responsible for each successive nuisance incident occurring on the property and shall be jointly, severally and individually responsible for payment of any and all costs associated with each successive nuisance service call within any twelve (12) month period, based upon the actual cost of the response. The cost of a response shall include, without limitation, the gross salaries, including all benefits and overhead paid to the responding employees of the Los Angeles County Sheriff's Department, City administrative costs, the pro rata cost of all equipment and the cost of repairs to any equipment or property owned by the City of Lancaster that is damaged in responding to the nuisance service call.

B. The costs of the response shall be included in a statement of abatement costs, which shall be prepared and served subject the provisions of Section 8.28.190 of this Code. If a statement of abatement costs is not timely paid, the City may cause a special assessment to be made upon the property pursuant to Section 8.28.200 of this Code or may cause a nuisance abatement lien to be recorded upon the property pursuant to Section 8.28.210 of this Code.

8.52.080 Revocation of Rental Housing Business License

In addition to the remedies specified in Section 8.52.070, in the event the owner fails to pay the amount set forth in the statement of abatement costs or in the event a subsequent nuisance abatement notice is served pursuant to Section 8.52.060 C, owners rental housing business license shall be revoked pursuant to Section 5.40.170 of this Code.

8.52.090 Property Owner's Affirmative Defense.

When a chronic nuisance property is occupied by, in the possession of and/or under the exclusive control of a tenant, it shall constitute an affirmative defense to the imposition of liability pursuant to Section 8.52.070 and revocation of the rental housing business license pursuant to Section 8.52.080 that the owner of the chronic nuisance property has completed unlawful detainer proceedings against the tenant or tenants responsible for the nuisance service call. The property owner shall not re-let any portion of the property to a tenant evicted pursuant to this section.

8.52.100 Appeal.

Any property owner or tenant who contests a notice of abatement issued pursuant to Section 8.52.060 shall, subject to filing a timely appeal, obtain review thereof before a hearing officer in the same manner as set forth in Sections 8.28.140 and 8.28.150.

8.52.110 Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The city council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.