TO:       HONORABLE CITY COUNCIL
FROM:     CITY MANAGER    DEPARTMENT:  POLICE
DATE:     JULY 10, 2006   CMR:289:06
SUBJECT:  ADOPTION OF AN ORDINANCE ADDING CITY OF PALO ALTO
MUNICIPAL CODE SECTION 9.09.010 (a) – (c) - REGULATING
PUBLIC NUISANCE

RECOMMENDATIONS

Staff recommends that the City Council adopt the attached ordinance Palo Alto Municipal Code, Title 9: Public Peace, Morals and Safety: Section 9.09.010 (a) – (c) Regulating Public Nuisance.

BACKGROUND

In September 2005, the Police Department hosted a meeting that included City staff (Human Services, Public Works, City Attorney’s Office) and members of the Santa Clara District Attorney’s Office (DA). The purpose of the meeting was to discuss the numerous calls for service involving intoxicated subjects specifically in the downtown area, and to begin to develop strategies to improve the current situation.

This meeting was called to address what staff believes are significant public health and safety issues. These issues include urination/defecation in areas open to the public and the igniting of fires in public areas by individuals attempting to stay warm. Although staff acknowledges that these issues cannot be resolved with just one strategy, the Police Department needs additional enforcement tools to address these issues. As a result in response to this issue, the City Attorney’s Office has drafted a new ordinance that would give the Police Department another enforcement option.

DISCUSSION

Staff has received numerous complaints from downtown business owners and visitors about the urination/defecation issue. Police officers frequently respond to calls involving subjects who have consumed too much alcohol at downtown establishments and who are relieving themselves in public. Similar calls have been received concerning transient subjects who are committing these same acts. These acts occur in parking lots/garages, stairwells, in alcoves/entrances to businesses, etc. While there have been several applicable Penal Code sections, the DA has declined to prosecute based upon problems with prosecution. Recently, the First District Court of Appeals ruled that public urination could not be prosecuted under the littering statute. As a result, officers can no longer use California Penal Code Section 374.4. The proposed ordinance will provide officers with a useful enforcement tool.
There are pay toilets available for these purposes. Free tokens are provided to the unhoused population. Additionally, there are toilets in the two new parking garages that are open 24 hours a day. Nonetheless, certain individuals continue to utilize public areas for urination and defecation, despite the alternatives available.

Since January 2006, three intentionally set fires were reported to the Police Department in the downtown area. Two were in parking structures and one was ignited in the rear parking lot of a business. These fires were set by members of the unhoused population in efforts to keep warm. Because there was not any intent to cause damage, these events cannot be prosecuted under the arson statute (PC 451). Fortunately, there has not been damage to any structures that have occurred from these fires. However, staff is concerned about the potential of property damage and injuries. The proposed ordinance will also provide officers with an enforcement tool that can be used in these circumstances.

The penalty for committing these acts will be a misdemeanor. The City Attorney’s Office will have the discretion to reduce these violations to an infraction as it sees fit.

Staff has discussed the draft ordinance with the Human Relations Commission at its June 8, 2006 meeting. There was some concern about a noise section that had been included in the first draft and has since been removed and the definition of public nuisance. However, the Commissioners were supportive of the ordinance.

**RESOURCE IMPACT**

The Police Department and City Attorney’s Office will absorb enforcement and prosecution costs.

**POLICY IMPLICATIONS**

The proposed ordinance is consistent with City policies.

**ENVIRONMENTAL ASSESSMENT**

This is not a project under the California Environmental Quality Act (CEQA).
ATTACHMENTS


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