

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	_X_
CM	_X_
CA	___

DATE: MARCH 20, 2007

TO: CITY MANAGER/CITY COUNCIL

FROM LT. MARK LEVY, CHIEF OF POLICE SERVICES

SUBJECT: TRESPASSING ON PRIVATE PROPERTY

RECOMMENDED ACTION:

That the City Council:

1. conduct first reading and introduce an ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING CHAPTER 11.50 ENTITLED "TRESPASSES UPON PRIVATE PROPERTY PROHIBITED" TO TITLE 11 (PEACE, MORALS, AND SAFETY) TO THE DANA POINT MUNICIPAL CODE; and

2. conduct first reading and introduce an ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REPEALING CHAPTER 5.06 ENTITLED "SOLICITATION OF EMPLOYMENT OR BUSINESS FROM PUBLIC STREETS PROHIBITED" FROM TITLE 5 (BUSINESS REGULATIONS) OF THE DANA POINT MUNICIPAL CODE.

BACKGROUND:

Within the City, there are locations at which individuals regularly congregate. A number of these locations are situated on private property. An example of this problem is "Donut World", in Doheny Village. People will gather there and loiter about the property throughout the day. They commonly engage in activities such as drinking, card playing and gambling. Individuals are frequently cited for drinking, urinating and/or defecating in public. The atmosphere created by this sort of presence and offensive behavior portray a less than attractive business atmosphere and impact commerce.

In addition enforcement efforts of these misdemeanor acts on private property are often hindered by the legal process. California Penal Code section 602 (Trespassing) requires the property owners to sign as the arresting party in order

for a peace officer to take enforcement action. Property owners are often reluctant to get involved and it is burdensome for them to sign for each arrest every time there is a trespass.

This problem is not unique to the City of Dana Point, but has frustrated other local municipalities. For example, in late 2006, the City of Lake Forest enacted an ordinance to enable property owners to indicate their intentions to arrest trespassers by posting the property as "No Trespassing" and giving the city's police department a general letter of permission to arrest all trespassers. This letter allows the deputy to execute a misdemeanor arrest without obtaining the property owner's signature at that time because the property owner's intent to prosecute has already been obtained in writing.

DISCUSSION:

In order to address the issue of unauthorized individuals congregating and loitering on private property, staff has crafted an ordinance similar to the one adopted by the City of Lake Forest. (Supporting Document A.) In sum, the ordinance prohibits trespassing on private property without the permission of the property owner; subject to certain enumerated exceptions required by either constitutional or other law. The ordinance also outlines the requirements for the proper posting on the property that no trespassing is authorized by the property owner. Staff believes that this ordinance is constitutional and will assist the City, its police department, and private property owners to more efficiently and effectively address the issue of unauthorized individuals on private property.

Although our effort is to curtail the loitering of individuals there are legal issues relating to a municipality's ability to prohibit individuals from soliciting employment ; particularly if there is not another location within the municipality for individuals to solicit and seek temporary employment. Dana Point Municipal Code Chapter 5.06 currently prohibits solicitation (and attempts to hire solicitors) from any public street or highway (including sidewalks, medians, alleys and public ways). In an abundance of caution, the City Attorney's Office recommends that the City repeal Chapter 5.06 concurrently with the adoption of the new ordinance concerning trespassing on private property. The repeal of Chapter 5.06 should remedy this issue.

FISCAL IMPACT:

Potential increased costs resulting from increases in the number of municipal code violations prosecuted by the City.

NOTIFICATION/FOLLOWUP:

If the City Council approves the first reading of the Ordinances, a second reading of the Ordinances is required for final adoption.

ALTERNATIVE ACTIONS:

Other actions as determined by the Council.

SUPPORTING DOCUMENTS: _____ **PAGE NO.**

A. [Ordinance \(Trespassing\)](#).....4

B. [Ordinance \(Solicitation\)](#)8

ORDINANCE NO. 07-**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADDING CHAPTER 11.50 ENTITLED "TRESPASSES UPON PRIVATE PROPERTY PROHIBITED" TO TITLE 11 (PEACE, MORALS, AND SAFETY) TO THE DANA POINT MUNICIPAL CODE.**

WHEREAS, the City of Dana Point ("City") is empowered by California Constitution Article XI, Section VII to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws;" and

WHEREAS, California Penal Code section 602 provides that it shall be a misdemeanor to trespass onto private property and cause interference with, obstruction of, or injury to any lawful business or occupation; and

WHEREAS, the City desires to adopt this Ordinance to regulate trespass on private property by prohibiting persons from remaining on private property without the consent of the property owner(s); and

THE CITY COUNCIL FOR THE CITY OF DANA POINT DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: The above recitals are incorporated herein by reference.

Section 2: Chapter 11.50 is hereby added to the Dana Point Municipal Code to read, in its entirety, as follows:

Chapter 11.50 PROHIBITION OF TRESPASSES UPON PRIVATE PROPERTY

11.50.010 Trespass on private property prohibited.

(a) No person shall remain upon any private property or business premises, after being notified by the owner, owner's agent, lessee, or by a peace officer acting at the request of any of the above to remove oneself from the property. For purposes of this section, the term "lessee" includes a tenant in lawful possession of real property.

(b) No person, without permission, express or implied, from the owner, owner's agent, or lessee, shall enter upon the private property or business premises after having been notified by the owner, owner's agent, or lessee to keep off or stay away from the property.

(c) No person shall enter or remain upon posted private property without the permission, expressed or implied, of the owner, owner's agent, or lessee of such posted property or premises.

(d) Exceptions. This section shall not apply in any of the following instances:

(1) Where its application results in or is coupled with an act prohibited by the Unruh Civil Rights Act or any other provision of law relating to prohibited discrimination against any person on account of sex, race, color, religion, creed, ancestry, national origin, disability, medical condition, marital status, or sexual orientation;

(2) Where its application results in or is coupled with an act prohibited by Section 365 of the California Penal Code or any other provision of law relating to duties of innkeepers and common carriers;

(3) Where its application would result in an interference with or inhibition of peaceful labor picketing or other lawful labor activities;

(4) Where its application would result in an interference with or inhibition of any other exercise of a constitutionally protected right of freedom of speech such as, but not limited to, peaceful expressions of political or religious opinions, not involving offensive personal conduct; or

(5) Where the person who is upon another's private property or business premises is there under claim or color of legal right. This exception is applicable, but not limited to, the following types of situations involving disputes wherein the participants have available to them practical and effective civil remedies, such as: marital and post-marital disputes, child custody or visitation disputes, disputes regarding title to or rights in real property, landlord-tenant disputes, disputes between members of the same family or between persons residing upon the property concerned up until the time of the dispute, employer-employee disputes, business-type disputes such as those between partners, debtor-creditor disputes, and instances wherein the person claims rights to be present pursuant to a valid order, decree, or process of a court.

(e) As used in this section, "posted property" means any property which contains at each corner and entrance a posted sign three feet above the normal ground level. Each sign shall be composed of wood, metal or other equally substantial material, the face of which is not less than one (1) square foot in area, and upon which, in legible letters not less than two (2) inches in height in black against a white background, appear the words "PRIVATE PROPERTY – NO TRESPASS" or words conveying a similar message. The sign may also contain words such other words as may be desired which indicate that trespassers are subject to prosecution. Where the area of such property exceeds one (1) acre, the notice shall also be posted at intervals of not more than three-hundred (300) feet along or near the boundaries thereof.

Section 3: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance 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 portions of this Ordinance. The City Council hereby declared that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 4: The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this ____ day of March, 2007.

Diane L. Harkey, Mayor

ATTEST:

Kathy M. Ward
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF DANA POINT)

I, KATHY M. WARD, City Clerk of the City of Dana Point, DO HEREBY CERTIFY, that the foregoing Ordinance No. 07-____ was duly introduced at a regular meeting of the City Council on the ____ day of March, 2007, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Kathy M. Ward
City Clerk

ORDINANCE NO. 07-**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REPEALING CHAPTER 5.06 ENTITLED "SOLICITATION OF EMPLOYMENT OR BUSINESS FROM PUBLIC STREETS PROHIBITED" FROM TITLE 5 (BUSINESS REGULATIONS) OF THE DANA POINT MUNICIPAL CODE.**

THE CITY COUNCIL FOR THE CITY OF DANA POINT DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Chapter 5.06 of the Dana Point Municipal Code, entitled "SOLICITATION OF EMPLOYMENT OR BUSINESS FROM PUBLIC STREETS PROHIBITED," and Ordinance No. 89-17 that adopted Chapter 5.06, are hereby repealed in their entirety.

Section 2: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance 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 portions of this Ordinance. The City Council hereby declared that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

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City Clerk