



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: FEBRUARY 19, 2019

DEPARTMENT: OFFICE OF THE CITY ATTORNEY

FROM: CHRISTOPHER A. CALLIHAN, CITY ATTORNEY

TITLE: ORDINANCE PROHIBITING DISTURBANCES AND UNRULY GATHERINGS; COST RECOVERY FOR MULTIPLE RESPONSES

RECOMMENDATION MOTION:

A motion to adopt an ordinance adding Article XI to Chapter 5 of the Salinas Municipal Code to prohibiting disturbances and unruly gatherings and imposing sanctions, in the form of City costs, when City officials respond multiple times to the same disturbance.

RECOMMENDATION:

It is recommended that the City Council adopt the proposed ordinance.

EXECUTIVE SUMMARY:

The proposed ordinance adds an article to the Salinas Municipal Code making it unlawful and a public nuisance for individuals to cause or allow a disturbance to occur on any private property in the city which negatively affects the peace, health, safety, or welfare of the community.

DISCUSSION:

Council members Barrera, De La Rosa, and Davis have raised concerns regarding loud and unruly gatherings in neighborhoods within their districts including, but not limited to, loud parties at which live music or amplified music disturbs the peace and the quiet of the residents. A related concern is the need for Salinas officials to respond to the same location multiple times in order to gain compliance.

The proposed ordinance makes it unlawful and a public nuisance for a responsible person(s) (as defined in the ordinance) to cause or to allow or to engage in conduct on private property that causes a substantial disturbance of the quiet enjoyment of private property or public property in a neighborhood, or which presents a threat to health, safety, or welfare of those in attendance, responding law enforcement personnel, or nearby residents or properties. Violations of the prohibitions set out in the ordinance may be criminally charged as a misdemeanor or prosecuted administratively pursuant to the City's administrative processes with penalties for violations

beginning at \$500.00 and increasing to \$1,500 for multiple violations within a twelve-month period.

In addition to any fines of penalties which may be imposed, the City will be entitled to recover from any person found to be in violation of any provision of the ordinance the City's full response costs incurred for subsequent responses within a twelve-hour period. For example, if the Salinas Police respond to complaints about a loud and unruly party, issue a warning, and then respond a subsequent time(s) to the same location for the same complaint, the City may impose its response costs on the person(s) responsible for the loud and unruly gathering and the multiple responses. The City's costs will include the costs of City employees who respond, in addition to any other City costs incurred in its multiple responses.

CEQA CONSIDERATION:

The action of adopting the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines section 15061(b)(3). This exemption is allowed when the activity, in this case the recommendation of adoption of the ordinance, does not have the potential for causing a significant effect on the environment.

STRATEGIC PLAN INITIATIVE:

The City Council's adoption of the proposed urgency interim ordinance supports the City Council's goals and objectives of improving the Quality of Life for all of its residents and promoting a Safe and Livable Community (2016-2019 Strategic Plan).

FISCAL AND SUSTAINABILITY IMPACT:

The City Council's adoption of the proposed ordinance would not have an impact on the City's General Fund, Measure E, or Measure G.

DEPARTMENTAL COORDINATION:

Implementation and enforcement of the proposed ordinance will require coordination among several City departments including Community Development (Planning, Building, and Code Enforcement), Police Department, Fire Department, and City Attorney's Office. The proposed ordinance was reviewed by the Salinas Police Department prior to its presentation to City Council for its consideration. The Salinas Police Department supports adoption of the proposed ordinance.

ATTACHMENTS:

Proposed Ordinance

AN ORDINANCE PROHIBITING DISTURBANCES AND UNRULY GATHERINGS; COST RECOVERY FOR MULTIPLE RESPONSES

City Attorney Impartial Analysis

This ordinance prohibits gatherings of people, such as parties, which rise to the level of being unruly to the point where they constitute a threat to the peace, health, safety, or general welfare of the community. A common example is parties which create excessive noise from loud music which disturbs the peace and the quiet of neighborhoods. Such loud and unruly gatherings are declared nuisances under this ordinance subjecting the host of such gatherings to sanctions.

Salinas Police Officers and Fire Department Employees often respond multiple times to complaints of unruly gatherings. This ordinance imposes an additional sanction—in the form of City costs—on the hosts of unruly gatherings to which City employees must respond to multiple times, provided adequate notice is provided.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Article XI is hereby added to Chapter 5 of the Salinas Municipal Code, will be titled “Cost Recovery for Responses to Disturbances and Unruly Gatherings,” and will read as follows:

Sec. 5-11.01. Findings and Purpose.

(a) Some gatherings of people, such as parties, frequently become loud and unruly to the point that they constitute a threat to the peace, health, safety, or general welfare of the public as a result of conduct such as one or more of the following: excessive noise, excessive traffic, obstruction of public streets or crowds who have spilled over into public streets, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, and litter.

(b) The City of Salinas, primarily its Police Department and its Fire Department, are required to make multiple responses to such unruly gatherings in order to restore and to maintain the peace and to protect public safety. Such gatherings are a burden on scarce City resources and can result in City responses to regular and emergency calls being delayed and public safety protection to the rest of the City being reduced.

(c) In order to discourage the occurrence of repeated disturbances, including loud and unruly gatherings, the persons responsible for these gatherings should be fined and should be responsible for the City’s costs incurred in repeatedly responding to the disturbances.

(d) In order to control unnecessary disturbances, including those caused by unruly gatherings in the city, it is declared to be the policy of the City to prohibit unruly gatherings that create a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as specified in this article.

(e) It is determined that unruly gatherings are detrimental to the public health, safety, and welfare, and are contrary to the public interest. Therefore, the City Council declares that creating, maintaining, causing, or allowing to be created, maintained, or caused, any unruly gathering in a manner prohibited by or not in conformity with the provisions of this article is a public nuisance

and shall be punishable as such in any manner provided by law, including, but not necessarily limited to, the filing of a civil or a criminal action.

Sec. 5-11.02. Definitions.

(a) Disturbance means and will include, but will not be limited to, an unruly gathering; conduct creating a disturbing or loud noise or sound; any conduct which disrupts the peace and quiet of a neighborhood; and any conduct which interferes with the quiet enjoyment of neighboring property by persons lawfully thereon.

(b) Unruly gathering means a gathering of twenty or more persons on private property or public property that results in conduct that causes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of an immediate neighborhood or presents a threat to the health, safety, and welfare of those in attendance, responding enforcement personnel, or nearby residents or properties. For purposes of this article, “conduct that causes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of an immediate neighborhood, or presents a threat to the health and safety...” shall include, but is not limited to, any or all of the following: a noise disturbance; obstruction of public streets or rights-of-way by people or vehicles; public drunkenness; unlawful possession of alcohol or drugs; serving alcohol to minors; fights; disturbances of the peace; urinating or defecating in public; setting off fireworks; vandalism; littering on public or private property; not belonging to the host of the gathering; presence of persons on rooftop areas not designed for occupancy; unpermitted live bands, amplified music or DJs; and throwing bottles or other objects or substances at law enforcement or any other person.

(c) Response means and will include, but will not be limited to, the arrival of a police officer or other law enforcement officer at the scene of a disturbance to render whatever service is reasonably required in order to stop a disturbance.

(d) Responsible party means any person who owns, leases, or is lawfully in charge of the property where the disturbance takes place, or any person who organizes, controls, or participates in a disturbance. If the responsible person is a minor, then the parent or the guardian who has physical custody of the child at the time of the disturbance will be the responsible person who is liable and responsible.

Sec. 5-12.03. Disturbances and Unruly Gatherings Prohibited.

(a) It shall be unlawful and constitute a public nuisance for any responsible person(s) to cause or allow a disturbance to occur on any private property or public property within the city. A disturbance may be abated by the city by all reasonable means including, but not limited to, an order requiring the unruly gathering to be disbanded, the issuance of citations, and/or the arrests of any law violators under any applicable local laws and state statutes.

(b) It shall be unlawful and a violation of this article for any person to attend or to participate in an unruly gathering by engaging in conduct that causes a substantial disturbance of the quiet enjoyment of private property or public property in a significant segment of an immediate neighborhood, or presents a threat to the health, safety, and welfare of those in attendance, responding enforcement personnel, or nearby residents or properties.

Sec. 5-11.04. Responses to Disturbances.

(a) No responsible party shall cause, permit, or tolerate a disturbance.

(b) Whenever a police officer or other law enforcement officer at the scene warns any responsible party present to discontinue the disturbance, the responsible party will be liable and responsible for the actual cost of each subsequent response required for a disturbance within twelve hours of the first response.

(c) At the first response, the responding police officer or other law enforcement office will give a written warning to one or more of the responsible parties present that the disturbance must cease immediately, and that if a second or subsequent response to the disturbance is required within twelve hours following such notice, a response fee will be charged to any responsible party for all responses after the first response.

(d) All responsible parties will be jointly and severally liable for the response charge regardless of whether or not a responsible party received a written warning pursuant to this section.

Sec. 5-12.05. Notice of Unruly Gathering—Mailing to Property Owner.

When a peace officer has determined that an unruly gathering has occurred, and either the unruly gathering was hosted by a person or persons other than the owner or responding personnel are unable to determine whether the owner was the host, the Police Department will mail a notice to the owner of the property where the unruly gathering occurred. The notice will advise the property owner(s) that any subsequent violation of this article at the same property may result in the property owner being subject to administrative action and penalties as defined in this article.

Sec. 5-12.06. Persons Liable for a Response to an Unruly Gathering.

If the City is required to respond to an unruly gathering, the following persons will be jointly and severally liable for civil penalties as set forth in this article, in addition to liability for any injuries to City personnel or damage to City property:

(a) The person or persons who own the property where the unruly gathering took place; provided, that notice has been mailed to the owner of the property as set forth herein and a subsequent unruly gathering occurs at least two weeks after the mailing of such notice.

(b) The responsible person or persons; provided, however, that if the responsible person is a juvenile, then the parents or the guardians of the juvenile will be jointly and severally liable for penalties and liabilities herein.

(c) Any persons in attendance at and engaging in conduct contributing to the unruly gathering as set forth in this article.

(d) Nothing in this section will be construed to impose liability on a property owner or responsible person for the conduct of persons who are present without the express or the implied consent of the property owner/responsible person as long as the property owner/responsible person has taken reasonable steps to exclude such uninvited participants from the property. Where an invited person engages in conduct which the property owner/responsible person could not reasonably foresee and the conduct is an isolated instance of a person at the gathering violating the

law which the property owner/responsible person is unable to reasonably control without the intervention of the police, the unlawful conduct of that person shall not be attributable to the property owner/responsible person for the purposes of determining whether the gathering constitutes an unruly gathering.

Sec. 5-11.07. No Mandatory Duty of Care.

This article is not intended to impose, and shall not be construed or given effect in a manner that imposes upon the city, or any officer, employee, agent, or representative of the city, a mandatory duty of care toward persons or property within and without the city limits, so as to provide a basis of civil liability for damages, except as may otherwise be imposed by law.

Sec. 5-11.08. Charging for Responses.

(a) In addition to any fines or penalties which may otherwise be levied by the city pursuant to this article, the city shall be entitled to recover from any person found to be in violation of any provision of this article (responsible party), the city's full response costs incurred for each subsequent response within the twelve-hour period following the first response.

(b) For purposes of this article, the term "response costs" means those reasonable and necessary costs directly incurred by the city for a response under this article and will include the cost of providing police, fire, and/or other emergency response services to include, but not limited to:

- (1) Salaries and benefits of law enforcement and/or emergency personnel for the full amount of time spent responding to, remaining at, or otherwise dealing with such gatherings, and the administrative costs attributable to such responses;
- (2) The cost of any medical treatment to or for any law enforcement personnel injured while responding to, remaining at, or leaving the scene of such gatherings; and
- (3) The cost of repairing any city equipment or property damaged and the cost of the use of any such equipment used in responding to, remaining at, or leaving the scene of such gatherings.

(c) The city's response costs will be deemed a debt owed to the city which may be recovered by the city in a civil action. In addition to any response costs which the city may recover, in the event the city brings a civil action to enforce the provisions of this section and to recover its response costs, the city may be entitled to recover its attorney fees and costs incurred in the action if the city prevails.

(d) The bill of charges will be served upon the responsible party(ies) within thirty days after the last response to a disturbance. The bill of charges must be paid within thirty days of the date of such bill.

(e) The total amount of the response charge will be deemed to be a civil debt to the City and the Finance Director and the City Attorney may take such action to recover the costs as the City is authorized to do by law for the recovery of a civil debt. If the City is obliged to initiate litigation or other proceedings authorized by this section to recover this debt, the responsible party(ies) will

also be responsible for costs of suit, attorney fees, and costs of collection, in addition to the response costs.

(f) The bill of charges and any other notices required by this section will be served upon the responsible party(ies) in accordance with the service procedures established in this Code. If the responsible party(ies) has no last known business or residence address, then the scene of the disturbance will be deemed to be the proper address for service of notice.

(g) The bill of charges will include a notice of the right of the person being charged to request a determination by the City to dispute the imposition of a response charge or the amount of the charge. Any request for a determination to dispute the imposition of a response charge or the amount of the charge must be in writing and must be received by the City Clerk within ten days of the date of service of the bill of charges. The City Manager will designate an individual to hear and to rule upon such requests. The decision of the designated City official will be final.

Sec. 5-11.09. Violations; Penalties.

(a) Violation of this article will be charged as a misdemeanor, punishable by up to six months in the county jail and/or up to a one thousand dollar fine.

(b) Alternatively, and in the discretion of the city attorney, a violation of this article may be prosecuted administratively. Any enforcement officer of the city, at his or her discretion, may issue an administrative citation for a violation of this article. There is a no requirement of a first warning in order for the enforcement officer to issue the citation.

(1) A first violation of this article shall result in a citation with a five-hundred-dollar penalty.

(2) A second violation of this article within a twelve-month period shall result in a citation with a one-thousand-dollar penalty.

(3) A third or a subsequent violation of this article within a twelve-month period shall result in a citation with a one thousand five-hundred-dollar penalty.

(c) The administrative penalty prescribed in this section is in addition to any administrative cost recovery fee for public safety responses set forth in the Salinas Municipal Code.

(d) The remedies provided in this Article are in addition to all other civil and criminal remedies available to the City with respect to the unlawful conduct constituting the public nuisance which gave rise to the need for the City response under this Article.

Sec. 5-11.10. This article shall not be interpreted in any manner that conflicts with the laws or the constitutions of the United States or of the State of California.

SECTION 2. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Salinas City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, clause, and phase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. Effective Date. This Ordinance will take effect thirty (30) days from and after its adoption.

SECTION 4. California Environmental Quality Act. This ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines section 15061(b)(3). This exemption is allowed when the activity, in this case the recommendation of adoption of the ordinance, does not have the potential for causing a significant effect on the environment.

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney