



NEWPORT BEACH

City Council Staff Report

March 12, 2024
Agenda Item No. 10

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2024-6 and Resolution Nos. 2024-18 and 2024-19: Code Enforcement Enhancement Program Associated with the Use of Public Property for Commercial Purposes (PA2024-0015)

ABSTRACT:

For the City Council's consideration are code enforcement enhancements needed to enforce unpermitted vending on any public property not meeting the definition of a sidewalk or pathway. Such areas include, but are not limited to, alleys, beaches, piers, squares, streets, street ends, and parking lots. Enhancements include: 1) amending Chapter 10.08 to include authority to impound equipment and items used in violation of current code; 2) adoption of an impound fee to allow cost recovery of impoundment and storage of items; 3) changes to staffing; and 4) purchase of an all-terrain vehicle and trailer.

RECOMMENDATIONS:

- a) Conduct a public hearing;
- b) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because this action will not result in a physical change to the environment, directly or indirectly;
- c) Waive full reading, direct the City Clerk to read by title only, introduce Ordinance No. 2024-6, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Section 10.08.030 (Use of Public Property for Commercial Purposes) of the Newport Beach Municipal Code*, and pass to second reading on March 26, 2024;
- d) Adopt Resolution No. 2024-18, *A Resolution of the City Council of the City of Newport Beach, California, Setting the Amount of Impoundment Fees Related to Unauthorized Use of Public Property for Commercial Purposes and Amending the Schedule of Rents, Fines and Fees*;
- e) Adopt Resolution No. 2024-19, *A Resolution of the City Council of the City of Newport Beach, California, Adding a Part-Time Public Works Maintenance Aide Position to the Public Works Department, and Upgrading a Part-Time Code Enforcement Officer Position to a Full-Time Code Enforcement Officer Position Within the Community Development Department*, and

- f) Approve Budget Amendment No. 24-054, for \$36,748.02 in increased expenditure appropriations in FY 2023-24 for the Unpermitted Commercial Use of Public Property Impounds.

DISCUSSION:

On November 27, 2018, the City Council adopted Ordinance No. 2018-19, implementing sidewalk vending regulations in compliance with Senate Bill 946 (Safe Sidewalk Vending Act). Despite the City of Newport Beach's efforts to implement a comprehensive ordinance (Chapter 5.97 [Sidewalk Vending Program] of the Newport Beach Municipal Code), which includes permitting, location and operational requirements, state law decriminalized unpermitted sidewalk vending. Consequently, there has been a notable increase in unpermitted vending within the city, extending beyond sidewalks to beaches and piers.

Additionally, independent of sidewalk vending regulations, the City prohibits the commercial use of public property in accordance with Newport Beach Municipal Code (NBMC) Section 10.08.030 (Use of Public Property for Commercial Purposes). Despite code enforcement efforts, unauthorized commercial activities persist, particularly during peak tourist seasons and summer months. One contributing factor is the reluctance of individuals engaged in unauthorized commercial activities to provide identification or carry identification on their person, impeding citation issuance. Moreover, City Code Enforcement Division officers observe that individuals or groups engaged in commercial activities often return to prohibited areas after the officers depart. The challenge of patrolling beaches, due to their vast expanse and the difficulty of navigating sand, further complicates enforcement efforts. The rise in unauthorized commercial activities on public property has prompted complaints from both the public and lifeguards.

At the February 3, 2024, City Council Planning Session, staff presented a comprehensive overview of proposed enhancements to the code enforcement program aimed at addressing the increase of unpermitted vending on any public property not meeting the definition of a sidewalk or pathway. Such areas include, but are not limited to, alleys, beaches, piers, squares, streets, street ends, and parking lots. The City Council expressed general support for the proposed enhancements, recognizing the need for proactive measures to mitigate the issue.

Impound Authority

NBMC Section 10.080.030 (Use of Public Property for Commercial Purposes) prohibits the use of any public right-of-way or parkway or other public property for the purpose of storing or displaying any equipment, goods, materials or merchandise, or any other commercial purpose. The proposed ordinance will amend the NBMC and authorize impoundment of equipment, goods, materials, merchandise and property, by authorized City employees, for a minimum of 30 days if said equipment was involved in the unauthorized use of public property for commercial purposes. City officials may also impound these items if it reasonably appears a person abandoned these items on public property.

The proposed amendment outlines procedures for authorized City employees to follow for the impoundment, including issuing receipts to individuals engaged in the unauthorized commercial use of public property. These receipts will contain information on the date and time of impoundment, a description of the seized items, and instructions on how to reclaim the impounded items and the process for appealing the impoundment. The ordinance authorizes City employees to immediately dispose of impounded goods or materials that cannot be safely stored or are perishable. Impounded items may be reclaimed after 30 days if the individual pays an impound fee and provides proper proof of ownership. Items not reclaimed within 60 days of impoundment will be deemed abandoned and forfeited to the City, which may dispose of them at its sole discretion. The ordinance provides individuals with the right to request an administrative hearing to appeal the impoundment of equipment and items (except those disposed of due to safety concerns or perishability). A redline version of the proposed amendment is included as Attachment E.

Impound Fee

NBMC Section 3.36 (Cost Recovery for User Services), City Council Policy F- 4 (Revenue Measures), and Item 12 of the Fiscal Sustainability Plan, provide policy guidance related to setting cost recovery targets and updating user fees. User fees, also known as cost-of-service fees, are charges levied on a private citizen or group for services performed or provided by a government agency on their behalf. The City Council adopted its current Schedule of Rents, Fines and Fees on June 13, 2023.

Staff is recommending an Impound Fee to recover the City's costs for impounding, storing and disposing of impounded items. Using well-established cost accounting methodologies, the City's consultant, ClearSource, met with City staff to discuss staff resources and time estimates for impounding equipment and items associated with unauthorized commercial activities on public properties. According to the consultant's study, the cost of service, based on 100% cost recovery, is \$319 per impound.

Staff Enhancements

Additional staffing is essential to handle the impoundment of large carts, which can require up to an hour for inventory and cleaning, as well as the daily cleaning of the storage facility. Additional tasks include the disposal of perishable items during impoundment, proper storage of equipment and materials, and accurate identification of individuals violating the City's ordinances. Staff enhancements include converting a part-time code enforcement officer position to full-time and adding a part-time Public Works maintenance aide position to the enforcement program.

Equipment

To implement the enforcement program discussed at the February 3, 2024, Planning Session, the City will purchase an all-terrain vehicle (ATV) to navigate on the beach sand and a trailer for transporting impounded items to the City's storage facility. The ATV is necessary for patrolling the City's beaches which stretch 9.3 miles. Without the ATV, the sand would significantly impede staff's ability to cover the beach areas. Training on how to drive the ATV will be mandatory for any staff member using the ATV.

FISCAL IMPACT:

The budget amendment appropriates \$36,748 in increased expenditure appropriations from the General Fund unappropriated fund balance. The purchase of the ATV and increase in salary and benefits will be expensed to expenditure accounts in the Community Development and Public Works Departments listed in Budget Amendment No. 24-054. Funding for maintenance of equipment in future fiscal years will be allocated during the development of the budget. Revenue generated by the Unpermitted Commercial Use of Public Property Impounds will be posted to the Code Enforcement Unpermitted Commercial Use Impound account in the Community Development Department, 01050503-531032 and budgeted in future fiscal years based on actuals.

The table below identifies the annual cost and the fiscal impact on the current Fiscal Year (FY) 2023-24.

Table 1 Fiscal Impacts

	Annual cost	FY 2023-24 Impact
One-time purchase of ATV and Trailer		\$15,000
Conversion of 0.75 FTE Code Enforcement Officer to Full-time	\$53,796	\$11,162
Additional 0.70 FTE Public Works Maintenance Aide	\$34,404	\$10,586
Total	\$88,200	\$36,748

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to Government Code Sections 66018(a) and 6062a (published at least 10 days before the scheduled meeting, on two publication dates separated by at least five days between them: notices were published on February 24, 2024 and March 2, 2024), Government Code Section 66016(a) (notice mailed at least 14 days prior to the meeting to any interested party who files a written request: notices were mailed to Building Industry Association of Southern California, Southern California Edison, and Southern California Gas Company on February 27, 2024), and the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Ordinance No. 2024-6 (Chapter 10.08 Amendment)

Attachment B – Resolution No. 2024-18 (Impound Fees)

Attachment C – Resolution No. 2024-19 (Staffing)

Attachment D – Budget Amendment No. 24-054

Attachment E – Redlines to NBMC Chapter 10.08