



STAFF REPORT

Date: June 16, 2014
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager; Derek P. Cole, City Attorney;
Kevin Rohani, Director of Public Works/City Engineer; Dan
Gomez, Chief of Police; Lindsey Bruno, Recreation Manager;
Troy Edgell, Code Enforcement Coordinator
SUBJECT: "Stay Away" Ordinance for Parks and Public Property
FOR CONSIDERATION AT THE CITY COUNCIL MEETING OF JULY 8, 2014

Background and Analysis

It sometimes happens that people misbehave at city parks or other public property and the best way of dealing with the problem is to remove that person from the area. For a number of years, Oakley has had an ordinance (Section 6.5.142 of the Municipal Code) authorizing city employees to remove persons from a park and not allow re-entry until the following day in cases where the person has interfered with an employee, has annoyed other park users or exhibited bad conduct in terms of profanity or threats.

It also sometimes occurs that more serious problems occur, such as vandalism, "trashing" of public restrooms, harming public property that justifies removal from the area for more than just the rest of the day. We have had recent examples of groups which bring individuals to parks who have trashed public restrooms, requiring specialized cleanup. Our informal objections to this have not been completely effective.

Thus staff proposes the attached ordinance, which expands on the present Sec. 6.5.142 by adding subparagraph (b), stating that the Director of Public Works may issue a "stay away order" to any individual or group involved in any "documented instance of any of the following prohibited conduct: vandalizing public property, creating the need for unusual or specialized cleanup or maintenance, defacing facilities or vehicles with graffiti, interfering with lawful performance of a city employee or causing damage or injury to property or persons." In such case, the Director could order the person or group to stay away from the park or public property for a period of up to 90 calendar days.

The order can also require the responsible party to pay restitution to the City, which becomes a civil debt owing to the City, and also to pay attorney's fees if the City has to enforce the order by applying to a court for a judicial order.

Several safeguards are built into the ordinance, including:

- The order can only be issued in "documented" cases of misconduct;
- The order can be appealed to the administrative hearing officer;
- The stay-away period is a maximum of 90 days;
- The order cannot be used to interfere with free speech rights.

Appellate courts have recognized that cities have a legitimate interest and power in the management and control of their parks and public property, and that reasonable rules can be established to ensure the public health, safety and welfare, *People v. Trantham* (1984) 161 Cal.App.3d Supp. 1, 14.

Additionally, BART is implementing a fairly new policy whereby it can issue "prohibition orders" to unruly passengers to keep them away from trains and BART facilities for specified periods of time, up to 90 days. Our new ordinance would be similar to this program.

Fiscal Impact

None perceived.

Recommendation

- 1) Introduce the ordinance by title only;
- 2) Introduce the ordinance amending Section 6.5.142 of the Oakley Municipal Code, dealing with removal from public property

Attachment

- A) Ordinance amending Section 6.5.142 of the Oakley Municipal Code.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY AMENDING
SECTION 6.5.142 OF THE OAKLEY MUNICIPAL CODE, DEALING WITH
REMOVAL FROM PUBLIC PROPERTY FOR PROHIBITED CONDUCT**

The City Council of the City of Oakley does ordain as follows:

Section 1. Section 6.5.142 of the Oakley Municipal Code is hereby amended to read as follows:

6.5.142. Removal from Park/Public Property for Prohibited Conduct.

(A) Any City employee or agent authorized by the City, including any police officer, may order a person to leave a park or other public property if the person has willfully harassed or interfered with any City employee or agent in the performance of duties, or who by their conduct, or by threatening or profane language, has annoyed or unreasonably interfered with the use of a park or other public property, or who has committed a public offense at such park or public property. Any such person who has been ordered to remove himself/herself from such park or public property shall not return or reenter such area until after 8:00 a.m. of the next day. This section shall not apply to speakers exercising their right under the Ralph M. Brown Act to address a public meeting in the Council Chambers of City Hall.

(B) The Director of Public Works may issue a “stay away” order to any individual or group when such person or members of a group have been involved in any documented instance of any of the following prohibited conduct: vandalizing any public property; creating the need for unusual or specialized cleanup or maintenance of public property; defacing facilities or vehicles with graffiti or other materials; interfering with the lawful performance of duty of a City employee or official; committing an act or engaging in behavior that may cause harm, damage or injury to any person or public property.

Any such “stay away” order shall be in writing or given by electronic transmission and delivered to the person or group to whom it is addressed. The order shall specify a period of time that the person or group is prohibited from returning to the park or other public property, but in no event to exceed a period of ninety (90) calendar days from the date of the order. The order shall specify the conduct that motivated the issuance of the order. The order shall specify the park(s) or other public property to which it applies. The order may also require the person or group to make restitution to the City for the cost of any damage or extra maintenance or cleanup of public property, the collection and recovery of which shall be a civil debt owing to the City. If the City successfully petitions a court of competent jurisdiction for enforcement of the stay away order by way of restraining order or injunction, or other judicial relief, the person or group named in the

order shall be responsible to reimburse the City for its attorneys fees and costs. The order shall also specify that it is appealable in the same manner as if an administrative citation had been issued pursuant to Title 1 Chapter 5 of this Code. This paragraph shall not apply to any person or group exercising the right under the Ralph M. Brown Act to address a public meeting at the Council Chambers of City Hall.

No person or group to which a stay away order has been issued shall return to or reenter the designated park or public property prior to the expiration of the order, unless the order has been overturned on administrative appeal or vacated by a court of competent jurisdiction.

Section 2. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Section 3. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 4. Effective Date and Publication.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date