

City of South Daytona

Office of the City Manager

1672 S. Ridgewood Avenue • South Daytona, FL 32119 • 386/322-3014



MEMORANDUM

To: James L. Gillis Jr., City Manager

From: Becky Witte, Deputy City Clerk

Re: Consideration of approving the Second and Final Reading of Ordinance No. 2024-02, including Fire Rescue nuisance activity calls within the monthly allowance of services.

Date: May 22, 2024

The City Council approved the first reading of Ordinance 2024-02 on May 14, 2024.

In 2008, the City Council adopted Ordinance No. 2008-19 creating an article regarding Chronic Nuisance Premises establishing a monthly allowance for Police and Code Enforcement services. The Code established the amount of police use and code enforcement use that each parcel of real property is entitled as a taxpayer of the City. Properties that use more than their allotment cause an unnecessary burden on all taxpayers of the City. Property owners should be responsible for the conduct and actions that occur on the property and therefore fiscally responsible for those actions.

Nuisance activity is defined in the Code as “any activity, behavior or conduct whenever engaged in by premises owners, operators, occupants or persons associated with a premises that could be enforced by means of a proceeding before the city's special master, through citation as set forth in this Code, through nuisance abatement, or relating to any actions or offenses relating to the following subject matter:

- (1) Firearms and weapons;
- (2) Harassment of a neighbor, disorderly conduct, or disturbing the peace;
- (3) Battery, substantial battery or aggravated battery;
- (4) Indecent exposure;
- (5) Keeping a place of prostitution, or otherwise using the premises for the purpose of prostitution;
- (6) Littering, solid waste or public health;
- (7) Arson;
- (8) Possession, manufacture or delivery of a controlled or illegal substance or related offenses;
- (9) Gambling;
- (10) Trespass to land or criminal trespass to a dwelling;
- (11) Production or creation of excessive noise or vibration;
- (12) Loitering;
- (13) Public drinking and other matters relating to alcoholic beverages;
- (14) Intoxicating beverages;

- (15) Unpermitted or illegal business;
- (16) Selling or giving away tobacco products to underage persons;
- (17) Illegal sale, discharge and use of fireworks;
- (18) Junk vehicles;
- (19) Action deemed a nuisance under state law;
- (20) Any action that is a violation of this Code which could be enforced by the through the city's code enforcement procedure;
- (21) Act of aiding and abetting of the activities, behaviors or conduct enumerated in this article; or
- (22) Conspiracy to commit or attempt to commit any of the activities, behaviors or conduct enumerated in this article.

Many of these nuisance activities are serviced by Fire Rescue and are a burden to the department and the City. Fire Chief John Brant suggested including Fire Rescue into the Code under this section to deter the overuse of Fire Rescue personnel for the outlined Nuisance Activities.

For purposes of the attached Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and strikethrough shall constitute deletions to the original text.

This revision will be another tool in the toolbox that staff can use to reduce the ability of nuisance properties to abundantly request fire rescue services. The key words to the above statement is that staff “can use” this ordinance depending on the circumstances of the frequent calls in combination to other calls for service on a given property. This revision will not apply to a medical office or assisted living facility operating normally, just those properties that have been deemed a nuisance.

Other municipalities have used this same language to great effect in reducing nuisance properties. Staff feels that by adding fire rescue calls to the list of monthly allowances, nuisance properties can be better regulated. Therefore, staff recommends approval of the Second and Final Reading of Ordinance No. 2024-02 to include Fire Rescue nuisance activity calls within the monthly allowance of services under Chapter 13, Police, Article V, Chronic Nuisance Premises.

ORDINANCE NO. 2024-02

AN ORDINANCE OF THE CITY OF SOUTH DAYTONA, FLORIDA, AMENDING THE CITY OF SOUTH DAYTONA CODE OF ORDINANCES, AMENDING CHAPTER 13, POLICE, ARTICLE V, CHRONIC NUISANCE PREMISES, SECTIONS 13-60, 13-61 AND 13-62, TO INCLUDE FIRE RESCUE NUISANCE ACTIVITY CALLS WITHIN THE MONTHLY ALLOWANCE OF SERVICES; AND PROVIDING FOR CONFLICTS, SEVERABILITY, APPLICABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of South Daytona, Florida (the “City”) adopts certain rules and regulations in order to promote the health, safety, morals, convenience, order, prosperity, and general welfare of the present and future inhabitants of the City; and

WHEREAS, the City Council finds that any premises that generate more than the monthly allowance of calls for nuisance activities have placed an undue and inappropriate burden on the taxpayers of the city; and

WHEREAS, it is the intent of the City Council to discourage nuisance activities by setting a monthly allowance of services with excessive calls would result in a fine and shall be a separate violation per occurrence;

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and ~~strike through~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, VOLUSIA COUNTY, FLORIDA, THAT:

SECTION 1. Recitals. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. Chapter 13, Police, Article V, Chronic Nuisance Premises, Sections 13-60, 13-61, and 13-62 of the City of South Daytona Code of Ordinances is amended to read as follows:

ARTICLE V. CHRONIC NUISANCE PREMISES

Sec. 13-60. Legislative findings and intent.

- (a) The city council finds that any premises that has generated more than the [monthly allowance of] calls for police service, fire rescue services, or code enforcement responses for nuisance activities found in section 13-62, (Monthly Allowance), has received more than the level of general and adequate police service, fire rescue services, and code enforcement activity and has placed an undue and inappropriate burden on the taxpayers of the city.
- (b) The above recitals are hereby adopted as legislative findings.
- (c) It is the intent of the city council to encourage the appropriate management of residential rental properties, to ensure that rental properties are maintained in a high-quality manner as required of all residential properties and to ensure that residential rental properties are maintained with the care necessary to ensure code compliance as evident in the vast majority of owner-occupied residences located within the city.
- (d) The recitals (whereas clauses) to ordinance number 08-19, from which this article is derived constitute additional legislative intent and findings of the city council relative to the enactment of this article.

Sec. 13-61. Definitions.

As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended and the definitions set forth in F.S. §§ 509.242 and 320.01(2)(b), shall apply to the interpretation of this article as shall the terms defined otherwise in the land development regulations of the city.

Absentee owner means an owner of residential rental property who does not utilize the subject property as their primary residence.

City means the City of South Daytona, Florida.

Monthly period means any consecutive thirty-day period.

Nuisance activity means any activity, behavior or conduct whenever engaged in by premises owners, operators, occupants or persons associated with a premises that could be enforced by means of a proceeding before the city's special master, through citation as set forth in this Code, through nuisance abatement, or relating to any actions or offenses relating to the following subject matter:

- (1) Firearms and weapons;
- (2) Harassment of a neighbor, disorderly conduct, or disturbing the peace;
- (3) Battery, substantial battery or aggravated battery;
- (4) Indecent exposure;
- (5) Keeping a place of prostitution, or otherwise using the premises for the purpose of prostitution;
- (6) Littering, solid waste or public health;
- (7) Arson;
- (8) Possession, manufacture or delivery of a controlled or illegal substance or related offenses;
- (9) Gambling;
- (10) Trespass to land or criminal trespass to a dwelling;
- (11) Production or creation of excessive noise or vibration;
- (12) Loitering;
- (13) Public drinking and other matters relating to alcoholic beverages;
- (14) Intoxicating beverages;
- (15) Unpermitted or illegal business;
- (16) Selling or giving away tobacco products to underage persons;
- (17) Illegal sale, discharge and use of fireworks;
- (18) Junk vehicles;
- (19) Action deemed a nuisance under state law;
- (20) Any action that is a violation of this Code which could be enforced by the through the city's code enforcement procedure;
- (21) Act of aiding and abetting of the activities, behaviors or conduct enumerated in this article; or
- (22) Conspiracy to commit or attempt to commit any of the activities, behaviors or conduct enumerated in this article.

Person associated with means any person who, whenever engaged in a nuisance activity, enters, patronizes, visits or attempts to enter, patronize or visit, or waits to enter, patronize or visit, a premises or person present on a premises including, but not limited to, any officer, director, customer, agent, employee or independent contractor of a premises owner.

Service call means each time one (1) or more city police officer(s), fire rescue personnel, or city code enforcement officer(s) commences and completes a response to an identifiable unit of property as recorded by the Volusia County Sheriff's Communication Center's computer aided dispatch system or a written report of a police officer or code enforcement officer which sets forth the time the officers were present upon the property. Responses caused by false reports of nuisance activity or for criminal activity that commences elsewhere and subsequently comes upon a unit of property despite reasonable efforts of persons responsible for the unit of property to exclude it, will not constitute a service call. Excluded from this definition are courtesy inspections, criminal investigations of matters not arising from or connected with the property, paid off-duty details of police officers, follow-up police officer activity to investigate a previous criminal violation, such as interviewing witnesses, or follow-up code enforcement activity to a previously cited code violation, such as inspections to determine if code violations are corrected. Also, excluded is police or code enforcement activity when it is determined that no criminal or code violation exists. If the city receives more than one (1) call related to the same circumstance or event and the multiple calls do not result in the city dispatching more police officers to the scene, all calls shall be deemed one (1) service call regardless of the number of calls received.

Unit of real property means any contiguous lands within the city which are under common ownership or are devoted to a single use, whichever is greater. Common ownership shall include all entities from which the same natural or fictitious person or people have ultimate benefit. Contiguous land shall include those separated by easements, sidewalks, alleys, rights-of-way and water bodies.

Sec. 13-62. Monthly allowance of services.

- (a) The city council has determined that the below schedule is a reasonable and permissible number of nuisance activities calls for city law enforcement, fire rescue, and/or code enforcement personnel to respond to any property in the city. The monthly allowance shall be the combined total of both law enforcement, fire rescue, and code enforcement service calls.

| | |
|----------------------------|---------------------------|
| 1—50 living units | 3 service calls per month |
| 51—150 living units | 4 service calls per month |
| 151—200 living units | 5 service calls per month |
| More than 200 living units | 6 service calls per month |

In the event the property owner or agent can establish to the satisfaction of the city staff or the special magistrate that sufficient corrective action has been taken to correct the problem that created the service call, the service call shall not be counted to the monthly allowance. Corrective action may include, but is not limited to, commencement of eviction proceedings of the source of the service call or retaining on-site security.

- (b) The city council has determined that nuisance activity calls in excess of the monthly allowance of nuisance activity calls as set forth in this article shall be a violation of this regulation. Each service call in excess of the monthly allowance shall be a separate violation.

SECTION 3. Administrative Actions. The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions to include, but not be limited to, the adoption of administrative forms, policies, procedures, processes and rules.

SECTION 4. Codification. The provisions of this Ordinance shall become and be made a part of the City of South Daytona, Florida Code of Ordinances, and the Sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that portions other than Sections 2 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 5. Conflicts. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 6. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 7. Effective Date. This Ordinance shall take effect immediately upon enactment.

APPROVED upon first reading on the 14th day of May 2024 at a regular meeting of the City Council of the City of South Daytona.

APPROVED AND ADOPTED upon second and final reading on the 11th day of June 2024 at the regular meeting of the City of South Daytona City Council.

CITY OF SOUTH DAYTONA:

ATTEST:

William C. Hall, Mayor

James L. Gillis, Jr., City Manager

CERTIFIED AS TO FORM:

Wade C. Vose, City Attorney