

CITY COUNCIL REPORT



Meeting Date: September 24, 2019
 General Plan Element: ***Neighborhoods***
 General Plan Goal: ***Enhance and Protect Neighborhoods***

ACTION

Adopt Ordinance No. 4417 amending Article VII by adding and reserving Sections 18-112 through 18-120 and adding Article VIII, Sections 18-121 through 18-149 concerning Nuisance Parties and Unlawful Gatherings to Chapter 18 of the Scottsdale Revised Code.

BACKGROUND

On November 26, 2018, the City Council directed the City Manager and City Attorney to review Scottsdale's current public nuisance ordinance and bring back recommendations that would update the public nuisance ordinance to better address unruly parties or gatherings and make it easier to hold property owners accountable for repeated unruly gatherings or parties on their properties. A team of City staff including members from the City Manager's Office, City Attorney's Office, Police and Code Enforcement Departments completed this process and developed the proposed draft ordinance as staff's recommendation on enhancing the City's ability to deal with unruly gatherings and parties within the City of Scottsdale. After making this recommendation, City staff conducted a public outreach campaign on the proposed ordinance.

ANALYSIS & ASSESSMENT

The proposed ordinance specifically addresses unruly parties or gatherings and makes it easier to hold property owners accountable for repeated unruly gatherings or parties on their properties through imposition of response fees and fines.

Nuisance parties on private property can be a threat to the peace, health, safety or general welfare of the public. Often police and other first responder response is required at a nuisance party in response to complaints of disturbances, the need to disperse uncooperative participants, the need to enforce criminal laws or city ordinances and/or the provision of other emergency services. The response of police officers and other city personnel to a nuisance party location is a drain of personnel and resources which may leave other areas of the City without minimal levels of police and public safety protections, all of which creates a significant hazard to the safety of the police and other city personnel and to the public in general.

The City does not currently have an existing ordinance that specifically addresses this issue in this way. The proposed ordinance is applicable to all private residences whether they are long term rentals, short term rentals, or owner occupied.

Key Features of the Proposed Ordinance:

1. Nuisance party is defined as an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.
2. Unlawful gathering is defined as a party, gathering, or event where spirituous liquor is served to, or is in the possession of, or consumed by, any minor, or where illegal drugs are in the possession of, or consumed by, any person, regardless of whether it would otherwise qualify as a nuisance party.
3. Assessment of service fees on a sliding scale for police response to nuisance party and unruly gathering calls including in some cases assessment of such fees on landlords/property owners.
4. Potential civil prosecution of occupants and/or owners for holding nuisance parties or unruly gatherings including in some cases prosecution of landlords.

If the City Council adopts the ordinance, it will go into effect 30 days after adoption.

City staff conducted a public outreach program that included an open house on August 7, 2019 with close to 100 citizens in attendance on the proposed nuisance party ordinance. The vast majority of attendees at the open house were in support of the proposed ordinance with general support for higher response fees. As a result of that feedback the response fees were raised from \$250, \$1,000 and \$1,500 to \$500, \$1,250 and \$2,500.

Additional public outreach included:

- A news release to Valley wide media and others on July 9.
- Scottsdale Update weekly e-newsletter (July 11, Aug. 1, Aug. 9) – 8,300 subscribers.
- Posting on City's ScottsdaleAZgov Facebook page (July 10) – 1,573 reaches; 324 engagements.

- Posting on City's Twitter feed on July 10.
- Posting on the City's events calendar at: WWW.SCOTTSDALEAZ.GOV/EVENTS .
- 61 emails were received regarding the proposed ordinance with 54 in support.

In response to the City's outreach campaign there were multiple media stores and articles.

The City of Tempe updated a similar ordinance in 2013. The City of Tempe was contacted and they reported that Tempe's calls for service involving Loud/Nuisance Parties have decreased by approximately 41% since the Tempe ordinance was strengthened/updated by the Tempe City Council in 2013, from 5928 in 2012 to 3474 in 2018.

RESOURCE IMPACTS

City staff believes it can enforce the proposed ordinance with existing staff, but more resources may be needed in the future to cover the cost of enforcement.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Ordinance No. 4417 amending Article I, Section 18-2 and adding Article IX, Sections 18-150 through 18-152 concerning Vacation Rentals to Chapter 18 of the Scottsdale Revised Code.

RESPONSIBLE DEPARTMENT(S)

City Manager's Office, City Attorney's Office

STAFF CONTACTS (S)

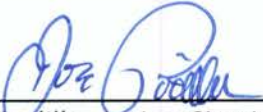
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Luis Santaella, Senior Assistant City Attorney, lsantaella@scottsdaleaz.gov

Joe Leduc, Police Commander, jleduc@scottsdaleaz.gov

Megan Lynn, Management Assistant, mlynn@scottsdaleaz.gov

APPROVED BY



Joe Padilla, Acting City Attorney

(480) 312-2405, jpadilla@scottsdaleaz.gov

9-6-19

Date



Jim Thompson, City Manager

(480) 312-2405, jthompson@scottsdaleaz.gov

9.9.19

Date

ATTACHMENTS

1. Ordinance No. 4417

ORDINANCE NO. 4417

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, AMENDING ARTICLE VII BY ADDING AND RESERVING SECTIONS 18-112 THROUGH 18-120 AND ADDING ARTICLE VIII, SECTIONS 18-121 THROUGH 18-149 CONCERNING NUISANCE PARTIES AND UNLAWFUL GATHERINGS TO CHAPTER 18 OF THE SCOTTSDALE REVISED CODE

BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1. Chapter 18, Article VII, Sections 18-112 through 120 of the Scottsdale Revised Code are hereby added and reserved.

Section 2. Chapter 18 of the Scottsdale Revised Code is amended by adding Article VIII, Sections 18-121 through 18-149 as follows:

ARTICLE VIII. - NUISANCE PARTIES AND UNLAWFUL GATHERINGS

Sec 18-121. - Purpose.

- (a) The City Council finds and determines that the control of nuisance parties on private property is necessary when such continued activity is determined to be a threat to the peace, health, safety or general welfare of the public. Often police and other first responder response is required at a nuisance party in response to complaints of disturbances, the need to disperse uncooperative participants, the need to enforce criminal laws or city ordinances and/or the provision of other emergency services. The response of police officers and other city personnel to a nuisance party location constitutes a drain of personnel and resources which may leave other areas of the City without minimal levels of police and public safety protections, all of which creates a significant hazard to the safety of the police and other city personnel and to the public in general.
- (b) The City Council finds and determines it is a public nuisance for any responsible person(s), social hosts or property owners to permit, allow, or host an unlawful gathering on residential property (or other private real property under his or her ownership or control) where, spirituous liquor is served to, or is in the possession of, or consumed by, any minor, or where illegal drugs are in the possession of, or consumed by, any person.

Sec. 18-122. - Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them herein unless the context requires otherwise:

Illegal drugs shall have the same meaning as defined in A.R.S. § 13-3401.

Juvenile means a minor under the age of eighteen (18) years.

Minor means any person under the age of twenty-one (21) years.

Owner means any property owner, as well as an agent of an owner acting on behalf of the owner to control or otherwise regulate the occupancy of use of the property.

Premises mean the property that is the site of a nuisance party or an unlawful gathering. For residential properties, a premise can mean the dwelling unit, units or other common areas where the nuisance party or the unlawful gathering occurs.

Nuisance party means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.

Police service fee means the fee as provided in Section 18-126 of this Article to offset the cost of services provided by the Police Department in response to the nuisance party or unlawful gathering.

Responsible person means any persons in attendance including any owner, occupant, tenant, or tenant's guest or any sponsor, host or organizer of the social activity or special occasion constituting the nuisance party or unlawful gathering. If such a person is a juvenile, the term "responsible person" includes, in addition to the juvenile, the juvenile's parents or guardians. Responsible person does not include owners or persons in charge of premises where an unlawful gathering or nuisance party takes place if the persons in attendance obtained use of the property through illegal entry or trespassing.

Special security assignment means the police services provided during any call-in response to complaints or other information regarding nuisance party or unlawful gatherings.

Spirituos liquor shall have the same meaning as defined in A.R.S. § 4-101(31).

Unlawful gathering means a party, gathering, or event where spirituous liquor is served to, or is in the possession of, or consumed by, any minor, or where illegal drugs are in the possession of, or consumed by, any person, regardless of whether it would otherwise qualify as a nuisance party.

Sec. 18-123. - Nuisance party.

- (a) When any Scottsdale police officer responds to any nuisance party and that police officer determines that there is a threat to the public peace, health, safety or general welfare, the Scottsdale police officer shall issue a written notice to any responsible person(s). If the owner is not present the Scottsdale police officer shall also send a copy of the written notice to the owner. The responsible person(s) will be assessed a police service fee for special security assignments relating to nuisance parties as provided in Section 18-126. For second and subsequent violations within ninety (90) days of the first response, the owner will also be assessed a police service fee for special security assignments relating to nuisance parties as provided in Section 18-126. The police officer or other police employee shall provide the notice of the violation to the responsible person(s) and the owner in any of the following manners:
- (1) Personal service to any responsible person(s) being cited at the nuisance party.
 - (2) As to the resident(s) of the premise, posting of the notice on the door of the premises of the nuisance party.
 - (3) As to the owner, notification of the posting of the notice of the nuisance party shall be mailed to the property owner at the address shown on the Maricopa County property tax assessment records. Notification shall be made by certified mail and regular mail. The return receipt will service as evidence of service.

- a. Upon request, the owner/landlord must provide the names of any and all occupants listed on the leasing documents at any location where the Police Department responds to a nuisance party.
- (b) If, after written notice of the violation as provided in subsection (a), a second or subsequent police response or responses is necessary to the same location or address for a nuisance party within ninety (90) days of the first response, such response shall be deemed a second response and subject to the police service fee as provided in Section 18-126. If, after written notice of the violation as provided in subsection (a), a third response is necessary to the same location or address for a nuisance party within ninety (90) days of the second response, such response shall be deemed a third response and subject to the police service fee as provided in Section 18-126.
- (c) On any response to a nuisance party, the responsible person(s) or owners may be assessed a fee commensurate with the next level fee for a nuisance party, if any of the following factors are found:
 - (1) Minor in possession;
 - (2) Minor in consumption;
 - (3) Public urination or defecation;
 - (4) Indecent exposure;
 - (5) Public sexual indecency;
 - (6) Illegal drugs;
 - (7) Illegal dumping or littering;
 - (8) Obstruction of public thoroughfares;
 - (9) Weapons violations; or
 - (10) Felonious conduct.

Sec. 18-124. - Unlawful gatherings.

- (a) When any Scottsdale police officer responds to any unlawful gathering and that police officer determines that there is a threat to the public peace, health, safety or general welfare, the Scottsdale police officer shall issue a written notice to any responsible person(s). The responsible person(s) will be assessed a police service fee for special security assignments relating to unlawful gatherings as prescribed in Section 18-126.
- (b) A police service fee may be imposed on any police response to an unlawful gathering. For any first response, the responsible person may be eligible for substance use education class in lieu of the police service fee assessment.

Sec. 18-125. - Fees, billing; and appeal.

- (a) The police service fee for special security assignments arising out of nuisance parties and unlawful gatherings shall be progressive depending on the number of repeat unlawful gatherings and provided for in Section 18-126.
- (b) The amount of such police service fees charged shall be deemed a joint and several debt to the City of any and all responsible persons and owners, whether they received the benefit of such special security assignment services or not. If the responsible person(s) for the nuisance party or unlawful gathering is a juvenile, then the parents or guardians of that juvenile will also be jointly and severally liable for the costs incurred for police services. Any

person owing money due for the police service fee shall be liable in an action brought in the name of the City for recovery of such amount, including reasonable attorney fees.

- (c) For a first police response, if a responsible person is the person who owns the property where a nuisance party or unlawful gathering takes place, the owner will not be charged the police service fee unless:
 - (1) The owner was present at or had knowledge of the nuisance party or unlawful gathering and took no reasonable action to prevent the nuisance party or unlawful gathering; or
 - (2) If the owner had been sent a notice from the City that a nuisance party or unlawful gathering had taken place on the premises, and a subsequent nuisance party or unlawful gathering occurs within ninety (90) days of the mailing of such notice to the owner; or
 - (3) If the owner/landlord fails to provide the names of the occupants listed on the leasing documents where the unlawful gathering or nuisance party occurs.
- (d) The City does not waive its right to seek reimbursement for costs through any other legal remedies or procedures.
- (e) The Chief of Police or his designee shall cause appropriate billings for the special security assignment to be made to the responsible person(s), which shall include the name and address of the responsible person(s), the date and time of the incident and the police services performed, and such other information as may be desired.
- (f) Any responsible person(s) who wishes to dispute the determination that they are liable for the police service fee may appeal within ten (10) business days of the assessment of the police service fee as indicated by the written notice imposing the fee by filing a request for hearing with the city clerk's office. Sections 18-105, 18-106 and 18-108 shall govern the conduct of such appeals. The hearing officer may waive part or all of a police service fee charged against the owner of the property where a nuisance party or unlawful gathering takes place if the owner provides proof that they did not have an adequate period of time to prevent the nuisance party or unlawful gathering that triggered the fee, or that they have taken reasonable action to prevent the occurrence of future disturbances at the property.
- (g) It is the responsibility of the responsible party to pay all fees due pursuant to this article in a timely manner. Fees will be due upon receipt of billing and fees not paid within thirty (30) days of initial billing shall be deemed delinquent.
- (h) The Chief of Police may assign collections of fees prescribed under the terms of this article to the City Treasurer's Office or other City department.

Sec. 18-126 – Police Service Fee.

- (a) Police service fee for special security assignments related to nuisance parties:

First response\ \$500.00

Second response\ \$1,250.00

Third response and each subsequent response\ \$2,500.00

- (b) Police service fee or special security assignments related to unlawful gatherings:

First response\ \$500.00

Second response\ \$1,250.00

Third response and each subsequent response \$2,500.00

Sec. 18-127. - Unlawful for a responsible person to permit a nuisance party or unlawful gathering; civil penalty.

- (a) It shall be unlawful for a responsible person to permit either a nuisance party or unlawful gathering.
- (b) A violation of this section is a civil offense and shall be punished with a minimum fine of \$750 for a first offense and a minimum fine of \$1,500 for second or subsequent offenses within a year.

Sec. 18-128. - Unlawful for an owner to permit a nuisance party or unlawful gathering after notice; civil penalty.

- (a) It shall be unlawful for an owner to permit either a nuisance party or unlawful gathering if the owner was previously notified by the city that a nuisance party or unlawful gathering had previously occurred within ninety (90) days on the same premises.
- (b) A violation of this section is a civil offense and shall be punished with a minimum fine of \$750 for a first offense and a minimum fine of \$1,500 for second or subsequent offenses within a year.

Sec. 18-129. - Other remedies.

Nothing in this article shall be construed as affecting the ability to initiate or continue concurrent or subsequent criminal or civil prosecution for any violation of the provisions of this code or state law arising out of the circumstances necessitating the application of this article.

Sec. 18-130 through Sec. 18-149. Reserved.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 24th day of September 2019.

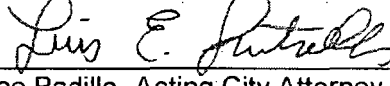
CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Joe Padilla, Acting City Attorney
By: Luis E. Santaella
Senior Assistant City Attorney

Short Term Rental Ordinance & Nuisance Ordinance Amendment

City Council Regular Agenda--September 24, 2019

Luis Santaella, City Attorney Office
Raun Keagy, Code Enforcement

Request

- Adopt Ordinance No. 4416 amending Article I, Section 18-2 and adding Article IX, Sections 18-150 through 18-152 concerning Vacation Rentals to Chapter 18 of the Scottsdale Revised Code.
- Adopt Ordinance No. 4417 amending Article VII by adding and reserving Sections 18-112 through 18-120 and adding Article VIII, Sections 18-121 through 18-149 concerning Nuisance Parties and Unlawful Gatherings to Chapter 18 of the Scottsdale Revised Code.

Background

- During the 2019 Legislative Session, the State Legislature passed HB 2672 that made some small changes to the authority that cities have in the regulation of residential vacation rentals or short-term rentals (STR).

Background (cont.)

- City Council directed the City Manager and City Attorney to review Scottsdale's current public nuisance ordinance and bring back recommendations that would update the public nuisance ordinance to better address unruly parties or gatherings and make it easier to hold property owners accountable for repeated unruly gatherings or parties on their properties.

Key Features--STR

- Clarifies that cities can prohibit a STR operator (owner) from using a STR for non-residential purposes including for retail, a restaurant, banquet space or other similar use, such as a wedding venue.
- It also allows cities to require the owner of an STR to provide contact information for someone who is responsible for responding to complaints before renting the STR.

Key Features—Nuisance Party

- Nuisance party is defined as an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property.
- Unlawful gathering is defined as a party, gathering, or event where spirituous liquor is served to, or is in the possession of, or consumed by, any minor, or where illegal drugs are in the possession of, or consumed by, any person, regardless of whether it would otherwise qualify as a nuisance party.

How does it work?

- Assessment of service fees on a sliding scale for police response to nuisance party and unruly gathering calls including in some cases assessment of such fees on landlords/property owners.
- Potential civil prosecution of occupants and/or owners for holding nuisance parties or unruly gatherings including in some cases prosecution of landlords.

Summary of Public Feedback Open House

- Vast majority of attendees were in support of the proposed ordinance with general support for higher response fees. As a result of that feedback, the response fees were raised from \$250, \$1,000 and \$1,500 to \$500, \$1,250 and \$2,500.

Summary of Public Feedback Emails

- 61 emails were received regarding the proposed ordinance with 54 in support.
- Some concern raised about “over regulation.”
- Several STR operators don’t want to be “lumped in” with less responsible operators.

Timeline

- If the City Council adopts the ordinances, they will go into effect 30 days after adoption.
- Database being created to track Nuisance Party complaints and to gather responsible party information.

Questions?

- Item # 1 & 2 City Council Regular Agenda
September 24, 2019

Items 11 and 12

Short Term Rental Ordinance & Nuisance Ordinance Amendment

City Council Regular Agenda--September 24, 2019

Luis Santaella, City Attorney Office

Raun Keagy, Code Enforcement

1

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2

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Background (cont.)

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4

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10

Questions?

- Item # 11 & 12 City Council Regular Agenda
September 24, 2019