



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

**SUBJECT: ADOPTION OF THREE COST
RECOVERY ORDINANCES FOR:
(1) AIRPORT SECURITY
BREACH RESPONSE; (2) FALSE
EMERGENCY RESPONSE; AND
(3) ATTORNEYS' FEES FOR
CODE ENFORCEMENT**

DATE: 4/29/2004

RECOMMENDATION

That the City Council take the following actions:

1. Approve an ordinance adding Chapter 25.17 to Title 25 of the San Jose Municipal Code to authorize the recovery of the City's emergency response costs for intentional security breaches at the Norman Y. Mineta San Jose International Airport;
2. Approve an ordinance adding Chapter 10.43 to Title 10 of the San Jose Municipal Code to provide for the recovery of false emergency response costs under specified circumstances; and
3. Approve an ordinance adding Section 1.08.016 to Chapter 1.08 of Title 1 of the San Jose Municipal Code to provide for the recovery of the costs of investigation and monitoring, and attorneys' fees and costs in code enforcement actions.

BACKGROUND

At its April 15, 2003 meeting, the City Council directed the City Attorney's office to draft the first two ordinances listed above: (1) an ordinance that would authorize the recovery of costs of response to intentional breaches of security at the Airport from persons responsible for the security breach, and (2) an ordinance to recover the City's emergency response costs to false emergencies. Additionally, it is also recommended that the Council adopt the third ordinance listed above to recover the City's attorneys' fees and costs that are expended in code compliance actions from persons found to have violated the Municipal Code.

ANALYSIS

1. Airport Security Breach Cost Recovery Ordinance

If approved by Council, this ordinance would authorize the recovery of the City's costs in responding to breaches of Airport security. The ordinance is narrowly tailored to provide for such cost recovery only where the responsible party intended to cause a breach of security. Breaches of security are defined by the ordinance as actions ranging from threats of harm against life or property at the Airport to such breaches as using the security pass of another to gain admission to secured areas of the Airport. The proposed ordinance provides for strict liability for such response costs. Pursuant to the proposed ordinance, the Airport would bill a responsible party for the response costs. The responsible party could then either pay the bill or dispute the bill through an administrative appeal process involving the Airport Commission. If the responsible party refuses to pay the City's costs, the bill would be collected by the City as a debt in civil court. This type of emergency cost recovery ordinance is authorized by state law and by the City's charter authority.

2. False Emergency Cost Recovery

The Council also asked the City Attorney's office to draft an ordinance providing for the recovery of the City's costs in responding to false emergencies. As the City already has an ordinance governing costs of false burglar alarms, this ordinance would broaden the City's ability to recover false emergency costs to other false emergency situations. The proposed ordinance provides for strict liability for such response costs from individuals and entities that intentionally, or with reckless disregard for the consequences, cause a response to a false emergency. The ordinance is intended to recover the City's costs of police, fire, emergency medical, related equipment and all other emergency response costs. This type of emergency cost recovery ordinance is also authorized by state law and by the City's charter authority.

3. Attorneys' Fee Recovery Ordinance

The third ordinance that Council is being requested to approve provides for the recovery of attorneys' fees in code enforcement actions. Currently, the City Code allows for the recovery of City staff investigative, hearing attendance, and compliance monitoring costs, but does not authorize the recovery of attorneys' fees expended by the City's lawyers in the code enforcement process. State law specifically authorizes the recovery of such costs, and the proposed ordinance complies with the state law authorizations for such costs recovery. The ordinance would authorize the City Attorney's office to opt to request the recovery of attorney's fees from the administrative hearing officer or the court in cases where the City is the prevailing party and such recovery is appropriate.

PUBLIC OUTREACH

Not applicable.

CEQA

The Planning Division has determined that the adoption of these ordinances is not a project under CEQA.

RICHARD DOYLE
City Attorney

By _____
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cc: Del Borgsdorf