

## REPORT TO THE CITY COUNCIL STUDY SESSION

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**DATE:** May 2, 2017

**TITLE:** Crime Free Housing and Absentee Landlords

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### **RECOMMENDATION**

**Provide Staff with direction as City Council deems appropriate.**

### **BACKGROUND**

The City of Desert Hot Springs ("City") desires to improve its housing stock by combating certain challenges stemming from absentee landlords. Poorly maintained and operated rental units contribute to increased blight and crime in residential areas, and results in a diminished quality of life for residents of the surrounding areas. In order to promote the health and safety of the public, the City may consider a number of programs to combat nuisance rental units.

### **OPTIONS**

The City has several options relating to the abatement of nuisance rental properties. These options include a 1) Rental Inspection Program, 2) Crime Free Multi-Housing Program, and a 3) Drug House Abatement Program. These options are not mutually exclusive, and can be implemented concurrently.

#### **1. Rental Inspection Program**

##### **a. Purpose**

A rental inspection program would aid the City in monitoring rental properties. This program would require the City to be proactive in inspecting its rental housing stock. Sometimes, absentee landlords may not be aware of ongoing violations at their rental properties or may be apathetic to any problems. This program would create more of a partnership between the absentee landlord and the City, wherein the communication and participation by both parties could result in abatement of nuisances. In other words, by being proactive in rental inspections, the City would establish a stronger presence, and the landlords would know that the City is keeping a close eye on the rentals in the community. This would hopefully ensure properties would be cleaned up and the rental housing market improved.

##### **b. Highlights**

Cities that have this kind of inspection program conduct periodic inspections of rental units, dwellings, apartments, and other residential properties to identify any violations of city ordinances, state housing laws, or any other relevant codes. Many cities exclude owner-occupied properties, transient lodgings such as hotels, and mobile homes from rental inspections.

The City would set a schedule for regular inspections, such as annually or once every 3-5 years. The City must give prior notice to the tenants and the owner. Should the City Council desire, the City Manager can be responsible for enforcing this program and promulgating related regulations, but may delegate inspections to code enforcement officers. Regardless, the owner or the occupant must give consent to allow actual entry. If consent is refused or if the owner or

occupant cannot be found, the City may obtain an inspection warrant pursuant to Code of Civil Procedure Section 1822.50 et. seq.

Of course, the City would still entertain complaint-based inspections, and conduct them outside of the regular schedule. Prior notice is usually not required for complaint-driven inspections. The City may develop criteria for requiring more frequent inspections of certain properties, especially if such properties exhibit a large number of violations or have been the subject of repeated enforcement activity.

If the City observes any violations, it may abate them pursuant procedures in the municipal code. Such procedures are located in Title 4. Any other remedies available under the law may be used.

The City may register all rental properties to keep track of violations and inspection records. In addition, landlords may be required to obtain a business license or other permit prior to leasing out property. The City may condition issuing a new business license or renewal of a license on the successful completion of a rental inspection.

The program includes fees sufficient for self-funding. Many cities impose an annual fee for every rental property. Additional fees may include fees for reinspections or rescheduling inspections. The City Council may establish the amount of fees by resolution. Unpaid fees may be collected via a lien against the rental property.

While many cities use rental inspections to observe conditions of property, these inspections may document instances of criminal activity, such as drug trafficking or gang activity. By making regular inspections, the City would be better equipped to identify the most egregious rental properties and take appropriate measures. Moreover, by requiring landlords to obtain a business license in compliance with this ordinance, it could induce owners to assume more responsibility for the criminal activity surrounding the rental property.

The success of this program may depend on the City' ability to maintain accurate registrations, track and conduct inspections, and follow through with enforcement action against non-compliant landlords.

### **c. City Procedures to Utilize the Program**

To implement this program, the City Council would be required to adopt an ordinance. Should the City Council desire, our office may draft a combined rental inspection and crime free housing ordinance to implement them concurrently.

Because a rental inspection program includes various fees, the amount of fees should be implemented via resolution. This will give the City flexibility to determine appropriate fees and amend them from time to time. The rental inspection ordinance may include a mandate that the City Manager develop regulations to enforce the ordinance. Because monitoring and tracking all rental properties is a serious undertaking, and unanticipated issues may arise, the City Manager may formulate regulations to address any novel issues and provide guidance for staff.

Once the ordinance is enacted, designated staff may immediately identify all rental properties within the City's jurisdiction and begin scheduling the periodic inspection. However, this process may take several months.

In addition, should the City Council desire this option, the City Attorney's office would recommend that the City send notices to owners of rental properties regarding the annual fees, and the program in general. Further, as rental property owners apply for new or renewed business licenses, staff should include the rental inspection fee as part of the application.

Code enforcement officers should conduct the periodic inspections, as they are best able to identify health and safety violations and formulate appropriate abatement measures. Rental properties known to be magnets for criminals should have higher priority. For dangerous properties, the City may obtain an inspection warrant with authorization to bring police officers for purposes of keeping the peace.

**d. Sample Ordinances**

Attached as “Exhibit 1” are three sample ordinances from cities that have a rental inspection program. Highlighted below are some notable differences.

The City of Pasadena has an ordinance that prohibits the occupation, use or sale, lease, or reoccupation of a rental property until a certificate verifying the inspection has been issued. (§14.16.030). The inspection must occur once every four years for multifamily buildings with three or more units, or prior to any sale, lease, rent, or exchange of single-family homes or duplexes with two units. The burden is on the property owner to file an application prior to the sale or occupation of any rental property to schedule an inspection and to pay the required fee. (§14.16.040). Pasadena does not appear to require registration of rental properties and relies on self-reporting from owners.

The City of Sacramento requires a detailed registration of every rental property and requires updates every five years. The registration includes the number and description of all rental housing units on the rental housing property, name and current contact information of the owner, annual rental housing inspection program fee, and description of the rental housing property (§8.120.060). Sacramento does not require inspection of every single unit on a multi-unit rental property; instead, Sacramento may randomly inspect no less than 10% of the units per rental property. (§8.120.080). Sacramento further allows self-certification by owners under certain conditions. Owners may certify each rental housing unit on the property is in compliance at least once every calendar year and upon each change in tenancy. (§8.120.160).

The City of San Rafael requires inspections of rental properties every five years or more frequently as needed. (§12.42.030). Violations found during the inspection may be abated by any remedy under the law. (§12.42.080). An annual inspection fee must be paid by owners. For apartments with sixteen or more units, a caretaker must be employed and live at the premises, unless the owner lives at the apartment and assumes that responsibility. (§12. 42.130).

**2. Crime Free Housing Program**

**a. Purpose**

To educate landlords on crime-free housing and impose a City requirement that landlords include lease provisions designed to reduce crime, drugs, and gang activity at rental properties.

**b. Highlights**

Cities that utilize this program require that landlords include a “crime free lease addendum” in all of their leases. The contents of the lease addendum may vary, but may include the following:

- 1) The tenant, members of the tenant’s household, guest, or other person under the tenant’s control are prohibited from engaging in any activity which constitutes a crime under any federal, state or local law. This includes activities defined as a nuisance under the municipal code and drug related activity under Health and Safety Code 11350 et. seq.

- 2) Prohibition against using, permitting or facilitating the dwelling unit or areas on or near the said premises to be used for nuisance or criminal activity.
- 3) A single violation of the lease addendum is sufficient cause for the immediate termination of the lease agreement.
- 4) The Chief of Police or designee may issue notices to landlords concerning any criminal activity by a tenant. Once notified, the landlord must begin evicting the tenant. The Chief of Police may require proof of eviction.

Although the City may not evict tenants for criminal violations, with a crime free lease addendum, the landlords are equipped with the ability to do so. Further, the addendum will provide clear grounds for unlawful detainer proceedings, which are already speedy civil actions. With the knowledge that even a single criminal act may result in eviction, tenants would be deterred from participating in or facilitating any crime.

The City may further require tenant screenings. The Chief of Police may create a database to track new tenants in properties participating in the program. The property owners would provide identifying information of all potential adult tenants and the Chief of Police may screen such tenants to determine if they have committed a crime recently or may have violated a similar crime free agreement. Such screenings would aid landlords in deciding whether to accept certain tenants.

Additionally, property owners may be required to, at their own expense, conduct criminal background checks of all tenants using private vendors.

As a means of enforcement, the maintenance of crime free housing may be a condition in the granting or renewal of a business license to property owners. Ongoing criminal activity may be grounds for revoking a business license. Thus, although the City may not evict tenants for committing crimes, the City may take away the landlord's ability to rent at all.

While tenant screenings and keeping a database updated may be challenging, the addition of a crime free lease addendum is a cost-effective method to help combat criminal activity in rental properties. Conditioning a landlord's business license on enforcing the crime free lease will also likely induce compliance.

#### **c. City Procedures to Utilize the Program**

This program would require an Ordinance. Again, Should the City Council desire, our office may draft a combined rental inspection and crime free housing ordinance to implement both programs concurrently.

Once the ordinance is enacted, the City Manager or designated staff should begin distributing the crime free lease addendum to all rental property owners or their property managers. This addendum must be included in all new or renewed lease agreements. Rental property owners applying for a new or renewed business license should receive a copy of the addendum by staff.

The Chief of Police may begin tenant screenings by establishing a database to track tenants engaged in criminal activity. If a rental inspection ordinance is enacted, the Chief of Police can help establish the priority of rental inspections by targeting properties with recent criminal activity or where tenants with criminal backgrounds have been applying in greater numbers.

With periodic inspections via the rental inspection ordinance and a tenant database from the crime free housing ordinance, the City should have sufficient information to guide enforcement efforts. Ideally, property owners will often utilize the lease addendum to remove tenants engaged in criminal activity.

#### **d. Sample Ordinances**

Attached as “Exhibit 2” are two sample ordinances from cities that have a crime free housing program. Highlighted below are some notable differences.

The City of Victorville requires every owner of a rental property to obtain a business license for each rental property. (§16-6.05.050). Owners must include a crime free lease addendum for in each rental agreement requiring that tenants shall not engage in illegal, nuisance, or criminal activity on the premises, as part of their rental agreement. Violations of this ordinance constitutes grounds for eviction of a tenant, but also potential grounds for the revocation, suspension or denial of the owner’s business license. (§16-6.05.070). Victorville incorporates both a rental inspection program and a crime free housing program in the same ordinance.

The City of Hesperia requires owners, as a condition of leasing out property, register each rental property every January. (§8.20.040). In addition to requiring a crime free lease addendum similar to Victorville, Hesperia requires tenant screenings by the city police department, as well as background checks by the owners through commercial vendors. (§8.20.050). Hesperia also combines a rental inspection program and crime free housing program in the same ordinance.

### **3. Drug House Abatement Program**

#### **a. Purpose**

To combat properties used for the storage and trafficking of illegal drugs.

#### **b. Highlights**

The Drug Abatement Act (Health and Safety Code §11570 et. seq.) can be a useful tool to shut down “drug houses,” Which could include commercial businesses who have ongoing drug activity. Drug houses often result in increased foot and vehicle traffic, disturbance of the peace, contribute to other criminal activity, and harm a neighborhood’s sense of security. City attorneys often learn about drug houses through the police department, whose efforts at arresting and prosecuting offenders have not stopped the flow of illegal drugs at a property.

The Drug Abatement Act states that:

Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

By deeming a building or place used for illegal drugs a nuisance, a district attorney, county counsel, or city attorney may file a complaint to abate the nuisance and permanently enjoin the owner from maintaining such a nuisance. (H&S Code §11571; Code of Civil Procedure §731; Civil Code §3494). The City could obtain remedies such as temporary and permanent injunction, closure of the premises for up to one year, sale of movable property used to conduct or maintain the nuisance, civil penalties of up to \$25,000 against the defendant, and attorney’s fees to the prevailing party. (H&S Code §11581; Civil Code §3496).

In addition, a receiver may be appointed to carry out orders of the court. (H&S §11573.5(e)(3)).

**c. City Procedures to Utilize the Program**

The City does not have to enact an ordinance in order to enforce the Drug Abatement Act. To initiate a drug abatement action, there are certain steps to take:

1. The police department may refer a case to the City Attorney for possible legal action.
2. The City Attorney must review all relevant police reports, search warrants, and calls for service. There must be evidence of habitual or continuing drug activity connected to the property. If the property is found in violation of the Drug House Abatement Act, the property owner would be strictly liable if found liable, whether or not s/he participated in the drug activity or knew about it.
  - a. For residences, information related to drug busts, raids, controlled buys, and surveillance reports are helpful. The goal is to show an ongoing drug activity, rather than an isolated incident or a simple possession case.
  - b. For businesses, common examples include bars, restaurants, and pool halls. These may include commercial buildings regularly hosting parties or concerts where drug activity may occur. Reports of arrests for possession and sale of drugs, drug seizures, or other violations are helpful.
3. Find all potential defendants. These include the property owner, property manager, and the tenant or person who has control over the property. The City would need to obtain a litigation guarantee to ascertain all potential defendants on title to the property.
4. The City may issue a demand letter to the property owner demanding compliance. The City may hold meetings or make other informal attempts at resolving the problem with the owner. Although the Drug Abatement Act does not require this step, courts look favorably at such attempts.
5. File the complaint. The complaint must be verified. (H&S §11572). Accordingly, the defendants' answer must be verified. (Code of Civ. Pro. § 446).
6. The complaint should include supporting declarations from police officers. The officers should have personal knowledge of the drug activity and have expertise in drug identification, drug trafficking, and drug use. Declarations from neighbors may also be used.
7. If the case is appealed, the order for closure remains in effect. (Code Civ. Pro. §917.8(c)).

Pursuant to Health and Safety Code §11571.1(a), the City may adopt ordinances related to drug abatement. If the ordinance duplicates parts of the Drug Abatement Act, such ordinance is not preempted, but rather considered an alternative remedy. In order to do this, the City should:

1. Direct the City Attorney's office to draft an ordinance. The ordinance may supplement the Drug Abatement Act by including additional notice procedures and remedies. For instance, the ordinance may require the city attorney to issue a notice to the property owner prior to taking any legal action. The ordinance may include a provision for what a property owner may do in response to a notice, such as eviction of the tenants. The ordinance may simply mirror the Drug Abatement Act, although it is not necessary.

2. Pursuant to Section 2.60.010 of the municipal code, the City Council must hold at least two hearings: one to introduce the proposed ordinance, and another to adopt the ordinance. A majority of a quorum of the City Council must vote for passage of this ordinance.

**d. Sample Ordinance**

Attached as “Exhibit 3” are two sample ordinances from the City of Livermore and City of Duarte that supplement the Drug Abatement Act.

Livermore supplements the Drug Abatement Act by requiring their city attorney, at his discretion, to initiate abatement proceedings by first issuing a notice to the property owner, landlord, or person in control of the property demanding voluntary abatement of the drug activity. In response, the owner, landlord, or person in control may initiate unlawful detainer proceedings pursuant to Code of Civil Procedure §1161(4), eliminate the nuisance, obtain a voluntary surrender of the property from the occupants, or submit a written response to the city attorney. If the nuisance is not abated, the city attorney may commence an action pursuant to the Drug Abatement Act.

City of Duarte allows either the police or the property owner to document and report drug activity at a property. (§9.31.030). Once the nuisance is established, a notice must be issued to the owner, occupant, manager, or agent for the property and to any other person interested in the property or who has requested such notice. The initial notice allots thirty days for voluntary abatement. Abatement includes but is not limited to eviction of tenants creating the nuisance. (§9.31.040(b)). If the nuisance is not abated after thirty days, a second notice must be issued warning that abatement must commence within five working days or the city attorney may take legal action. (§9.31.040(d)).

**FISCAL IMPACT**

Depending upon specific City Council direction, Staff will be able to assess the financial impact.

**EXHIBITS**

- 1) Three sample city ordinances for rental inspections
- 2) Two sample city ordinances for crime free housing and a sample lease addendum
- 3) Two sample city ordinances for drug abatement