City Council Agenda Report
Meeting Date: March 3, 2015
Department: City Manager

SUBJECT:

DISCUSSION OF A POTENTIAL CITY ORDINANCE PROHIBITING THE FEEDING OF WILDLIFE IN PUBLIC PLACES

RECOMMENDED ACTION(S):

1. Provide direction to staff regarding a potential ordinance prohibiting the feeding of wildlife in public places or, alternatively, introduce an ordinance for first reading, entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST, CALIFORNIA, ADDING PROVISIONS RELATED TO THE FEEDING OF WILDLIFE IN PUBLIC PLACES

2. Subject to the City Council's discretion relative to the adoption of an ordinance provide staff with input regarding enforcement alternatives.

EXECUTIVE SUMMARY:

On January 6, 2015, the City Council, directed staff to prepare a revised draft Wildlife Ordinance and identify potential costs associated with its enforcement. Responsive to the City Council's request, staff worked with the City Attorney's Office to update the previous draft of the Wildlife Ordinance. The revised ordinance would allow the Parks and Recreation Commission to hold a public hearing to designate a public park as "overcrowded" by wildlife, thereby, prohibiting the feeding of animals at only those locations. As drafted, the Wildlife Ordinance would also allow the Orange County Sheriff's Department ("OCSD") and the City's Code Enforcement Division to issue warnings or citations as appropriate. In addition, violation of the ordinance could be considered either a misdemeanor violation of the Lake Forest Municipal Code or an infraction.

Additionally, the City Council requested information to aid its understanding of the potential enforcement options and costs associated with implementing the proposed Wildlife Ordinance. Staff worked with the OCSD and the City's Code Enforcement Division to develop two potential basic approaches to enforcement. The first, which is designated as an "Opportunity-Based" approach would use existing using Sheriff and Code Enforcement resources only to respond to calls for service or to patrol the park as time allows. Alternatively, the City Council could direct staff to engage in a "Concentrated Enforcement" approach with

dedicated resources. However, the latter approach results in direct additional costs to the City in the form of potential overtime hours for the Sheriff's Department at a cost that could range from approximately $32,000 to $98,000 annually. However, a combination of both approaches could be used in some fashion. Under either enforcement scenario (or combination) staff recommends additional public outreach including educational brochures and additional signage to discourage residents from feeding wildlife.

Lastly, the City is advancing renovation efforts at Village Pond Park. Nuvis, the company selected to engage the community in the visioning process and prepare the final design, is approximately halfway complete with its work. Working collaboratively with the community and with specialists that understand the migratory patterns of these animals, the City is actively engaged in a renovation process that will result in a variety of features at Village Pond Park designed specifically to reduce the presence of waterfowl. As of the writing of this report, construction is anticipated to begin sometime in Fall 2015. Should the City Council decide to adopt the Wildlife Ordinance at this time, staff suggests Opportunity-Based enforcement at least until the park renovation is complete. In that fashion, the City has the ability to assess the success of that renovation project relative to the waterfowl population and then engage in more active enforcement as necessary.

BACKGROUND:

Village Pond Park, located on Ridge Route Drive, is a 4.7 acre park that includes a pond approximately one acre in size. The park is unique in that responsibility for its maintenance is shared by the Lake Forest I Community Association ("Homeowner's Association") and the City. Based on a 1976 agreement with the County of Orange that pre-dates the incorporation of Lake Forest, the City now funds utility costs and provides park landscape maintenance while the Association's responsibilities include maintenance of the pond's water quality and feeding the wildlife. Amendments to the agreement have been under negotiation between the City and the Association.

At the time the County of Orange entered into the agreement with the Association, it also accepted a conveyance of undivided ownership interests from various homeowners in the neighborhood immediately adjacent to Village Pond Park. Unfortunately, not all of the adjacent homeowners, for various reasons, provided a Quit Claim to the County to clear title completely to the park parcel. Since the recent process to redesign the park was started, the City has been working to clear the title completely; that effort is just about complete.

In 1980, before ownership of the park was deeded to the City, the County

implemented several modifications to the park to address maintenance issues which included installing a concrete sidewalk around the pond and upgrading the pond's aeration, pumping, and filtration systems. Unfortunately, some of those modifications may have inadvertently exacerbated some of current maintenance issues at the park. The current redesign of the park is intended, in part, to re-address some of those same maintenance issues.

The City Council previously discussed a proposed Wildlife Ordinance prohibiting the feeding of wildlife in all public places throughout the City in November 2013. At the time, the City Council also discussed the challenges associated with the implementation of such an ordinance, including that it would effectively criminalize the feeding of wildlife and potentially create public expectation that regular enforcement would take place and reduce the instances of feeding. Subsequently, the City Council discussed potential mitigation efforts including egg depredation, introduction of species to haze the waterfowl (e.g. herding dogs or predatory birds), and potential relocation of existing waterfowl. Ultimately, the City Council elected to place a decision regarding the adoption of a Wildlife Ordinance in abeyance in light of ongoing work to redesign the park and partially due to the agreement with the Lake 1 Homeowner's Association.

On January 6, 2015, the City Council further discussed the possible adoption of an ordinance prohibiting the feeding of wildlife at Village Pond Park. At the meeting, staff presented additional information and the City Council discussed whether potential modifications to the draft Wildlife Ordinance presented in 2013 could address prior concerns regarding its citywide application. At the meeting, by a consensus vote, the City Council directed staff to work with the City Attorney's Office to draft a Wildlife Ordinance prohibiting the feeding of wildlife at public parks. In addition, the City Council requested that staff provide an analysis of enforcement options and related costs associated with the proposed Wildlife Ordinance. This report summarizes staff's efforts regarding both elements of the direction most recently provided by the City Council.

DISCUSSION:

As with any ordinance enacted by the City Council, there are certain expectations regarding its enforcement. This would certainly be the case in the instance of a wildlife feeding prohibition at Village Pond Park as residents living near the park and its visitors may likely anticipate regular enforcement. However, the potential adoption of such an ordinance suggests the City consider a balance of enforcement effectiveness and effort against related costs to do so. As noted below, the level of enforcement the City desires directly affects the associated costs of that effort - whether in terms of opportunity costs, hard costs, or both. The following section of the report begins with a brief discussion of the Wildlife

Ordinance as requested by the City Council. This is followed by an initial analysis of potential options for enforcement, including the frequency of enforcement and its associated costs. Lastly, staff offers initial suggestions in the instance the City Council decides to enact an ordinance at this time.

Proposed Wildlife Feeding Ordinance

As requested, staff worked with the City Attorney's Office to prepare the draft Wildlife Ordinance (Attachment). The ordinance incorporates many of the elements present in the initial iteration which appeared before the City Council in November 2013. The updated version includes suggestions made in January 2015 to enable the Parks and Recreation Commission to deem certain public parks "overpopulated" subject to an inspection by City staff. That determination would occur at a publicly noticed Park and Recreation Commission meeting and enable enforcement of the Wildlife Ordinance which could ultimately result in either a warning or citations to violators as appropriate. A violation of the Wildlife Ordinance could be considered either a misdemeanor violation of the Lake Forest Municipal Code or an infraction. Based on the City Council's direction, the fine amount would be set by the City Council in a subsequent resolution. By example, the current administrative citation process used for code enforcement violations contains an escalation schedule which begins with an official warning followed by $100, $250, and $500 fines as necessary. However, in the instance of the Wildlife Ordinance, staff suggests a lower maximum, perhaps not exceeding $50. Based on the discussion and analysis below, staff is seeking further direction regarding the potential introduction of the proposed Wildlife Ordinance.

Enforcement Options

Orange County Sheriff's Department

The proposed Wildlife Ordinance enables the OCSD to issue citations for its violation. However, the Sheriff's Department is charged with performing various public safety duties that may require attention to calls concerning other public safety priorities. Consequently, an enforcement program utilizing the Sheriff's time must be considered within the context of its immediate law enforcement priorities and any additional financial costs that directed enforcement efforts would have to the City. Below, staff discusses two potential enforcement options, classified into opportunity-based and concentrated enforcement. However, these two options should not be considered mutually exclusive; rather, a final program of enforcement may consist of some mix of these basic approaches. The Opportunity-Based Enforcement could generally act as the foundation of the enforcement program and the Concentrated Enforcement would be available to supplement that effort from time to time should the City

Council desire enhanced enforcement or the prior approach proves unsuccessful.

Opportunity-Based Enforcement

The OCSD personnel spends approximately half of their time responding to calls for service; this is the portion of their work schedule known as “consume time.” The balance of their schedule is dedicated to engaging proactively in patrol and crime prevention activity. Time not dedicated to responding to calls for service is used to engage in active patrol (e.g. investigating suspicious persons and vehicles and enforcing traffic laws among various other activities) to deter or reduce the instances of crime. In the example of the proposed Wildlife Ordinance, a Sheriff’s Deputy could use some proactive time to patrol the park and issue either warnings or citations as appropriate; such enforcement would carry opportunity costs by diverting deputies from other activities However, given other priorities that may arise, either in terms of responding to calls for service or other proactive patrol efforts, enforcement of the Wildlife Ordinance would not likely take immediate priority or appear consistent. Consequently, and as discussed further in this report, enforcing the Wildlife Ordinance using only existing Sheriff’s Department resources on an opportunity basis may not always meet the level of enforcement expected by some members of the public.

Concentrated Enforcement

To identify an option that would allow some level of concentrated enforcement of the Wildlife Ordinance, staff worked with the OCSD to create a concentrated enforcement schedule dedicating specific resources to patrol Village Pond Park for instances of individuals feeding the wildlife, but with the following caveats: (1) without retaining an additional deputy, and (2) without significantly encumbering the daily law enforcement activities of the OCSD. To that end, staff observed activity at the park and identified the most likely times at which feeding activity occurs: in the early morning hours (6:00 a.m. to 9:00 a.m.), around noon, and in the evening around dusk. Given the existing patrol workload, staffing resources, and other policing priorities, concentrated enforcement efforts would very likely involve overtime costs.

By way of example, staff found that concentrated daily enforcement, occurring three times per day at approximately the times outlined above, would require between 35-40 weekly patrol hours. Such an enforcement schedule is likely not sustainable as it would require a significant investment from the City by exceeding an annual cost of approximately $100,000. Consequently, a more cost-effective enforcement model could structure patrols in two-hour increments occurring anywhere from two to four days per week. The table below represents an enforcement approach that, coupled with educational efforts discussed later in

this report, may offer a method by which to provide a more reasonable level of concentrated enforcement if so desired.

Table 1 – OCSD Enforcement Schedule with Approximate Costs

Enforcement Hours (Weekly)	Estimated Annual Cost to the City[1]
4 hours per week	$32,832
8 hours per week	$65,664
12 hours per week	$98,496

As noted in the table above, even a limited concentrated enforcement schedule carries some fiscal impact requiring further consideration at the Mid-Year Budget discussion and as part of the development of the City's Annual Operating Budget. Additionally, other factors, such as the City's cost to clean up the sidewalks to remove animal waste may remain even with active enforcement of the Wildlife Ordinance. Conversely, successful implementation of the proposed ordinance may result in declining costs associated with its enforcement as the City hopefully achieves a higher rate of compliance with the passage of time. However, it is important to note that these concentrated cost estimates carry a high level of variability depending on the City Council's desired level of consistent enforcement, the success of the program, and subsequent enforcement needs beyond the first year of implementation.

Sheriff's Team of Active Retired Seniors ("STARS")

To supplement the efforts of the OCSD, staff also considered use of the STARS to engage in enforcement activity; however, the issuance of citations requires specialized certification obtained through the State of California that these volunteers do not possess. Notwithstanding these legal requirements, instances in which volunteers or part-time staff becomes engaged with residents in situations involving citations may become complex, stressful, and even hostile. Consequently, while the STARS could assist the City with limited educational efforts, such as providing information to park visitors about the provisions of a Wildlife Ordinance and penalties with its violation, staff does not recommend using volunteers for enforcement activity. However, the STARS volunteers occasionally could be used to engage primarily in outreach and educational efforts. While this option presents a relatively low cost to the City, there are likely opportunity costs to both the City and the OCSD associated with using the STARS volunteers as they would not be available to assist the Sheriff's Department with other matters.

---

[1] *Based on the fully-burdened costs for Sheriff's Deputies including salary (overtime), benefits, vehicle costs, and other equipment..*

Code Enforcement Officers

The City's Code Enforcement Officers address a variety of violations of the Lake Forest Municipal Code. In that respect, the City's Code Enforcement Division is better equipped to address potential violations of the Wildlife Ordinance than the STARS volunteers. To that end, Code Enforcement Officers could use the City's Administrative Citation Process to enforce the proposed ordinance. However, while Code Enforcement Officers are legally authorized to cite individuals, they are not trained to detain them physically when suspected of violating local laws. Consequently, in the instance a Code Enforcement Officer encounters a potential violation of the Wildlife Ordinance, that officer could issue a citation provided that the individual carries a form of identification and is cooperative. Absent such information or cooperation, however, the Code Enforcement Officer would be required to contact OCSD to detain and cite that individual. Notwithstanding these challenges, the City's Code Enforcement Division could make a concerted effort to engage in limited enforcement efforts during their regular work hours. However, this would result in an opportunity cost as the Code Enforcement Officer would be unavailable to respond to other code enforcement complaints and circumstances.

Additional Cost Considerations

In addition to the hard and opportunity costs discussed above, there are additional costs required to process a citation. These include legal costs to review the violation and staff costs to process an invoice. Based on the City's experience with the violations of the Multiple Responses Ordinance, staff estimates the hard cost of processing a citation for the violation of the Wildlife Ordinance at approximately $100.[2] However, should someone found to be in violation of the Wildlife Ordinance refuse to pay, additional staff time would be required to ensure the City receives payment of the fine. This scenario could double or triple the cost to process the fine as some form of legal action, such as a letter from the City Attorney's Office, would likely be required.

Enforcement Challenges

The proposed Wildlife Ordinance carries with it an inherent challenge in providing a concentrated level of enforcement without incurring substantial costs, both in terms of hard and opportunity costs, to the City. The latter creates instances where the Sheriff's Department or Code Enforcement personnel are unable to pursue other activities such as proactive policing or code enforcement efforts.

---

[2] *Estimate based costs to process an invoice for the City's Multiple Responses Ordinance, which generally includes a review of the violation by legal counsel and processing of the invoice by the City's Finance Department.*

Conversely, the OCSD personnel and Code Enforcement would likely be required to suspend immediate enforcement of the Wildlife Ordinance as other more pressing matters occur.

Without patrolling the park on a continuous basis, enforcement of the proposed Wildlife Ordinance becomes an educated assumption. When staff conferred with other agencies about their experiences, the enforcement challenges identified herein were consistent with the conclusions in those jurisdictions. On that basis, given potential rising community expectations due to its adoption, the ordinance may create frustration for some park neighbors or other people when they observe feeding incidents without active enforcement.

Opportunities, Constraints, and Other Considerations

As discussed, the potential levels of enforcement associated with the Wildlife Ordinance are variable based on the City Council's desire to dedicate funding to that effort. While the enforcement program itself contains inherent opportunities and constraints, staff identifies below additional efforts the City could undertake, or is already undertaking, that might help strike a balance between education, effectiveness, and costs if the City Council decides to enact the Ordinance.

Public Outreach and Education

Public outreach and education are important characteristics of a successful partnership with the community to address various issues of concern. The City Council, in the absence or adoption of the Wildlife Ordinance, could request staff to implement a more active outreach program that includes additional signs at Village Pond Park which specifically emphasize the deleterious effects of feeding the wildlife. The additional signs would be placed in strategic locations around the park. In fact, the installation of new signs already is a key component of the Village Pond Park Renovation Project and the proposed suggestion would simply expedite the installation of the signs. Examples of the signs being contemplated as part of the park renovation project are reflected below:

Exhibit A - Example “Do Not Feed the Waterfowl” Signs

Depending on the number, size, and quality of signs, the cost would range from approximately $1,000 dollars to $3,000 dollars. Staff would work with Nuvis, the firm preparing the construction plans for the renovation of Village Pond Park, to ensure that signs installed prior to renovation would be placed in a location where they could remain subsequent to the completion of the project.

In conjunction with this option, the City Council could also request staff to prepare educational brochures designed to inform the public of the negative effects associated with feeding wildlife. In addition, this outreach effort could include articles in upcoming editions of *The Leaftlet* as well as on the City’s website and other media. Staff believes that active educational efforts could help reduce the instances of feeding through voluntary compliance.

<u>Village Pond Park Renovation Project</u>

The City is advancing the Village Pond Park Renovation Project. Based on community feedback, Nuvis is preparing construction drawings and specifications that will result in a variety of design features that address the overpopulation of wildlife. As of the writing of this report, demolition plans are approximately 95% complete while detailed plans are roughly 50% complete. The park renovation includes a number of features designed to mitigate the existing population of

waterfowl mitigation by controlling access to the pond with low fences and discourage the public from feeding the wildlife directly from the street. The project will also add trees and fountain geysers to interfere with the waterfowl's flight patterns, replace vegetation with plant species not favored by waterfowl, and remove the perimeter concrete walkway to assist in impeding entry into the pond. The renovation will also result in updating and improving the water filtration system to address water quality issues. The renovation plan is reflected below:

Overall, the project is designed in part to modify the existing habitat to address the wildlife issue concurrent with the renovation to enhance utility of the park for visitors. Construction is tentatively scheduled to begin in early Fall. Consequently, the current project schedule creates an approximate six month gap between the effective date of a Wildlife Ordinance (April 17, 2015) and the potential start of construction.

Conclusion

At this juncture, the City Council could either modify the draft Wildlife Ordinance and request that staff return with a final draft version, introduce the ordinance as drafted at tonight's meeting, or defer its adoption entirely. The Wildlife Ordinance would go into effect 30 days after the second reading if the City Council chooses to enact it. Consequently, the earliest date in which the Wildlife Ordinance could

be effective is April 16, 2015. However, staff suggests the City Council nevertheless engage in more active educational efforts prior to the construction work at Village Pond Park regardless of the proposed ordinances' status.

Should the City Council decide to adopt the Wildlife Ordinance at this time, staff suggests building upon the foundation of the educational efforts described in this report. Staff also recommends allowing sufficient time to provide the community with information regarding the Wildlife Ordinance before actual citations are issued. The actual enforcement of the Wildlife Ordinance could occur before the renovation of the park; however, staff recommends only less active opportunity based enforcement at least until the renovation is complete. As a result, the City could first observe the impact of the renovation effort on the population of waterfowl and then exercise its ability to ramp up enforcement only if needed.

FISCAL IMPACT:

There is minimal fiscal impact associated with the recommended action. Staff anticipates, however, that there would be costs associated with the ongoing enforcement of the Wildlife Ordinance, either by OCSD or Code Enforcement staff. While a portion of these costs could be mitigated through the collection of fines, this activity involves an ongoing enforcement component that will require City funds in an amount consistent with the expected level of enforcement.

ATTACHMENTS:

Wildlife Ordinance

Initiated By: Carlo Tomaino, Senior Management Analyst
Submitted By: Robert C. Dunek, City Manager
Approved By: Robert C. Dunek, City Manager