

## REPORT TO CITY COUNCIL

**DATE:** AUGUST 12, 2009

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER

**BY:** RAMIRO ADEVA, CITY ENGINEER

**SUBJECT:** ADOPT ORDINANCE NO. 09-364; REGARDING PORTABLE BASKETBALL STANCHIONS (MORE COMMONLY KNOWN AS BASKETBALL HOOPS) PLACED IN THE PUBLIC RIGHT-OF-WAY, AMENDING THE MUNICIPAL CODE

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At the July 8, 2009, City Council meeting, the Council introduced, read by title only, and waived further reading of Ordinance No. 09-364. The ordinance will amend the Municipal Code, by providing a process for impounding unattended stanchions in the public right-of-way that consistently violate the code and compromise public safety. The adopted resolution established a fee to cover the costs of administering this program.

The City Council approved the ordinance amendment and resolution by a 5-0 vote.

### RECOMMENDATION

Staff recommends the City Council adopt Ordinance No. 09-364 regarding basketball stanchions placed in the public right-of-way, amending the Agoura Hills Municipal Code.

Attachment: Ordinance No. 09-364

**ORDINANCE NO. 09-364**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADDING CHAPTER 5 TO ARTICLE VII OF THE AGOURA HILLS MUNICIPAL CODE, RELATING TO THE REGULATION OF BASKETBALL STANCHIONS**

**THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:**

**Section 1.**     **Findings and Intent.** The City Council finds and declares that:

- A.     The uncontrolled placement of basketball stanchions in the public right-of-way constitutes a threat to public health, safety, and welfare; and
- B.     This Ordinance reduces the City’s liability exposure to personal injury and property damage claims; and
- C.     Recovery of City’s administrative costs associated with compliance monitoring and subsequent enforcement through impoundment is necessary.

**Section 2.**     Section 4117 of Chapter 1 of Article IV of the Agoura Hills Municipal Code is hereby amended to read as follows:

**“4117. Leaving merchandise or other property in public ways; when prohibited.**

No person shall leave or permit to remain on any public highway, alley, sidewalk, crosswalk, or other public way open for pedestrian travel any merchandise, baggage, or other article of personal property. Notwithstanding the foregoing, Chapter 4 of Article VII shall exclusively regulate the placement of newsracks in public ways, and Chapter 5 of Article VII shall exclusively regulate the administration and enforcement regarding the removal of basketball stanchions in public ways.”

**Section 3.**     A new Chapter 5 is hereby added to Article VII of the Agoura Hills Municipal Code to read as follows:

**Chapter 5**  
**BASKETBALL STANCHIONS**

**7501. Title.**

This chapter shall be known as the “Basketball Stanchion Ordinance.”

**7502. Definition.**

For the purposes of this chapter, the following words and phrases shall mean:

- (a) *Stanchions* shall be any freestanding, upright support, framework, post, or stand containing a horizontal circular hoop through which users try to throw a basketball.
- (b) *Public Right-of-Way* shall mean a place of any nature that is dedicated to use by the public for pedestrian or vehicular travel. “Public right-of-way” includes without limitation: street; sidewalk; curb; gutter; intersection; parkway; highway; alley; lane; mall; court; way; avenue; boulevard; road; roadway; bridge; thoroughfare; park or any similar public way.
- (c) *Line-of-Sight* shall mean a path of unobstructed vision between any two points.
- (d) *Owner* shall mean a person or persons to whom a stanchion belongs.
- (e) *Street* shall mean a way or place or whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.
- (f) *Roadway* shall mean the portion of a street improved, designed or ordinarily used for vehicular travel.
- (g) *Curb Return* means the curved portion of a street curb at street intersections or the curved portion of a curb in the end slopes of a driveway approach.

**7503. Location Standards.**

Stanchions shall not be unattended at any time, nor be placed in any location that interferes with vehicular or pedestrian travel. When not in use, all stanchions shall be located on private property. City Engineer shall have the final determination on whether a stanchion location does not comply with this chapter. Stanchions shall not be placed:

- (a) Within twenty (20) feet of any curb return;

- (b) Within ten (10) feet of any fire hydrant, fire call box, police call box, or other emergency facility;
- (c) At any location whereby the clear space for the passageway of pedestrians is reduced to less than four (4) feet;
- (d) At any location that unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic; or
- (e) At any location that interferes with the cleaning of any sidewalk by the use of any mechanical sidewalk cleaning machinery.

**7504. Maintenance Standards.**

Stanchions located on public rights-of-way shall comply with the following maintenance standards:

- (a) Each stanchion shall be maintained in a clean and neat condition and in good repair at all times.
- (b) Occurrence of any of the following conditions on a stanchion shall constitute evidence that the stanchion is not being maintained in a clean and neat condition or in good repair:
  - (1) Graffiti.
  - (2) Broken or unreasonably misshapen structural components.

**7505. Impoundment Process.**

Whenever a stanchion is found to be in violation of this chapter, the city engineer shall affix a notice of violation tag upon such stanchion and shall send a written notice of violation to the owner of the stanchion. The notice shall state the following: (1) the nature of the violation; (2) the compliance date by which the violation must be corrected; and (3) a warning informing the owner that failure to correct the violation or to file a written hearing request with the city clerk within ten (10) days may result in impoundment of the stanchion. The city engineer may impound such stanchion if the owner has not corrected the violation or filed a written hearing request within the allotted period. If the owner timely files a written hearing request with the city clerk, then an administrative hearing regarding the existence of the violation shall be conducted. The city hearing officer shall be the hearing officer for the purpose of such procedure. The stanchion may be impounded following such hearing if the city hearing officer determines that the stanchion is in violation of this chapter.

**7506. Administrative Hearing.**

- (a) Administrative hearings shall be conducted in accordance with procedures established by the city hearing officer. All parties involved shall have a right to: (1) offer testimonial, documentary and tangible evidence bearing on the issues; (2) be represented by counsel; and (3) confront and cross-examine witnesses. The city hearing officer shall not be bound by formal rules of evidence and may receive, under penalty of perjury, any relevant evidence that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing may be continued for a reasonable time for the convenience of a party or a witness. Unless otherwise specifically provided by law, the burden is on the city to prove that the determination that is being appealed is reasonable and not an abuse of discretion.
- (b) The city hearing officer may uphold, overturn or modify the decision being appealed. The city manager or their designated representative shall, within thirty (30) city business days of the appeal filing date, render a written decision supported by findings. The city hearing officer's decision shall be final and shall not be subject to council review. Notice of the decision and a copy thereof shall be mailed to the appellant. Such notice shall contain the substance of the following statement: "You are hereby notified that the time within which judicial review of this decision may be sought is governed by California Code of Civil Procedure Section 1094.8."

**7507. Return of Impounded Stanchions.**

- (a) Stanchions that have been impounded shall be returned to the owner without charge if the City Manager or their designated representative determines that the seizure was improper. Otherwise such stanchions shall be returned upon filing of a written request and payment of the impound fee within thirty (30) days of the date of the impoundment.
- (b) The amount of the impound fee shall be set by City Council resolution.

**7508. Disposal of Impounded Stanchions.**

The City Manager or their designated representative may sell or otherwise dispose of any impounded stanchions provided that both: (a) thirty (30) days have elapsed since the impoundment; and (b) the owner of the stanchion has failed to pay the impound fee. The proceeds of such disposal shall be deposited in the City's general fund.

**7509. Fees.**

The fees provided for in this chapter shall be established by City Council resolution and shall not exceed the City's actual administrative costs.

**Section 4.** If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court or competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or applications, and to this end the provisions of this Ordinance are declared to be severable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof even if one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof is declared invalid or unconstitutional.

**Section 5.** The City Clerk shall certify to the passage of this Ordinance and shall cause same to be published pursuant to state law within fifteen (15) days after its passage, and said Ordinance shall become effective 30 days after its passage.

PASSED, APPROVED, and ADOPTED this 12th day of August, 2009, by the following vote to wit:

- AYES: (0)
- NOES: (0)
- ABSENT: (0)
- ABSTAIN: (0)

BY:

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Denis Weber, Mayor

ATTEST:

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Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

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Craig A. Steele, City Attorney