COUNCIL MEETING
April 17, 2012

Honorable Mayor and Members
of the Torrance City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Police and Environmental Quality & Energy Conservation Commission – Adopt ORDINANCE amending the Torrance Municipal code relating to feeding of birds on public property.

RECOMMENDATION

Recommendation of the Police Chief and Environmental Quality and Energy Conservation Commission that City Council adopt an **ORDINANCE** adding Article 13 to Chapter 1 of Division 4 of the Torrance Municipal Code to address the feeding of birds on any public street, public right-of-way, sidewalk, public building, public parking lot, park or any other public property within the City of Torrance and approve an ordinance summary for publication.

Funding: Not applicable

BACKGROUND

On February 3, 2011, the Torrance Police Department presented this new Ordinance for consideration and review to the Environmental Quality Energy Conservation Commission due to an increase in the feeding of birds in public parks, public streets and other public locations throughout the City. This increase in feeding is causing a public nuisance by attracting large amounts of birds to specific locations and also creating a public health concern due to the refuse and/or food left at the location as well as the large amounts bird feces left deposited on the ground, on public and private structures and in the surrounding area.

The public health concern created by the feeding of birds is due to the diseases carried by a number of these birds, which is amplified substantially as more and more birds are attracted to these public locations. Additionally, the feces left behind after the

feeding of these birds can be a breeding ground for a number of diseases/fungi that may then infect the human population also using these public spaces. The public nuisance created by the bird feeding is caused not only by the increase in the numbers of birds but also the damage they create to surrounding areas, both public and private, including the defacement of buildings, vehicles, trees, lawns and other areas, which then further deplete city resources to clean and/or repair.

During the February 3, 2011 Commission meeting, several concerned citizens commented on the proposed ordinance and specifically the wording. Concerns were raised regarding how the new Ordinance would be enforced and its applicability to private property in addition to public property. This Ordinance is not intended to apply to private property nor would it be enforceable in instances where feeding was being conducted solely on private property. Additional concerns included the perception that this Ordinance was being proposed to address one location and one individual. Bird feeding throughout the City has increased significantly and complaints from concerned citizens have been received regarding a number of locations throughout the City of Torrance.

Additional comments regarding the verbiage in the Ordinance included requests from citizens and the Commissioners to further clarify what would constitute a violation of this Ordinance, specifically in regards to delineating a specific minimum number of birds that would need to be fed in order to be a violation. Based on public comments, the Commission requested language be inserted that would necessitate a showing of intent on the part of the person feeding birds to have the birds "linger, congregate or gather" at a location to be fed. The Commission further requested the City Attorney's Office be consulted on the feasibility of utilizing a public nuisance section to address this issue.

Based on the Commission's inquiries and direction, the Ordinance was forwarded to the City Attorney's Office for review and a final version of the Ordinance was scheduled to be presented to the Commission on September 1, 2011.

ANALYSIS

The City Attorney's Office reviewed the recommended language changes to the Ordinance and declined to make any changes in the proposed Ordinance. The City Attorney's Office indicated that the proposed language changes would create an element of intent in the ordinance, which would actually cause greater problems with enforcement and prosecution in proving that a person intended to feed a bird. As written, the Ordinance is legally enforceable but the proposed changes would create unnecessary legal issues that would result in more manpower to prosecute and result in a lower likelihood of successful prosecutions.

ENVIRONMENTAL QUALTY COMMISSION RECOMMENDATION

The Environmental Quality Commission again considered this proposed Ordinance on September 1, 2011. At the meeting, there were a number of citizens who chose to speak on the issue including a large number of residents whose homes were in direct proximity to feeding locations. During the ensuing discussions, the Commission heard comments in support of and against the proposed Ordinance and the City Attorney's opinion of the Ordinance as written. At the conclusion of the discussion, the Environmental Commission unanimously voted that the City Council approve the Ordinance.

Respectfully submitted,

JOHN J. NEU
Chief of Police

Environmental Quality Commission

Michael Griffiths
Chair

By
Stephen D'anjou
Traffic and Special Events Commander

NOTED:

LeRoy J. Jackson
City Manager

Attachments: A) Ordinance
B) Ordinance Summary
C) February 3, 2011 Excerpt of Minutes
D) September 1, 2011 Excerpt of Minutes

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE ADDING A NEW ARTICLE 13 TO CHAPTER 1, DIVISION 4 OF THE TORRANCE MUNICIPAL CODE

The City Council of the City of Torrance ordains as follows:

SECTION 1

A new Article 13 is added to Chapter 1, Division 4 of the Torrance Municipal Code, to read in its entirety as follows:

"Article 13 – Feeding of Birds

SECTION 41.13.1 FEEDING BIRDS PROHIBITED

a) It is illegal for any person to deposit on or in any public street, public right-of-way, sidewalk, public building, public parking lot, park or any other public property within the city any food or edible thing that can be consumed by birds.

b) It is illegal for any person, while on or in any public street, public right-of-way, sidewalk, public building, public parking lot, park or any other public property within the city, to feed or cause to be fed any bird.

c) Any violation of this section is a misdemeanor.

d) This section may be enforced by a city police officer, animal control officer, animal control supervisor, code enforcement officer, or any City employee authorized under Section 11.2.5 of the Torrance Municipal Code."

SECTION 2

Any inconsistent provisions of the Torrance Municipal Code or its appendices or any inconsistent ordinances of the City are repealed, to the extent of the inconsistencies.

SECTION 3

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason deemed or held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision will not affect that validity of the remaining portion of this Ordinance. The City Council of the City of Torrance hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause,

phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or other portions might subsequently be declared invalid or unconstitutional.

SECTION 4

This ordinance will take effect thirty days after the date of its adoption. Within fifteen days following adoption, this ordinance or a summary of this ordinance, if authorized by the City Council, will be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.

INTRODUCED AND APPROVED the __ day of ____, 2010.

ADOPTED AND PASSED this ___ day of _____, 2010.

_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____
Patrick Q. Sullivan, Assistant City Attorney

Attachment B

ORDINANCE NO. _____

SUMMARY

On _____, 2012, the City Council of the City of Torrance adopted Ordinance number _____ adding Section 41.13.1 the Torrance Municipal Code relating to feeding of birds. The Ordinance provides that it is illegal to deposit on or in any public property any food or edible thing that can be consumed by birds. Further, the Ordinance provides that it is illegal to feed or cause to be fed any bird while on or in any public property. Violation of this Ordinance is a misdemeanor.

*****City Clerk to add a paragraph stating that copies of the ordinance are available at the City Clerk's office and stating the names of the City Council members that voted in favor and those that voted against.*****

EXCERPT OF MINUTES	☑ Minutes Approved

February 3, 2011

MINUTES OF A REGULAR MEETING OF THE ENVIRONMENTAL QUALITY AND ENERGY CONSERVATION COMMISSION

1. CALL TO ORDER

The Torrance Environmental Quality and Energy Conservation Commission convened in a regular session at 7:02 p.m. on Thursday, February 3, 2011 in the West Annex meeting room at Torrance City Hall.

2. ROLL CALL:

Present: Commissioners Chim, Cunningham, Gobble, Griffiths, Watson, and Chairperson Reilly.

Absent: Commissioner Robbins.

Also Present: Deputy Community Development Director Cessna, Environmental Quality Officer Colclasure, Torrance Police Lieutenant D'Anjou, and Animal Control Supervisor D'Amico.

7A. RECOMMENDATION TO FORWARD A DRAFT ORDINANCE PROHIBITING THE FEEDING OF BIRDS ON PUBLIC PROPERTY TO CITY COUNCIL FOR ADOPTION

Deputy Director Cessna introduced the item and welcomed Torrance Police Lieutenant D'Anjou, Traffic and Special Events Division, as well as Animal Control Supervisor D'Amico.

With the aid of slides, Lieutenant D'Anjou presented a draft ordinance prohibiting the feeding of birds on any public street, right-of-way, sidewalk, building, parking lot, park, or any other public property within the City. He requested that the Commission concur with Torrance Police Department's recommendation to forward the draft to City Council for adoption. He stated that the proposed ordinance is in response to the increase in feeding of birds in public parks and other public locations throughout the City. He noted that the feeding is causing a public nuisance by attracting large amounts of birds to specific locations. It is also creating a public health concern due to the refuse and/or food left at the location as well as to the large amounts of bird feces deposited on public and private property. He stated that City resources are being increasingly depleted to clean and/or repair the defacement and noted that, although the photographs were taken at Columbia Park, it is a Citywide issue.

Responding to Commissioner Griffiths' inquiry about other cities, Animal Control Supervisor D'Amico distributed the ordinance banning the feeding of birds on public and private adopted by the City of Pasadena.

Responding to Commissioner Watson's inquiries, Lieutenant D'Anjou advised that at this point the proposed ordinance does not address the feeding of birds on private property, that as far as he knows it is individuals and not organizations who are feeding the birds, and that any violation of the ordinance would be a misdemeanor.

Commissioner Gobble related his observation that sea gulls are a protected species and Lieutenant D'Anjou responded that the problem is primarily pigeons and that there would be no protection issues as only feeding is banned. He added that citations issued thus far have been for leaving refuse and that a littering violation requires physically seeing an individual throw something down.

When Commissioner Gobble requested that Lieutenant D'Anjou compare this to feeding ducks at Wilson Park, he responded that the ordinance would address large scale feeding which impacts an area.

Responding to Commissioner Chim's inquiries, Lieutenant D'Anjou stated that bird feces is difficult to remove once it has dried and causing birds to leave behind excess feces does not constitute vandalism.

Commissioner Watson related her concern regarding runoff and storm water pollution from bird feces.

In response to Chairperson Reilly's inquiries, Deputy Director Cessna stated her understanding that the Cities of Beverly Hills and Lomita also have ordinances banning bird feeding and that the draft ordinance has been reviewed by staff and is expected to be enforceable.

MOTION: Commissioner Gobble, seconded by Commissioner Watson, moved to open the public hearing; a voice vote reflected unanimous approval.

Peter Dabbieri, Via el Chico, expressed concern that the ordinance would make it an offense to feed any animal with any food that a bird could eat. He maintained that it would be discriminatory to give the Police Department discretion as to how the law is enforced. He suggested modifying the ordinance to limit it to attraction of 100 birds or a certain amount of feces in one location.

Debra Corwin, West Bulova Street, questioned if staff's concern is the pigeons, the individual feeding them at Columbia Park, or both. She expressed concern that the ordinance would spearhead the movement to ban the feeding of feral cats if there is any food left on the ground.

Ms. Corwin received clarification that the ordinance addresses only the large scale feeding of birds.

Harry Stuver, Towers Street, questioned if humans can really catch diseases from bird feces and stated that he has a hard time accepting that this is solely about birds and not about a certain individual who is feeding them. He stated that other cities are concerned about the feeding of birds around areas where people are consuming food and expressed concern about the discretionary part of enforcement. He called attention to a problem in West Torrance regarding illegal abandonment of lead bullet fragments by the City of Redondo Beach, noting that it is a much larger problem than bird feeding.

Doug Austin, 190th Street, stated that birds belong in a park but as soon as they are done feeding they land on his house. He noted that it is a filthy, unlivable, dangerous, and unhealthy situation and that officers need "teeth" to enforce excessive feeding of birds.

Nina Dabbieri, Via el Chico, expressed concern about the close-minded attitude in the City where it is "all or nothing" with no room for negotiation. She stressed the need to halt this type of legislation and start looking at ways to address issues where there is a "win-win" situation.

MOTION: Commissioner Watson moved to close the public hearing. Commissioner Gobble seconded the motion; a voice vote reflected unanimous approval.

Commissioner Watson related her observation that cities in Europe such as London, Venice, and Amsterdam, have ordinances against the feeding of birds. She voiced support for an ordinance that gives officers an option to cite an individual for excessive feeding.

Commissioner Gobble stated that quality of life is important but feels that Animal Control officers have much more important things to do for public safety and that wildlife is not a large problem in the City.

Chairperson Reilly was informed by Lieutenant D'Anjou that three citations have been issued in the past year and that communication attempts with individuals who are feeding birds have had no effect on their behavior.

Commissioner Chim expressed an interest in what suggestions audience members may have for negotiation.

MOTION: Commissioner Chim, seconded the Commissioner Watson, moved to reopen the public hearing; a voice vote reflected unanimous approval.

Nina Dabbieri, Via el Chico, suggested restricting the quantity and type of food that is fed to birds.

Peter Dabbieri, Via el Chico, recommended a quantitative inclusion in the ordinance, such as a certain number of birds attracted, and adding verbiage so that anyone who feeds an animal in a public area is not a criminal.

Don Clounch, West 238th Street, related his understanding that there is an ordinance on the books regarding creating a public nuisance, adding that officers can use this to cite the few individuals who are creating the problem.

Laura Rubio, West 177th Street, expressed concern that the City is trying to get rid of a homeless individual who is feeding birds at Columbia Park and received clarification that the problem exists in several City parks.

Harry Stuver, Towers Street, asserted that the individual in question adds character to the City and has every right to feed the birds.

Doug Austin, 190th Street, maintained that the parking lot is useless because it is a bird feeding ground and that bird feces is a health hazard.

MOTION: Commissioner Gobble moved to close the public hearing. Commissioner Watson seconded the motion; a voice vote reflected unanimous approval.

In response to Commissioner Cunningham's inquiry, Lieutenant D'Anjou explained the difficulty in getting a conviction on a public nuisance complaint.

MOTION: Commissioner Gobble moved to receive and file the staff report. The motion died due to a lack of a second.

Deputy Director Cessna provided several options for Commissioners to consider.

Chairperson Reilly suggested amending Section 1a) so that it targets the issue of excessive feeding and is not such a broad ban that it includes any food that can be consumed by birds.

Commissioner Gobble cautioned against adopting an ordinance because of a few individuals. He urged Animal Control officers to reason with the individuals on a case-by-case basis and to explore humane ways to keep the pigeon population healthy and limit their numbers so they do not affect neighboring residences.

MOTION: Commissioner Watson moved to refer the draft ordinance to staff to modify verbiage to make a violation of public bird feeding more specific. Commissioner Chim seconded the motion; the motion passed on a 4-2 roll call vote as follows:

Commissioners Chim, Cunningham, Watson, and Reilly	Aye
Commissioners Gobble and Griffiths	Nay
Commissioner Robbins	Absent

Deputy Director Cessna thanked audience members for their input and advised that they would be notified when the item comes back to the Commission.

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Attachment D

EXCERPT OF MINUTES	☑ Minutes Approved

September 1, 2011

MINUTES OF A REGULAR MEETING OF THE ENVIRONMENTAL QUALITY AND ENERGY CONSERVATION COMMISSION

1. CALL TO ORDER

The Torrance Environmental Quality and Energy Conservation Commission convened in a regular session at 7:04 p.m. on Thursday, September 1, 2011 in the West Annex meeting room at Torrance City Hall.

2. ROLL CALL:

Present: Commissioners Cunningham, Gobble, Reilly, Robbins, Watson, and Chairperson Griffiths.

Absent: Commissioner Chim.

Also Present: Deputy Community Development Director Cessna, Senior Environmental Quality Officer Jones, Torrance Police Lieutenant D'Anjou, and Torrance Police Operations Supervisor Aceves.

7. ENVIRONMENTAL MATTERS

7A. DISCUSSION REGARDING THE DRAFT ORDINANCE PROHIBITING THE FEEDING OF BIRDS ON PUBLIC PROPERTY

Deputy Director Cessna provided background on the item continued from the February 3, 2011 Commission meeting. She reported that the Police Department worked with the City Attorney to craft language that would reflect concerns expressed at that meeting; however, the City Attorney recommends that the ordinance go forward as previously written.

Lieutenant D'Anjou introduced Police Operations Supervisor Aceves. Referring to a question raised at the February meeting, he explained that using a Public Nuisance ordinance to address the bird feeding issue would be extremely difficult and expensive to enforce and that the City Attorney does not recommend it. Responding to a suggestion to add language making "large scale feeding" of birds a violation, he stated that the City Attorney advised that enforcement would be cost prohibitive and time/labor intensive.

At 7:15 p.m., Chairperson Griffiths welcomed comments from the public.

Aniqa Azad, West 190th Street, voiced support for the ordinance and discussed problems caused by feeding pigeons and sea gulls at Columbia Park that include roof damage, decreased property values, and spread of disease.

Valerie Ellis, Plaza Del Amo, read and entered into record a February 23, 2011 letter from Nina Dabbieri, Via El Chico, to Planning Manager Lodan expressing her opposition to the proposed ordinance.

Doug Austin, Park Place, expressed support for the ordinance to resolve the destruction of property and health issues caused by excessive bird feeding.

Jae Kim, West 190th Street, urged the Commission to recommend passing the ordinance, noting that there is more than one person feeding birds at Columbia Park.

Terry Furey, Cranbrook Avenue, voiced support for the ordinance to address the large number of birds that wait all day to be fed at Columbia Park.

Mimi Im, West 190th Street, pleaded passage of the ordinance and stated that her backyard is unusable because of bird feces and health concerns.

Commissioner Robbins stated that the unwanted behavior at Columbia Park is unfair to residents and park visitors, that he is in favor of recommending adoption to City Council, and suggested using Park Rangers to assist with enforcement.

In response to Commissioner Watson's inquiry, Deputy Director Cessna explained that the original ordinance has been determined to be the most enforceable, adding that a "Where as" section could be added to make the intent clear.

Lieutenant D'Anjou stated that the ordinance is similar to those passed in other jurisdictions and that it is not being proposed to target one homeless individual who is in fact not homeless. He pointed out that more than one person is feeding birds at Columbia Park and that problems also exist at Wilson Park, downtown Torrance, and at 171st and Gramercy Avenue. He noted the damage being done to parks and public right-of-ways, adding that Park Services is unable to clean it.

Commissioner Gobble thanked audience members for their comments. He stated that he sympathizes with residents but expressed concern about citations being issued for the small feeding of birds.

Lieutenant D'Anjou explained discussions with the City Attorney, the difficulty in enforcing and prosecuting the ordinance with revisions suggested at the February meeting, and the difference between the letter of the law and the spirit of the law. He added that Animal Control has no way to relocate the birds or "thin the population" but asserted that once the food source is taken away, the birds will have no choice but to go elsewhere. He offered to explore the possibility of using sterile grain in the future.

Commissioner Reilly voiced support for recommending approval of the ordinance and, in response to her inquiry regarding enforceability, Lieutenant D'Anjou stated that officers do not need to see the crime occurring, just a connection.

Commissioner Cunningham thanked residents for their patience with the process and, responding to his inquiries, Lieutenant D'Anjou stated that signage would be installed at parks, explained the enforcement and prosecution process, and advised that restitution was a civil matter.

MOTION: Commissioner Gobble moved to recommend adoption of the ordinance to ban the feeding of birds on public property as presented. Commissioner Robbins seconded the motion; a roll call vote reflected unanimous approval (absent Commissioner Chim).