



WS 2a

DATE: January 13, 2009
TO: Mayor and City Council
FROM: Director of Library and Neighborhood Services Department
SUBJECT: Enhancement of Code Enforcement Policies and Procedures

RECOMMENDATION:

That Council reviews and comments on this report.

SUMMARY

In Fiscal Year 2008, the Hayward City Council designated as one of its priorities the issue of community cleanliness. This, along with the Council's approval of the Neighborhood Services Initiative, has set in motion staff efforts to improve the effectiveness of City code enforcement activities. This City Council work session will provide an opportunity for staff to summarize recommended changes to the City's Community Preservation and Improvement Ordinance. These changes are designed to address inconsistencies between sections of the Hayward Municipal Code, clarify and streamline administrative procedures, and enhance the efficiencies of City code enforcement activities. The staff recommendations described in this report, if approved, will also require minor adjustments to the City's Master Fee Schedule.

BACKGROUND

The City's Community Preservation and Improvement Ordinance (Article 7, Chapter 5 of the Hayward Municipal Code) currently makes it unlawful for Hayward real estate owners to allow the condition of their property to deteriorate to the point that it becomes detrimental to the public health, safety, or general welfare of the community. This includes both inhabited properties and vacant properties, be they residential or commercial. Specific definitions of what constitutes a "public nuisance" are provided in the Community Preservation and Improvement Ordinance, as are the procedures for enforcing the provisions of this law. Due process procedures are also included which guarantee the Constitutional right of property owners accused of breaking the law to be treated fairly, and to explain and defend their actions before an impartial party that is authorized to decide whether their rights have been breached during the enforcement of the City's municipal code.

Modifications to the Community Preservation and Improvement Ordinance are now needed in order to improve the City's ability to address violations that exist on vacant and foreclosed properties, to streamline and strengthen code enforcement procedures, to clarify legal terms, and to enhance cost

efficiencies. Changes are also proposed that will more accurately reflect the current organizational structure of the City.

DISCUSSION

To improve the effectiveness of the City's code enforcement activities, several modifications to the Community Preservation and Improvement Ordinance are recommended. This includes language that clarifies the legal definition of what constitutes a *public nuisance*. Changes are also recommended that will enhance the City's ability to address violations on foreclosed properties by broadening the definition of *Owner* to now include "organizations or other legal entities", in addition to "persons" that are legally responsible for maintaining owned property in Hayward.

Staff recommendations also are intended to strengthen the ability of City Code Enforcement Officials to address code violations by including, among other things, violations that are visible from the public right of way. Changes are also recommended that clarify the different types of code enforcement costs for which the City may seek reimbursement. Modifications that clarify intent and which address inconsistencies which currently exist with other sections of the Municipal Code are also presented.

Significant modifications to the Administrative and Lien Hearing processes are also proposed. Currently, City Council conducts its Lien Hearing for both Housing and Community Preservation code enforcement cases once a year. Consequently, if someone wishes to appeal the charges against them, and they just missed the annual Lien Hearing, they may have to wait for as long as a year before their case can be decided. Not only is this cumbersome for the people involved, this significantly delays the City's ability to file a lien against the property of those owners whose appeals are not upheld.

In lieu of the current Annual Lien Hearing before the City Council, staff recommends that Lien Hearings be combined with Administrative Citation Hearings, and that they be conducted before a Hearing Officer as outlined in the new Administrative Citation Ordinance. Staff also recommends that if needed, these hearings be conducted as frequently as two times per month. A Hearing Fee is proposed to partially off-set the increased cost that would be incurred by this change. Presumably, increased revenue would also be realized as a result of staff's enforcement efforts and the associated collection of fees and fines. With Council's approval, minor adjustments would need to be made to the Master Fee Schedule to reflect these changes.

The specific proposed changes to the Community Preservation and Improvement Ordinance are provided as Attachment A to this report. The rationale for each of these is provided below:

Chapter 5, Article 7, Section 5-7.10 – Definitions:

- (b) *Enforcement Officer*: In order to more accurately reflect the current organizational structure of the City, Staff recommends that the language pertaining to the *Director of Community and Economic Development Department or his or her designee* be stricken from this section. This would leave the City Manager with the authority to designate or appoint City employees or officials to serve in this capacity.

Staff also recommends that additional language be deleted from this section which limits the conditions under which a designated Enforcement Officer is allowed to enter a property for the purpose of inspection and enforcement. This change would more readily allow Enforcement Officers to enter vacant properties in order to determine if code violations exist.

- (g) *Nuisance*: Staff recommends that unnecessary language be deleted from this section which could inadvertently limit the purpose of defining the term *nuisance*.
- (h) *Owner*: Added language broadens the definition of the term *owner* to include situations such as foreclosures where banks or other institutions own and therefore are responsible for the maintenance of their property.
- (j) *Property*: The areas of a property that are subject to the provisions of this ordinance are clarified by added language to this section.
- (k) *Costs*: Staff recommends that the definition of the term *costs* be added to this section to clarify the different types of cost that are incurred during the course of conducting code enforcement activities, and for which the City may seek reimbursement. Staff recommends that this language also be inserted as needed in other relative sections of the Hayward Municipal Code.
- (l) *Lien*: This definition has been added to clarify that a special assessment or lien may be levied against a property owner in order to recoup City costs and fines associated with code enforcement activities. Staff recommends that the same language be included in other relevant sections of the municipal code, including those pertaining to the Administrative Citation Ordinance, so that these provisions are consistent with one another.

Chapter 5, Article 7, Section 5-7.20 – Public Nuisance: Language has been inserted to broaden the meaning of those who are responsible for maintaining owned property, as well as to broaden and clarify what is legally considered to be a Public Nuisance, as follows:

- (a) Language is stricken from this section that may inadvertently limit the authority of the City to enforce conditions that constitute a public nuisance, and leaves to the discretion of the authorized Enforcement Officer to determine if the items noted in this section are temporarily present on a property due to the normal course of an authorized business. In addition “used motor oil” has been added.
- (b) Language has been added to include *shopping carts* and *paint cans* to the list of items that must be contained in an enclosed non-habitable structure or appropriate containers for health and safety reasons, as these items have been frequently reported to the City by community residents, and observed by Enforcement Officers in the field. Staff also recommends that language be stricken from this section that inadvertently allows for blighted conditions to exist for up to 30 days.
- (c) Staff recommends that *shopping carts* be removed from this section and instead be included in Section (b) for the sake of clarity.

- (d) The current language in this section may inadvertently be interpreted to limit the City's authority to address blighted conditions that only exist in the front area of a privately owned property that is adjacent to a public roadway or other publicly owned property. Staff recommends that the language be amended so as to be consistent with broader legal authority to address blighted conditions that are visible from the public right-of-way, even if those conditions exist on the side or backyard areas of a privately owned property.
- (e) As in Section (a) above, staff recommends that the language in this section be amended so as to give authorized Enforcement Officers the discretion to determine if the items noted are temporarily present on a property due to the normal course of an authorized business. Staff also recommends that clarifying language be added that does not substantially alter the intent of this section.
- (g) Staff recommends that the timeframe in which discarded construction materials can be stored on a construction site be reduced from 60 to 30 days.
- (h) Staff recommends that language be stricken from this section that could inadvertently limit the authority of Enforcement Officers to address situations where appliances such as washers, dryers, refrigerators, and other similar items are on properties in such a way as to be considered community blight.
- (j) Staff recommends that the standard for what constitutes an acceptable amount of peeling paint on the exterior of a building be reduced from 50% to 25% of the total surface area that is observable from the public right-of-way. This amendment will strengthen the authority of Enforcement Officers to address such conditions.
- (k) In order to address current inconsistencies between different sections of the municipal code that require that *vacant* properties be adequately secured for health and safety reasons, staff recommends that language in this section be amended to prohibit only *occupied* buildings from covering doors and windows with boards, tarps or other similar opaque materials, except as otherwise directed by the City's Building Official or his/her designee. Staff also recommends that additional language be added to this section that prohibits broken or cracked glass windows or doors on occupied buildings.
- (l) For the sake of consistency with other provisions of the municipal code, staff recommends that language be added to this section that would require *unoccupied* buildings to be secured for health and safety reasons.
- (n) Staff recommends that this section pertaining to deteriorated building structures be deleted from this section of the municipal code, for these types of issues more appropriately fall under the jurisdiction of the Building Official and the City's Building Division.
- (o) Language defining weeds that have exceeded four inches in any yard or planter strip as being a public nuisance was deleted from section (r) and added to this section for clarity.

- (s) Changes to this section, pertaining to the requirement that inoperable vehicles be stored in enclosed structures, are recommended for clarification purposes only and do not substantially change the intent of this section.
- (t) This section pertains to the storage of unmounted campers or camper shells, and the changes that are recommended are for clarification purposes.
- (x) Language is deleted from this section that could inadvertently limit the authority of Enforcement Officers from addressing persons illegally sleeping or living in vehicles.

Chapter 5, Article 7, Section 5-7.30 – Abatement Notice: In order to better align this section with the recently adopted Administrative Citation provisions of the Hayward Municipal Code, staff recommends that the title of this section be amended to read: *Administrative Citation/Abatement Notice*. For the sake of clarification, staff further recommends that the term, *Notice to Abate*, be replaced with the more generic term, *notice*, where applicable in this section.

Recommended language is also added to this section in order to recognize that other sections of the municipal code may supersede the provisions outlined in this section pertaining to timeframes and processes for correcting noticed violations. Other minor changes are also recommended in this section in order to be consistent with other provisions of the Hayward Municipal Code.

Chapter 5, Article 7, Section 5-7.35 – Manner of Giving Abatement Notice: Minor language changes to this section are recommended for the sake of clarity and consistency with other provisions of the municipal code.

Chapter 5, Article 7, Section 5-7.40 – Administrative Hearing: Staff proposes that language be added to this section which references Section 1.7.13 of the Administrative Citation Ordinance pertaining to the right to Judicial Review. In summary, this section states that any person aggrieved by an administrative decision of a Hearing Officer may appeal that decision before the Alameda County Superior Court in accordance with timelines and provisions set forth in Section 53069.4 of the California Government Code.

Changes to the Annual City Council Lien Hearing Process:

Chapter 5, Article 7, Section 5-7.70 – Abatement of Nuisances: Staff recommends that the changes in this section include the replacement of the term *expenses* with the term *costs*, in reference to Section 5-7.10(k) above. That section defines those costs that can be recouped by the City by charging a fee, or by imposing a lien or special assessment on a property if necessary.

Chapter 5, Article 7, Section 5-7.80 – Account and Report of Cost: If Council approves recommended changes to the Administrative / Lien Hearing process, staff proposes that it would no longer be necessary to render an annual itemized report to the Council showing the cost of abatement, including any salvage value, and outstanding inspection charges, as is currently submitted in conjunction with the annual City Council Lien Hearing. Therefore, staff recommends that the language referring to the annual *Account and Report of Cost* be deleted.

Chapter 5, Article 7, Section 5-7.90 – Notice of Report: To be consistent with the above recommended changes, staff recommends that this entire section be deleted. This section describes the procedure that the City Clerk would use to post the Report of Cost noted in Section 5-7.80.

Chapter 5, Article 7, Section 5-7.100 - City Council Hearing: In lieu of the current practice of conducting an annual Lien Hearing before the City Council on matters pertaining to Housing and Community Preservation code enforcement, staff recommends that these Lien Hearings be combined with Administrative Citation Hearings, and that they be conducted before a Hearing Officer as outlined in the new Administrative Citation Ordinance, on an as needed and more timely basis. Furthermore, staff recommends that if needed, these hearings be offered as frequently as two times per month in order to strengthen the impact of the City's code enforcement activities, and to expedite the City's cost recovery efforts. If this change in practice is approved by Council, this entire section would be deleted.

To further enhance the City's code enforcement efforts, Staff is currently researching whether it is possible to file a formal notice on the title of a property through the Alameda County Assessor's Office where the owner has been unresponsive to the issuance of notices and the imposition of fines and fees. This will be particularly useful in those instances where a property has been foreclosed upon and is owned by a bank or some other institution. This course of action would be applied only to specific cases where the violations are not abatable and do not pose a health or safety risk (i.e., where an illegal accessory structure does not meet set-back requirements).

FISCAL IMPACT

Currently the City contracts with a retired San Leandro Police Officer to function as the City's impartial Hearing Officer. The Hearing Officer conducts monthly appeal hearings associated with parking citations that are issued by the Hayward Police Department. He serves several jurisdictions in the San Francisco Bay Area in this capacity, and has worked with the City for over 9 years with no increase in his fee. The current cost of this contract is approximately \$200 per month.

If Council approves staff's recommendation to have the Hearing Officer conduct Housing and Community Preservation Administrative Citation Appeal / Lien Hearings in lieu of the annual City Council Lien Hearing, and if this occurs as frequently as two times per month, it stands to reason that the cost of the Hearing Officer's contract will increase. It is anticipated that, in addition to this expansion in work, the Hearing Officer would also conduct hearings pertaining to other citations issued by City officials under the new provisions of the Administrative Citation, Anti-Smoking, Social Host, and Anti-Graffiti Ordinances. Consequently, there will be a significant expansion in the volume of work, and the type of cases heard will increase in complexity.

Negotiations with the Contractor are still underway, so the extent to which the cost of the Hearing Officer's contract will increase is not yet known. It is anticipated that there will also be an increase in City staff time commensurate with the increased volume of hearings that will be conducted. Staff will need to ensure that the logistics associated with the hearings are efficient and effective, and will also be responsible for processing associated billing and other required documentation. To partially offset these anticipated expenses, staff recommends that a nominal fee of \$25 be charged per hearing. Presumably, increased revenue would also be realized as a result of staff's increased

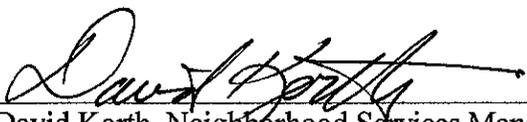
enforcement efforts and the associated collection of fees and fines. If Council approves these procedural changes, minor adjustments will also need to be made to the Master Fee Schedule.

No other specific identifiable fiscal impacts are expected.

PUBLIC CONTACT / NEXT STEPS

The January 13, 2009 City Council Work Session is the first step to introducing the staff's recommendations outlined in this report to the Council, and to the public. Taking into consideration comments offered by the Council members and members of the public, staff will prepare the documentation necessary and properly notice the introduction of the proposed amendments to the Municipal Code at the regular City Council meeting scheduled for Tuesday, February 3, 2009. On Tuesday, February 17, 2009, Council will consider the adoption of the proposed changes to the Hayward Municipal Code.

Prepared by:



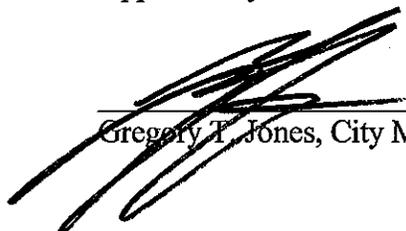
David Korth, Neighborhood Services Manager

Recommended by:



Lisa Rosenblum, Director
Library and Neighborhood Services Department

Approved by:



Gregory T. Jones, City Manager

Attachment A – Proposed Revisions to the Community Preservation and Improvement Ordinance - Article 7, Chapter 5, Sections 5-7.00 to 5-7.200 of the Hayward Municipal Code.

**DUE TO THE COLOR OF
THE REFERENCED
ATTACHMENT, IT HAS
BEEN ATTACHED AS
A SEPARATE LINK**