

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 06/8/09		Item Number: A-1	
AGENDA ITEM: Continued Discussion of an Ordinance Amending Chapter 9.04 of Title 9 of the Culver City Municipal Code, Entitled “Nuisances,” to Modify Property Maintenance Standards and to Update the Procedures for Administrative Due Process Abatement of Public Nuisances; and, Amending Chapter 1.01 of Title 1 to Relocate the Definition of the Composition of the Municipal Code Appeals Committee from Chapter 9.04.			
Contact Person/Dept.: Sharon Guidry, Sol Blumenfeld, Community Development		Phone Number: 310-253-5940	
Fiscal Impact: Yes ☐ No ☒		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Public Notification: Master E-Mail Notification List (06/03/09), Culver City News May 21, 2009, Homeowner Associations E-Notification List (05/21/09), Chamber of Commerce (05/21/09), Downtown Business Association (05/21/09) City Council Speaker Cards regarding property maintenance from 01/08-05/09 (05/21/09)			
Department Approval: Sol Blumenfeld (06/01/09)		City Attorney Approval: Carol Schwab (by L. Vidra) (06/03/09)	
Chief Financial Officer Approval: Jeff Muir (by N. Kimball)(06/03/09)		City Manager Approval: Mark Scott (06/03/09)	
<u>RECOMMENDATION:</u> Staff recommends the City Council conclude deliberations and direct staff to bring back an Ordinance amending Chapter 9.04 of Title 9 of the Culver City Municipal Code (CCMC), entitled “Nuisances,” to modify property maintenance standards and to update the procedures for administrative due process abatement of Public Nuisances; and, amending Chapter 1.01 of Title 1 to relocate the definition of the composition of the Municipal Code Appeals Committee from Chapter 9.04,. <u>BACKGROUND/DISCUSSION:</u> In August 2008, staff reported to the City Council on the status of the new Enforcement Services Division and discussed property maintenance standards established in the CCMC that required Council consideration, since the standards had been adopted almost 50 years ago and were ambiguous. Staff also reported on the process for enforcement activities and the progress made in implementing the Enforcement Services Division’s (Divison) annual work plan. It was indicated at the hearing that a revised Property Maintenance Ordinance would be prepared based upon Council direction and in March, April and May 2009 staff presented the draft Ordinance to City Council. A follow-up item was scheduled to discuss public testimony and receive any additional direction from Council prior to scheduling the final adoption of the Ordinance.			

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As reported at the August, 2008 meeting, the Division responds to constituent complaints and conducts proactive inspections of commercial and residential property. The current residential property maintenance standards address, among other concerns, overgrown vegetation, junk, trash and debris stored in yards, deferred maintenance and storage of trash cans away from public view. In the commercial areas, the Division typically enforces banner sign violations, outdoor storage and encroachment violations on the public way.

Enforcement Focus:

Historically, Culver City has encouraged persons to voluntarily comply with the provisions of the CCMC. This focus will not be altered under the proposed Ordinance. The focus of the Division is to obtain voluntary compliance by providing reasonable time to correct violations of the CCMC. Typically a Code Enforcement Officer will respond to a constituent's complaint or observe a violation while in the field and meet with the property or business owner, tenant or other responsible person to discuss the violation. At that time the responsible person is given a warning to correct the violation. Unless a violation involves encroachment on the public right-of-way or a life-safety issue, typically two weeks is given to correct the condition if it is an uncomplicated maintenance issue, such as clearing overgrown vegetation. More time will be given to correct a violation if there are exceptional circumstances that prevent more timely compliance.

When enforcement problems are not corrected after receiving a warning, the CCMC provides the authority for the City to fine the responsible person (through the administrative citation process previously adopted by the City Council). If the violations are not corrected within a reasonable amount of time, a conference will be arranged with the City Attorney's Office to try to obtain compliance. If a violation is so severe that it requires a more concerted effort to obtain compliance, the CCMC provides the City Attorney's Office the authority to prosecute the violator in criminal court, or file a civil case. Additionally, the CCMC provides the authority for the City to abate violations through the nuisance abatement process. State law provides the authority and procedure for the City to go onto the property through inspection warrants or abatement warrants. It is important to note that abatement warrants and hearings have rarely been used by the City in the past 20 years, according to the City Attorney's Office, and none have been pursued under the new Enforcement Services Division.

Analysis:

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I. Council Direction Related to Draft Ordinance:

During the City Council's deliberations at the Council Meeting of April 6, 2009, Council provided general direction on the following::

1. Clarify the terms *overgrown vegetation* and *lawn*.
2. Incorporate the ability to provide *xeriscape* and *ocean friendly gardens*.
3. Identify a location for trash can storage that is consistent with the goal to keep them out of public view from the street but allows storage in the side yard.
4. Consider age and economic hardship in establishing compliance.
5. Prepare a brochure describing new standards and requirements, ensuring the process for compliance is described and compliance steps and verbal warnings prior to fines and penalties and economic hardship provisions.
6. Provide comparison between new and old ordinance to note what has been changed.
7. Bring back ordinance in final form in 45 days with advance notice.
8. Involve volunteer groups in gaining compliance. Assist elderly on fixed incomes that cannot comply.
9. Revise maximum uncut lawn height to reflect alternatives to lawns.
10. Modify wording for overhanging tree limbs.
11. Ensure there is a neutral hearing officer or use the Landlord-Tenant Mediation Board and that the process is objective.
12. Ensure the process is not random and includes commercial properties.
13. Review provisions for entry of vacant property.
14. Ensure there is due process to contest citations.
15. Detail selection process of hearing officer.

Pursuant to the direction provided, the following definitions and clarifications have been added to the draft Ordinance:

- Overgrown Vegetation- landscaping (ground cover, shrubs, plant materials, etc.) within the yard areas that are not maintained (i.e., trimmed, mowed, pruned, weeded, etc.) on a regular basis. Includes vegetation that has grown excessive or beyond normal size without being tended.
- Lawn-Variety types of grasses used for ground cover over larger areas that are intended to take heavy use and foot traffic.

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- Xeriscape- Native or indigenous plant material that requires little to no water or maintenance, and typically mulching and no or limited drip/subsurface irrigation.
- Location of Trash Cans – This provision has been modified to require can storage behind the building line or not less than 20' from the front and side property lines, whichever is greater (Please see attached exhibit).
- Hardship – When staff is aware that an economic or physical hardship exists that may prevent a violator from complying, staff will continue to involve the Senior Social Services Division and will also seek out other service/volunteer organizations that can assist in bringing the property into compliance including the Boy Scouts and Exchange Club.
- Entry to vacant property - Unless there is an imminent danger of harm and immediate entry onto a property is required, entry should not be made onto vacant property without notice to the property owner and/or consent. Currently, the City's graffiti removal crews only enter onto private property to abate graffiti with consent of the property owner.

II. Summary of Draft Amendments

Chapter 9.04 is currently divided into 4 subchapters: General Provisions, Graffiti, Property Maintenance, and Administrative Charges. The following summarizes the changes between the existing and proposed Ordinance which is also shown on the attached table.

First, addressing conditions of vegetation that constitutes a violation, the existing code was ambiguous and created uncertainty throughout the community as to how certain conditions on their property constituted a violation of these standards. The proposed code however, removes the ambiguity by describing specific conditions or similar conditions that could exist to constitute a violation. Although code enforcement and City Attorney staff has been successful throughout the years when actions were taken to correct property maintenance violations using the existing code, it is important for the community to understand the plethora of conditions that fall into these categories. The proposed code changes help to achieve that.

Second, addressing the storage of items on property visible from the public right-of-way, the existing code simply stated that debris, rubbish, and trash accumulated and stored for a period of time exceeding two (2) weeks in front yards, or in side and rear areas abutting streets visible from the public rights-of-way or alleys; including but not limited to items such as:

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- a. Discarded household furnishings, appliances, boxes or packing materials or all kinds;
- b. Discarded building materials;
- c. Abandoned, wrecked, dismantled or inoperative toys, wheel goods, boats or recreation equipment; and/or,
- d. Neglected Machinery.

The above section did not limit enforcement to only those items listed above, however, the proposed code goes further to describe the types and placement of items that would constitute a violation of the code so as to eliminate any confusion or misinterpretation. The proposed changes are summarized on the attached table.

III. Public Testimony

Some of the testimony presented regarding the Ordinance involved concerns that staff would abuse its authority to correct violations, that the violations listed in the ordinance were inappropriate and should not be included, and that there was inadequate due process in the draft regulations. These concerns are addressed by the following:

Voluntary Compliance

As noted, the Division's focus is to obtain voluntary compliance and to establish a "work out" schedule when necessary to correct violations, taking into consideration the extent of the violation and the circumstances of the property owner. Over 4,000 violations have been corrected in this manner by the new Enforcement Services Division during the first year. As a result of these efforts, overgrown vegetation, illegal dumping and graffiti have been removed from private property through collaboration with property owners and other City departments. Abatement warrants and nuisance abatement, which are provided for in the CCMC as tools available to deal with the most egregious problems, have not been used to date. The "work-out" schedule has been employed by the Division with several commercial and residential property owners or other responsible persons, with satisfactory results. In addition, staff has recently began arranging an informal network of assistance which will include the Boy Scouts and Exchange Club to assist those who cannot maintain their properties due to economic or physical hardship to respond to this concern. Staff will continue to involve the Senior Social Services Division as a resource to identify other available avenues of assistance. (See Section V. below).

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Code Enforcement Procedures and Due Process

The process for enforcing property maintenance standards is not unlike the process used to obtain compliance for other code violations. It involves the identification of a violation, collection of evidence to confirm the violation identified, and then a process for obtaining compliance, which may involve one or more warnings, a conference with the City Attorney's Office, or if necessary when a problem is severe, a criminal prosecution, a civil action, or the use of the CCMC to commence administrative abatement proceedings. Using the administrative abatement process means the City would either use City employees or City-hired contractors to go onto the property to correct egregious violations, after first giving notice and the opportunity to be heard to the responsible person(s). Additionally, the City could not enter onto private property to correct a violation without a court-issued abatement warrant. In the highly unusual event that an inspection and/or abatement warrant is utilized to achieve compliance, execution of the warrant (which would result in the City entering upon private property) requires at least 24 hours' notice to the property owner.

Staff has presented an overview of this process with the adoption of the annual work plan indicating that property maintenance complaints ranging from simple deferred maintenance to more extensive derelict conditions would be handled by documenting the violations observed in the field, notifying the owner of the condition and providing a date certain to correct it, using discretion to allow more time for correction through a "work-out" program to correct problems over a reasonable period of time.

Enforcement Actions

In the small number of anticipated cases where voluntary compliance is not achieved, the ordinance codifies the enforcement tools available to achieve compliance. To reiterate, it is not expected that these tools will be needed in the great majority of cases where voluntary compliance is achieved. These tools include:

Administrative Penalties

The administrative citation process detailed in CCMC Chapter 1.02 is one of the tools the City may use when compliance has not or cannot be achieved through other methods (such as working with the responsible person(s) to voluntarily correct the violations). In such instances where voluntary compliance is not achieved, the Enforcement Officer may issue an administrative citation to the responsible person. The initial citation carries a \$100 fine; subsequent citations for the same violation increase the fine to \$200 and then to \$500. The administrative

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citation process also provides for due process in the form of service of a written Notice, and an opportunity to be heard, i.e., a method to appeal the citation. Appeals are heard by a neutral hearing officer.

An *inspection warrant* is permission provided by a judge or other properly authorized judicial officer to enter onto private property if the owner or responsible person will not give consent. No work may be performed under an inspection warrant; it is used if there is reasonable cause to believe that violations exist that cannot be viewed from the public right-of-way or from a neighboring property. Staff must have reasonable cause to conduct an inspection, when field observation by a Code Enforcement Officer indicates that there may be a potential violation of the CCMC. The Officer must support their suspicions with a written statement of the facts that describes why the property may violate the Code. In the event an inspection warrant is sought, a judge must review and determine whether there is reasonable cause to issue the warrant.

An abatement warrant is also obtained from a judicial officer and is used to enter onto private property to conduct corrective work. Safeguards are established under the rules for collection of evidence under civil cases or criminal prosecution and is more commonly known as “Reasonable Cause” and in the abatement process outlined in the CCMC.

Administrative Nuisance Abatement proceedings must provide “due process” to the responsible person(s) in the form of notice and the opportunity to be heard. The proceedings are commenced when a “Notice of Abatement and Intent to Abate by City Personnel (“Notice”)” is served on the responsible party. The Notice must describe the violations and list the required corrective actions. The Notice must also contain information pertaining to the responsible person’s right to appeal the Notice. At the appeal hearing, a neutral hearing officer hears the appeal of the Notice, and the burden is on the City to prove the violations. The responsible person also has the right to appeal the decision of the hearing officer to the Superior Court if he/she disagrees with the hearing officer’s decision. Thus the method to collect evidence, obtain warrants and conduct a nuisance abatement all provide ample due process to protect against abuse.

IV. Due Process Protection

It is important to note that staff must lawfully collect evidence in support of code enforcement efforts. The Fourth Amendment of the U.S. Constitution protects persons, houses, papers, and effects against unreasonable searches by government agents without a warrant. Where governmental agents violate the Fourth Amendment, the agency cannot use any of the evidence obtained as a

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result of the illegal search. Numerous case decisions have clarified how the Fourth Amendment applies to code enforcement situations. Other safeguards against abuse of code enforcement activities are described under the “Reasonable Expectation of Privacy Doctrine”, “Curtilage” and “Plain View” which are described below.

Reasonable Expectation of Privacy Doctrine: Reasonable expectation of privacy is a complex constitutional doctrine which is subject to numerous court interpretations about whether a person in a particular situation or place has an objective and reasonable expectation of privacy. This expectation is not the owner’s personal expectation, but is an objective standard based on what society is prepared to recognize as reasonable. The Fourth Amendment’s prohibition against unreasonable searches and seizures applies to administrative inspection by enforcement agents. A warrant is not required when an occupant consents to the inspection or where no reasonable expectation of privacy exists in the place or situation. Some common code enforcement situations where inspection warrants are not required include violations that exist in plain view, open fields and yards, common areas of apartments, in certain highly regulated businesses, and where the situation presents emergency or exigent circumstances.

Plain View: An inspector can make observations from areas open to the public or open to public view where no expectation of privacy exists. Common public places include streets, sidewalks, parks, and alley. Places where an inspector has gained lawful access (such as from a neighboring property) are also permissible.

Curtilage: Is the area to which extends the intimate activity associated with the “sanctity of a person’s home and privacies of life.” City staff may not enter an enclosed backyard absent consent or an inspection warrant. Two basic requirements must be met to obtain an inspection warrant: (1) refusal by the occupant to inspect; and (2) reasonable cause to suspect code violations.

V. Need for Revised Maintenance Standards

The existing provisions of the CCMC are becoming dated (adopted in 1965). It is prudent to update the CCMC to ensure the use of standard accepted terminology that is used throughout the Code Enforcement profession and in case law. Also, the proposed Ordinance removes ambiguity in the CCMC by describing specific conditions or similar conditions that could exist that constitute a violation.

In addition to the substantive changes to the CCMC, the proposed Ordinance also combines and replaces two different sections on abatement procedures and clarifies

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and updates the property maintenance standards by moving them all under one heading. Further the updates make the ordinance easier to understand and administer.

VI. Programs for Assistance with Compliance

Staff will be contacting the Culver City chapter of the Boy Scouts the Exchange Club, and other volunteer organizations, to determine how those who cannot maintain their properties because of economic or physical hardship may receive assistance. Staff will continue to work with the Senior Social Services Division staff to identify resources available to assist the community.

Conclusions:

The City Council directed that staff present draft modifications to the Residential Property Maintenance Standards after first considering the matter in August 2008 and has taken substantial testimony and considered the subject amendments over four Council meetings over several months. The proposed Ordinance will facilitate administration of the standards and provides substantial backstops to prevent capricious application of the law relative to collection of evidence and conduct of enforcement activities. The Enforcement Services Division has demonstrated its commitment to voluntary compliance and has successfully corrected thousands of violations using a cooperative compliance philosophy. There have been no abuses of staff authority and there are very few cases that have not been corrected voluntarily.

Over 60 percent of the City's total land use is residential, and over half is comprised of single-family development. This means a great portion of enforcement activities are concentrated in residentially zoned areas. The issues in these single-family areas are primarily the protection and enhancement of neighborhood character. However, the property maintenance standards are not limited to residential property.

Enforcement on abandoned and neglected properties throughout the City has met with very positive results. Overgrown vegetation, illegal dumping and graffiti have been removed from vacant properties through collaboration with property owners and other responsible persons, along with assistance from other City departments.

Complaints such as graffiti, illegal dumping in the public right-of-way and abandoned shopping carts continue to be immediately reported to the responsible department, shopping cart retrieval company or other responsible party. Enforcement Services also monitors the new complaint hotline where the community can leave detailed

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information on the location of abandoned shopping carts and illegal signs in the public right-of way. The hotline is checked twice daily and a log of all calls to the hotline is maintained in the Division.

Based upon the changes presented in the most current draft document, staff recommends that Council approve the revised draft Ordinance and direct staff to set the matter for introduction, and then ultimately, adoption.

ADDITIONAL COMMENTS FROM THE CITY MANAGER:

While I have not been here to participate in the development of the amended ordinance, I am very comfortable with the proposal. Most cities of any size adopt ordinances very similar to the one being proposed, and the ordinance upon which our draft ordinance is based was written by a legal firm which is among the more experienced in the country in this field. In fact, there are few substantive differences in these codes throughout the state. As with Building, Fire, and Zoning codes, there is no way to write a code that completely describes all possible conditions in the field. There will always be some interpretation required. Thus, it is implicit within the code that those administering it must use reason and judgment. The administrative procedures are written to support that, and we will have oversight by the Department Head, the City Manager, City Attorney and City Council. And, as indicated earlier in this report, the courts are very protective of private property rights.

As we all know, the best code enforcement is done by use of smiles and moral suasion. Only when necessary, does a staff person wish to use formal warnings, citations and penalties. That is the mindset of the staff in pursuing this ordinance. However, there are times when enforcement is necessary and the ordinance gives us the framework, almost identical to other cities, within which we can operate fairly.

If I might predict, by far the most common code enforcement complaints in the future will not relate to the code being too vigorously enforced. Rather, I think it is likely that citizens will complain that we do not enforce the code more aggressively. That would be the experience in most cities, including Culver City, where citizens take pride in their neighborhoods.

FISCAL ANALYSIS:

There may potentially be an incremental increase or decrease in revenue generated by penalties for failure to rectify property maintenance violations, but staff anticipates the potential revenue to be negligible. Though Enforcement Services has authority to issue Administrative Citations, which carry a fine payable to the City, staff intends

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to pursue compliance with property maintenance standards through voluntary cooperation to the greatest extent possible, using fines and penalties only as a last resort.

ATTACHMENTS:

1. Proposed Ordinance
2. Current Chapter 9.04 entitled "Nuisances"
3. Notice published in Culver City News on May 21, 2009
4. Trash can diagram
5. Photos
6. Typical Code Enforcement case flow chart
7. Language Comparisons Sample

MOTION:

That the City Council:

Direct staff to return with an Ordinance amending Chapter 9.04 of Title 9 of the Culver City Municipal Code, entitled "Nuisances," to modify property maintenance standards and to update the procedures for administrative due process abatement of Public Nuisances; and, amending Chapter 1.01 of Title 1 to relocate the definition of the composition of the Municipal Code Appeals Committee from Chapter 9.04.

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Notes:

The proposed changes to Chapter 9.04 are as follows:

General Provisions

- A. Section 9.04.005, Purpose, has been amended to reflect the overall intent of the Chapter.
- B. Section 9.04.010, Penalty, has been deleted; the penalty provisions are now included in Section 9.04.040. New Section 9.04.010 sets forth the definitions that apply to the Chapter.
- C. Sections 9.04.015 "Prohibited Public Nuisance Conditions on Real Property" is new, and sets forth a comprehensive list of property maintenance standards, and makes any violation of the standards a public nuisance. (Previously, property maintenance standards were contained in Sections 9.04.400 and 9.04.405. The requirements were general in some cases and may be subject to varying interpretation. Additionally, staff had reviewed property maintenance codes from surrounding cities to determine if the CCMC was comparable to other codes when describing conditions that may constitute a violation and which would clearly apply to conditions that may exist. Sections 9.04.400 and 9.04.405 were adopted in 1965, and no modifications to these sections have been made since their original adoption.)
- D. Three sections detailing various prohibited nuisance conditions (and some of these pertain to property maintenance), remain the same:
 - (1) Section 9.04.020 "Nuisances Declared and Prohibited";
 - (2) Section 9.04.025 "Nuisances Affecting Public Safety, Dangerous Conditions, Fire Hazards and the Like;" and
 - (3) Section 9.04.030 "Nuisances Affecting Health; Contaminated Materials."
- E. Section 9.04.035 "Application for Permit" remains the same;
- F. Section 9.04.040, "Nuisance Prohibited" has been amended to include the penalty provisions.
- G. Section 9.04.045, "Conditions Precedent for Imposition of City Lien" has been deleted. Abatement liens in favor of the City are addressed in new subchapter 9.04.100 et seq. entitled "Administrative Procedures for Abatement of Nuisances." New Section 9.04.045 sets forth the maintenance standards for vacant properties, which are in addition to any other requirement in the chapter.
- H. Sections 9.04.050 through 9.04.075 pertaining to abatement by the City have been repealed.

Administrative Procedures for Abatement of Nuisances

This newly named subchapter, numbered 9.04.100 et seq., is added to Chapter 9.04, and sets forth comprehensive and up to date due process procedures for the abatement of nuisances by the City, including notice provisions, requirements for demolition of buildings or structures by City

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personnel, rights of appeal, review by an impartial hearing officer, abatement of imminent hazards, and recovery by the City of the costs of abatement. It combines and replaces two different procedures contained in the current code. Certain basic principles and tenets of law remain the same, such as the ability of the City to recover the cost of abatement if the City goes onto the property.

Recordation, Enforcement Fees and Attorney's Fees

A new subchapter 9.04.200 et seq. has been added to set out the procedure by which the City may record a notice of substandard property, and expressly provides for the recovery of code enforcement fees incurred by the City in residential enforcement matters. A section of the State Housing Law (specifically, California Health and Safety Code Section 17951) allows cities and counties to recover enforcement fees in matters pertaining to properties with buildings used for human habitation. This provision in state law underscores the importance of maintaining residential buildings up to Code. The new subchapter also provides for the recovery of attorney's fees by the prevailing party in certain instances.

Graffiti

The subchapter on Graffiti remains the same; it has been moved from 9.04.200 et seq. to 9.04.300 et seq.