

**City of Culver City, California
Agenda Item Report**

Meeting Date: 09/09/13		Item Number: A-2	
CITY COUNCIL AGENDA ITEM: Introduction 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; and Adding Chapter 9.13 Establishing Regulations for the Maintenance and Security of Vacant and/or Undeveloped Properties.			
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: Meetings and Agendas – City Council (09/04/13), Culver City News (08/08/13), Homeowner Associations E-Notification List (09/04/13), Chamber of Commerce (09/04/13), Downtown Business Association (09/04/13)			
Department Approval: Sol Blumenfeld: (08/27/13)		City Attorney Approval: Carol Schwab (by L. Vidra) (09/03/13)	
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (09/03/13)		City Manager Approval: John M. Nachbar (09/04/13)	
<u>RECOMMENDATION:</u> Staff recommends that the City Council introduce 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, amend Chapter 1.01 of Title 1 to relocate the definition of the composition of the Municipal Code Appeals Committee from Chapter 9.04; and Adding Chapter 9.13 Establishing Regulations for the Maintenance and Security of Vacant and/or Undeveloped Properties.. <u>BACKGROUND:</u> <u>Focus of Enforcement Services</u> The Enforcement Services Division of the Community Development Department (Enforcement Services) responds to resident complaints and conducts proactive inspections of commercial, industrial, and residential property in the City in order to promote and sustain a high quality of life within the City and to protect the health, safety, and welfare of the City’s residents, business community, and visitors. The current residential property maintenance standards address, among other concerns, conditions that are viewed from the public right-of-way, such as overgrown			

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vegetation, junk, trash and debris stored in yards, deferred maintenance and storage of trash cans. In the commercial and industrial areas of the City, Enforcement Services typically enforces sign violations, outdoor storage, overgrown vegetation, and encroachment violations on the public rights-of-way.

The focus of Enforcement Services is to obtain voluntary compliance by providing reasonable time to correct violations of the CCMC. Typically a Code Enforcement Officer will respond to a resident 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 an encroachment on a public rights-of-way or a life-safety issue, Code Enforcement Officers typically provide 10-14 days for a responsible person to correct the substandard and unlawful condition. Where such a condition requires technical permits or other entitlements (especially where public hearings are required to obtain such entitlements), a lengthier compliance period is granted. Code Enforcement Officers can also provide reasonable extensions of time when the specific circumstances so merit.

In a continuing effort to obtain voluntary compliance from a responsible person, when enforcement problems are not corrected after the issuance of warnings, notices, and subsequent Administrative Citations, a conference will typically be arranged with the City Attorney's office to seek compliance. The CCMC provides the authority for the City Attorney's Office to prosecute the violator in criminal court or to 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 enter private property through obtaining inspection warrants or abatement warrants from a court of competent jurisdiction.

Recent History

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 City Council consideration, since the standards had been adopted almost 50 years ago. Over the years, society's standards, the economy, and environmental awareness have all evolved. As is the case in most areas of the CCMC, best practice also requires the periodic evaluation of the City public nuisance standards to ensure the CCMC is relevant to present day conditions. Recent enforcement actions have had to rely on state law rather than the CCMC, because the CCMC was insufficient to address nuisance conditions that presented potential hazards to the life, property, and welfare of the City's residents and the Community at large.

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Staff presented a proposed ordinance to the City Council in March, 2009 which included proposals to significantly update and modernize the CCMC's property maintenance standards. During the course of that meeting, and subsequent lengthy meetings in April, May, and June of 2009, the City Council provided substantial feedback to staff on the proposed ordinance. Extensive public comment was provided at each meeting, and the City Council directed staff to make numerous modifications to the draft ordinance based on the public's input.

Need for Revised Maintenance Standards

Staff is proposing the ordinance for the following reasons:

- To update the existing provisions of the CCMC (adopted in 1965) that are outdated. Such updates are necessary to ensure the use of terminology that is standardly used and accepted throughout the Code Enforcement profession and in case law;
- To remove potential ambiguity in the CCMC, and to increase the Community's ability to understand its obligations and the ability for staff to enforce the CCMC by providing additional definitions for specified terms used within the CCMC, and to explicitly set forth the conditions that would constitute prohibited hazardous, substandard, and nuisance conditions;
- To consolidate and streamline the administrative abatement procedures;
- To clarify and update the property maintenance standards by consolidating them under one heading.
- To provide specific maintenance and security requirements for vacant and/or undeveloped real properties within the City.

DISCUSSION

Summary of Proposed Amendments

Chapter 9.04 is currently divided into 4 subchapters: General Provisions, Graffiti, Property Maintenance, and Administrative Charges. Property maintenance standards are currently referenced in several sections of the General Provisions subchapter, as well as in the Property Maintenance subchapter. The proposed ordinance clarifies and updates the property maintenance standards by consolidating them under the heading of Nuisances Enumerated. It should be noted that the new ordinance repeals and replaces the current chapter; however, many of the provisions remain essentially the same. The current subchapter on Graffiti is not proposed to be altered.

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The new proposed subchapter entitled Administrative Procedures for Abatement of Nuisances replaces the two differing abatement procedures contained in the current General Provisions and the current Property Maintenance subchapters. Another newly named subchapter "Recordation, Enforcement Fees and Attorney's Fees" has also been added to address the City's ability to record a Declaration of Substandard Property in an effort to ensure that persons with an actual or potential interest in real property are adequately advised about outstanding violations, the City's ability to responsibly defray the costs associated with the investigation and enforcement of applicable laws, and the abatement of substandard, hazardous, and/or nuisance conditions as authorized by State law, the City's ability to recover its attorney's fees, as well as other general provisions.

The provisions currently contained in Section 9.04.425, pertaining to the composition of the Municipal Code Appeals Committee ("MCAC"), is proposed to be moved to the General Provisions in Chapter 1.01. Staff recommends that public nuisance appeal hearings, as set out in the new ordinance, be heard by a neutral hearing officer appointed by the City Manager.

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 9.04.020. New Section 9.04.010 sets forth the definitions applicable 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 has 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. Sections 9.04.020 through 9.04.030 which previously listed various prohibited nuisance conditions have been incorporated into Section 9.04.015.

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- D. Section 9.04.035 "Application for Permit" has been deleted as unnecessary and redundant of other permit requirements throughout the CCMC.
- E. Section 9.04.040, "Nuisance Prohibited" has been renumbered to 9.04.020 and amended to include the penalty provisions.
- F. Section 9.04.045, "Conditions Precedent for Imposition of City Lien" has been deleted. Abatement liens in favor of the City are addressed in the new subchapter "Administrative Procedures for Abatement of Nuisances", as are special assessments in favor of the City.
- G. Sections 9.04.050 through 9.04.075 pertaining to abatement by the City have been repealed and deleted.

Administrative Procedures for Abatement of Nuisances

This newly named subchapter, beginning with 9.04.030, is added to Chapter 9.04, and sets forth comprehensive, 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 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 CCMC. Certain basic principles and tenets of law remain the same, such as the ability of the City to recover its costs of abatement should the City elect to utilize the administrative procedures authorizing the use of City forces to abate a substandard, hazardous, or other nuisance condition.

Recordation, Enforcement Fees and Attorney's Fees

A new subchapter beginning with Section 9.04.135 has been added to set out the procedure by which the City may record a Declaration of Substandard Property with the County Registrar/Recorder's Office in an effort to provide adequate notice to persons with an actual or potential interest in real property of the existence of substandard, hazardous, and/or otherwise unlawful conditions.

The new subchapter also expressly provides the ability for the City to responsibly defray the costs associated with the investigation and enforcement of nuisance-related laws ("code enforcement fees") by recovering said fees from persons responsible for the unlawful condition as authorized by State law and the City's police powers.

The new subchapter additionally provides for the recovery of attorney's fees by the prevailing party in certain instances.

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Maintenance and Security of Vacant and/or Undeveloped Properties

The proposed Ordinance would add a new Chapter 9.13 that would mandate certain maintenance and security requirements for vacant, abandoned, and/or undeveloped properties – that are in addition to the other property maintenance provisions contained in Chapter 9.04. Specifically, the proposed Chapter would require that *vacant or abandoned* structures that have been breached by unauthorized persons be boarded in accordance with FHA standards – and that the boards be painted in a color to complement the color of the structure. Vacant structures that have not been breached need not be boarded, but are still required to be secure.

The proposed Ordinance would also require that any vacant or abandoned real property where an Enforcement Officer has determined in writing that the site constitutes a hazard to the health, safety and welfare of the public, as well as any undeveloped property, to be enclosed by a *temporary security fence* in order to prevent access by unauthorized persons – including children.

Additionally, parties responsible for vacant, abandoned, and undeveloped properties will be required to post “No Trespassing” signs at such properties, as well as to submit a “Letter of Agency” to the Police Department authorizing the removal and arrest of any unauthorized persons at the property.

Graffiti

The subchapter on Graffiti remains the same.

Summary

The following summarizes the changes between the existing and proposed Ordinance:

First, the existing CCMC is potentially ambiguous and could create uncertainty throughout the community as to what specific conditions on real property constitute 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. For example, the proposed code provides great detail about the when vegetation would be deemed “overgrown” or otherwise become a public nuisance. Although Enforcement Services and City Attorney Office staff has been successful throughout the years in defending code enforcement actions taken to correct property maintenance violations using the existing code, it is important for the community to understand the many conditions that fall into these categories. The proposed code changes help to achieve that goal.

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Second, addressing the storage of items on property visible from the public right-of-way, the existing CCMC has a potentially ambiguous definition by simply stating 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:

- a. Discarded household furnishings, appliances, boxes or packing materials or all kinds,
- b. Discarded building materials, and/or
- c. Abandoned, wrecked, dismantled or inoperative toys, wheel goods, boats or recreation equipment,
- 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. Furthermore, it provides the City the ability to address “hoarding/pack-rat” conditions under the municipal code in an effort to seek immediate abatement of imminent life-safety hazards that impact not only the occupant of a property with such conditions, but also of the entire neighborhood.

Relationship of Administrative Penalties to Property Maintenance Standards

Although not being impacted by this ordinance, the administrative citation process detailed in CCMC Chapter 1.02 is one of the tools that 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 Code 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 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.

Conclusion

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

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has successfully corrected thousands of violations using a cooperative compliance philosophy.

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 the 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 complaint hotline where the community can leave detailed information on the location of abandoned shopping carts and illegal signs in the public right-of way.

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 change in revenue to be negligible. Though Enforcement Services has authority to issue Administrative Citations, which carry a fine payable to the City, staff intends to continue 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 July 25, 2013
4. Trash can diagram
6. Typical Code Enforcement case flow chart

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MOTION:

That the City Council:

Introduce 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; and Adding Chapter 9.13 Establishing Regulations for the Maintenance and Security of Vacant and/or Undeveloped Properties.