



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Report
AGENDA ITEM NO.: 3

DATE: June 13, 2017

TO: City Council

FROM: Stephen Fischer
City Attorney

Jefferson Billingsley

SUBJECT: Updated Code Compliance and Nuisance Abatement Provisions (5/10/15)

CONTACT: Stephen Fischer, City Attorney
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RECOMMENDATION:

That City Council approve the introduction and first reading by title only and waive further reading of an ordinance adding Article XIX to Chapter 7 of the Oxnard City Code relating to recording of notices of violation for property related violations and section 7-160 relating to authorizing judicial remedies and attorney's fees for nuisance actions.

BACKGROUND

In conjunction with the Code Compliance Division, the City Attorney's office is seeking updates to the Oxnard City Code to add additional tools and options for dealing with code compliance and nuisance issues within the City.

First, the proposed ordinance authorizes the recording of notices of violation as permitted by Government Code section 27201. Notices of Violation ("NOV") are used in many jurisdictions to address code compliance situations and serve to put the public on notice of code violations on specific properties. This information is particularly important for prospective purchasers and lenders as the NOV provides notice to future potential owners that a violation continues to exist on a property. The recordation of the NOV would also cause a "cloud" upon the title that would compel a property owner or responsible lender to correct violations prior to the transfer or re-financing of the property in violation. The ordinance will only apply to serious property related violations, defined as those affecting the health and safety of persons upon or near the property and other hazardous conditions related to structures. The NOV portion of the ordinance does not apply to minor non-hazardous violations or property maintenance violations.

Second, the proposed ordinance authorizes the City Attorney's office to initiate civil actions to abate nuisances in addition to the other current remedies. Civil actions would only be pursued in serious nuisance cases in consultation with all involved departments and as resources permit. Lastly, the City may provide for the recovery of attorney's fees in civil actions to abate nuisances under Government Code section 38773.5. This is provided for in the proposed ordinance.

Staff recommends updating the Oxnard City Code to adopt these additional tools and options to deal with code compliance issues in the City.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Goal 1. Improve community safety and quality of life through a combination of prevention, intervention, and suppression efforts that address crime and underlying issues.

Objective 3a. Create a renewed focus on establishing a positive outlook and orientation of our City, neighborhoods and overall community.

FINANCIAL IMPACT

No financial impact at this time; however there is potential future cost recovery of fees as authorized by the ordinance.

ATTACHMENTS:

Attachment A: Code Compliance Ordinance

ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD ADDING
ARTICLE XIX TO CHAPTER 7 OF THE OXNARD CITY CODE RELATING TO
RECORDING OF NOTICES OF VIOLATION FOR PROPERTY RELATED VIOLATIONS
AND SECTION 7-160 RELATING TO AUTHORIZING JUDICIAL REMEDIES AND
ATTORNEYS' FEES FOR NUISANCE ACTIONS

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WHEREAS, Article XI, Section 7 of the California Constitution provides that the City may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, pursuant to Government Code section 27201, the City may record notices of violations and other real property notices as authorized by local ordinance; and

WHEREAS, the City wishes to add Article XIX (Recording Notices of Violations) to Chapter 7 (Nuisances) of the Oxnard City Code to authorize the recording of notices of violations related to serious property violations with the County Recorder; and

WHEREAS, pursuant to Government Code section 38773.5, the City may provide by ordinance for the recovery of attorney's fees in nuisance abatement actions.

WHEREAS, the City wishes to add Section 7-160 to Chapter 7 of the Oxnard City Code to authorize the City Attorney's office to initiate civil actions to abate nuisances and allow for attorney's fees to the prevailing party.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES ORDAIN AS FOLLOWS:

Part 1. Article XIX of Chapter 7 of the Oxnard City Code is hereby added to read as follows:

“ARTICLE XIX. RECORDING NOTICES OF VIOLATIONS

SEC. 7-310. PURPOSE.

(A) The city council finds that there is a need to give notice of pending and open enforcement actions and property-related code violation actions to persons who may subsequently acquire the property as a means to ensure such violations will be corrected. An appropriate method to accomplish this is through the issuance and recordation of notices of violation.

(B) The procedures established in this article shall be in addition to any criminal, civil, or other remedy established by law which may be pursued to address violations of the city code or applicable state or uniform codes.

SEC. 7-311. QUALIFYING VIOLATIONS.

This article shall apply to serious property related violations of the city code, state code or any adopted uniform code. Serious property violations are defined as those affecting the health and safety of persons upon or near the property and other hazardous conditions related to structures. This article does not apply to minor non-hazardous violations or property maintenance violations that do not pose a threat to public health and safety. The code compliance manager (manager) shall make the qualifying violation determination pursuant to this article.

SEC. 7-312. PROCEDURES.

(A) Once the manager has issued a notice of violation to a responsible person for a qualifying violation, if the property remains in violation after the deadline established in the notice, the manager may record the notice of violation with the Ventura County Recorder's office. For purposes of this article, the responsible person shall be as defined in section 7-51(J) of this code.

(B) Before recordation, the manager shall provide the responsible person with the notice of violation which shall state that such notice will be recorded unless a written request to appeal the action is received pursuant to the procedures outlined in this article. The notice of violation shall be served in accordance with the methods set forth in section 7-313.

(C) If a written request for appeal is not received within the time frame specified in the notice of violation, the manager may thereafter cause the notice of violation to be recorded if the violations remain.

(D) The recorded notice of violation shall include the following:

- (1) The name of the responsible person;
- (2) The name of the property owner, if different from the responsible person;
- (3) Street address and parcel number;
- (4) The code section(s) in violation;
- (5) A description of the conditions which violates the applicable codes;
- (6) A list of necessary corrections to bring the property into compliance;
- (7) A deadline or specific date to correct the violations listed in the notice of violation, after which the notice of violation will be recorded;
- (8) A description of the appeal process and a written appeal form.

SEC. 7-313. SERVICE OF NOTICE OF VIOLATION.

The notice of violation shall be served in accordance with either paragraph A, B, or C of this section:

(A) An enforcement officer may personally serve the notice of violation on the responsible person. A declaration of service shall be completed and attached to a copy of the notice of violation mailed to the responsible person via first class mail.

(B) An enforcement officer may post the property in a conspicuous location with a copy of the notice of violation. A copy shall also be mailed via certified mail to the responsible person's last known address. An address shown on the county's last equalized property tax assessment rolls is deemed to be a valid address for service.

(C) If the responsible person is not the property owner; the notice shall also be mailed via certified mail to the property owner.

(D) Service is deemed accomplished on the date the notice of violation is personally served or posted in accordance with this section.

(E) A copy of the notice of violation shall be mailed via first class mail to any mortgage holder, property manager, agent for service, or owner's next of kin as applicable, but failure of one of these parties to receive notice shall not invalidate any action under this article.

SEC. 7-314. APPEAL PROCESS.

(A) An appeal of the manager's notice of violation shall utilize the procedures and timelines set forth in chapter 1, article V of this code.

(B) Upon receiving a written appeal, the manager shall schedule a hearing pursuant to the procedures set forth in section 1-58. The purpose of the hearing is for the responsible person or property owner to state any reasons why the notice of violation should not be recorded.

(C) The failure of any person to file an appeal in accordance with these provisions shall constitute a waiver of the right to an administrative hearing and shall not affect the validity of the recorded notice of violation.

SEC. 7-315. APPEAL HEARING.

(A) At the appeal hearing, the hearing officer shall only consider evidence that is consistent with the city's rules and procedures for administrative hearings, and that is relevant to the following issues:

(1) Whether the conditions listed in the notice of violation violate the city code, state code or any adopted uniform code; and

(2) Whether the manager afforded the responsible person with due process by adhering to the notification procedures specified in this article.

(B) If the hearing officer affirms the manager's decision, the manager may proceed to record the notice of violation.

(C) If the hearing officer determines that recordation is improper, the hearing officer shall invalidate the manager's decision to record the notice of violation.

SEC. 7-316. NOTICE OF COMPLIANCE.

(A) When the violations listed on the notice of violation have been corrected, the responsible person or property owner shall file with the manager a written request for a notice of compliance on a form provided by the city.

(B) Once the manager receives this request, the manager, or designee, shall re-inspect the property within twenty (20) days from receipt of the request to determine whether the violations listed in the notice of violation have been corrected and whether all necessary permits have been issued and final inspections have been performed.

(C) The manager shall provide a notice of compliance to the responsible person or property owner if the manager determines that the following conditions are met:

(1) All violations listed in the recorded notice of violation have been corrected;

(2) All necessary permits have been issued and finalized;

(3) All administrative fines or civil penalties have been paid;

(4) The party requesting the issuance of the notice of compliance shall be responsible for payment of all administrative fees necessary to reimburse the city for all costs involved in the issuance of the notice, including re-inspection.

(D) Administrative costs may include costs incurred in the investigation, inspection, re-inspection, title search, appeal hearing, and any other processing costs associated with the violations specified on the notice of violation.

(E) If the manager denies a request to issue a notice of compliance, the manager shall serve the requesting party, the responsible person and the property owner with a written explanation within five (5) days from the inspection setting forth the reasons for the denial. The written explanation shall be served by any of the methods of service listed in section 7-313 or by certified mail.

(F) The manager's decision denying a request to issue a notice of compliance constitutes the final decision in the matter and is not appealable.

(G) It shall be the responsibility of the responsible person or property owner to record the notice of compliance with the county recorder and this recording shall have the effect of canceling the recorded notice of violation.

SEC. 7-317. PROHIBITION AGAINST ISSUANCE OF CITY PERMITS.

For properties where a notice of violation has been recorded, the city may withhold permits for repair, construction and/or alteration on the affected property until a notice of compliance has been issued by the manager. The city may not withhold permits which are necessary to obtain a notice of compliance or which are necessary to correct serious health and safety violations.”

Part 2. Section 7-160 is added to Article IX of Chapter 7 of the Oxnard City Code to read as follows:

“SEC. 7-160. JUDICIAL REMEDIES.

(A) In addition to the other remedies of this chapter the city attorney is authorized to:

(1) Commence a civil action in the superior court to enforce all or any of the provisions of any abatement order;

(2) Commence a civil action, including seeking a receivership, to abate a public nuisance as an alternative to, or in conjunction with, an administrative proceeding pursuant to this chapter.

(B) In any civil action, administrative or special proceeding brought to abate a public nuisance, the prevailing party will be entitled to recover attorneys’ fees; provided, that attorneys’ fees will only be available in those actions or proceedings in which the city has provided notice at the commencement of such action or proceeding that it intends to seek and recover its own attorneys’ fees. In no action or proceeding shall an award of attorneys’ fees exceed the amount of reasonable attorneys’ fees incurred by the city in the action or proceeding.”

Part 3. If any provision(s) of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that they would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

Part 4. Exempt from CEQA. The City Council determines and finds that this ordinance is exempt from the California Environmental Quality Act under section 15061(b)(3) because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Part 5. Pursuant to Government Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City Council's adoption of the ordinance.

Part 6. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen calendar (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. ____ was first read on _____, 2017 and finally adopted on _____, 2017 to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney