



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: March 19, 2019

DEPARTMENT: OFFICE OF THE CITY ATTORNEY

FROM: CHRISTOPHER A. CALLIHAN, CITY ATTORNEY
MEGAN HUNTER, COMMUNITY DEVELOPMENT DIRECTOR

TITLE: ORDINANCE ALLOWING FOR THE ABATEMENT OF
BLIGHTED PROPERTIES

RECOMMENDATION MOTION:

A motion to adopt an ordinance adding Article IX to Chapter 5 of the Municipal Code to impose maintenance requirements for commercial and residential properties and to declare unmaintained properties as nuisances subject to abatement.

RECOMMENDATION:

It is recommended that the City Council adopt the proposed ordinance.

EXECUTIVE SUMMARY:

The proposed ordinance adds Article IX to Chapter 5 of the Municipal Code to impose a level of maintenance responsibility upon the owners of commercial and/or residential property. In doing so, this ordinance makes it unlawful and a public nuisance for such properties to be maintained in an unclean condition or a blighted condition. Commercial or residential properties found to be in violation of this ordinance may be abated pursuant to the procedures established in the ordinance with unpaid costs resulting in a lien on the property, in addition to other penalties and sanctions.

DISCUSSION:

This ordinance was requested by Councilmember McShane (with respect to commercial properties) and Mayor Gunter and Councilmember Davis (with respect to residential properties). Councilmember Davis also specifically requested the inclusion of a registration program to make the program more efficient to implement. The City Council first considered a proposed ordinance at its March 5, 2019 meeting; however, citing concerns with the proposed registration provisions and notice posting provisions, among others, the City Council directed amendments to the proposed ordinance and that a revised ordinance be brought back to the City Council for consideration at the March 19, 2019 meeting. Edits made to the originally-proposed ordinance are shown in the attached in track changes format.

The City Council's comments generally focused on the desire for a "blight" ordinance as oppose to a vacant property ordinance which requires registration. The public comments made during the public hearing supported this approach. The attached proposed revised ordinance addresses the City Council's direction and the concerns expressed by the public.

The proposed ordinance provides the City with additional tools to protect the quality of life in Salinas neighborhoods, which is a goal of the City Council's current Strategic Plan.

CEQA CONSIDERATION:

The action of adopting the proposed ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines section 15061(b)(3). This exemption is allowed when the activity, in this case the recommendation of adoption of the ordinance, does not have the potential for causing a significant effect on the environment.

STRATEGIC PLAN INITIATIVE:

The City Council's adoption of the proposed supports the City Council's goals and objectives of improving the Quality of Life for all of its residents and promoting a Safe and Livable Community (2016-2019 Strategic Plan).

FISCAL AND SUSTAINABILITY IMPACT:

It is anticipated that the City Council's adoption of the proposed ordinance would require additional resources or staff time to ensure proper program enforcement and management. Fees and administrative penalties will be utilized to recover operational and administrative program costs. A fee program will be developed and presented to the City Council for consideration, possibly as a part of its annual update to the City's fee program.

DEPARTMENTAL COORDINATION

Implementation and enforcement of the proposed ordinance will require coordination among several City departments including Community Development (Planning, Building, and Code Enforcement), Police Department, and City Attorney's Office.

ATTACHMENTS:

Proposed Ordinance

ORDINANCE NO. _____ (N.C.S.)

AN ORDINANCE PROHIBITING BLIGHTED, NUISANCE PROPERTIES

City Attorney Impartial Analysis

This ordinance imposes a level of maintenance responsibility upon the owners of commercial and/or residential property. In doing so, this ordinance makes it unlawful and a public nuisance for such properties to be maintained in an unclean condition or blighted condition. Commercial or residential properties found to be in violation of this ordinance may be abated pursuant to the procedures established in the ordinance with unpaid costs resulting in a lien on the property, in addition to other penalties and sanctions.

WHEREAS, vacant or abandoned properties are community eyesores and pose threats to the public safety in some cases becoming shelters for criminal activity. These buildings and structures (both commercial and residential) are sometimes deteriorated beyond repair, overgrown with vegetation, and act as potential dumping grounds for trash and other materials. Such vacant or abandoned properties often attract vagrants and often harbor illegal activities; and

WHEREAS, there are vacant and abandoned commercial and residential properties in Salinas, as well as occupied commercial and residential properties in Salinas, which are not maintained, and which represent both visual blight and threats to the public health due to their conditions. The one hundred through three hundred blocks of Main Street are among the areas in Salinas with vacant commercial buildings; and

WHEREAS, the City Council finds that residential and commercial properties in Salinas should be maintained at a certain level in order to promote economic development, healthy neighborhoods, and to protect and to preserve the livability and the appearance of the city.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF SALINAS as follows:

SECTION 1. Article IX is hereby added to Chapter 5 of the Salinas Municipal Code, is titled “Blighted Properties; Vacant Properties,” and reads as follows:

Chapter 5. Article IX. Blighted Properties

Sec. 5-09.01. Purpose.

The purpose of this article is to promote the health, safety and general welfare of the city’s residents and visitors by requiring a level of maintenance of residential and commercial property, whether

occupied or vacant, which will promote economic development, healthy neighborhoods and protect and preserve the livability and appearance of the City.

Sec. 5-09.02. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Blighted property" shall mean any property maintained in such a manner that at least two or more of the conditions found in of this article are found to exist thereon where such conditions are visible from a public right-of-way and/or neighboring property and such conditions have both a significant adverse visual impact on the neighborhood and substantially contribute to the dilapidated or deteriorated appearance of the neighborhood.

B. "Code Official" shall mean, anyone responsible for the implementation of this code as designated by the City Manager.

C. "Commercial building/structure" shall mean any commercial, industrial or other establishment, warehouse, kiosk, or other structures affixed to or upon real property used for the purpose of conducting a business, storage, or other activity, whether or not such structure is occupied.

D. "Foreclosed" shall mean the property for which the foreclosure process has begun with the filing of a notice of default.

E. "Owner" shall mean the owner or owners of record of real property as shown on the latest equalized assessment roll of Monterey County and any person, including a trustee or substitute trustee, or any other legal entity having a legal or equitable interest in the subject property, including any beneficiary that is pursuing foreclosure of a property subject to this ordinance secured by a mortgage, deed of trust, or similar instrument or a property that has been acquired by the beneficial interest at a trustee's sale.

F. "Person" shall mean any individual, firm, partnership, corporation, association, or any other organization or entity, however formed.

G. "Property" shall mean all residential, industrial, commercial, and other real property, including but not limited to vacant lots, front yards, side yards, back yards, driveways, walkways, alleys, and sidewalks, and shall include any building or other structure whether fixed or movable, located on such property.

H. "Residential building/structure" shall mean any structure including but not limited to any house, garage, duplex, apartment, condominium, stock cooperative, mobile home, or other residential structure, whether or not such structure is occupied.

Sec. 5-09.03. Unlawful nuisance--Inadequately maintained property.

It shall be an unlawful nuisance for any person owning, leasing, renting, occupying or having charge or possession of any commercial and/or residential property, whether occupied or vacant, to maintain or allow to be maintained such property in such manner that at least two or more of the following conditions are found to exist thereon where such conditions are visible from a public right-of-way and/or neighboring property and such conditions have both a significant adverse visual impact on the neighborhood and substantially contribute to the dilapidated or deteriorated appearance of the neighborhood.

A. Property which is not kept substantially clean and free from accumulations including, but not limited to, overgrown, dead or decayed trees, weeds or other vegetation, rubbish, junk, garbage, litter, debris, flyers or circulars.

B. Buildings or structures which are unpainted, or the exterior paint is substantially worn off, provided, however, that nothing in this section shall be construed to require an owner to paint a building where the architectural style indicates it was intended to be unpainted, such as a brown shingle building.

C. Buildings or structures or significant sections thereof including, but not limited to, exterior stairs, roof, foundation, walls, fences, signs, retaining walls, driveways, or walkways which are substantially broken, deteriorated, or defaced, or windows which are missing or broken. For the purposes of this section "defaced" includes, but is not limited to, writings, inscriptions, figures, scratches, or other markings commonly referred to as "graffiti."

D. Property used or intended to be used for residential purposes which contains, in the outdoor area, any refrigerator, washing machine, sink, stove, heater, boiler, tank or any other household

equipment, machinery, furniture, or item, appliance or appliances, boxes, lumber, dirt or debris, trash, garbage or refuse cans, or any items other than those commonly stored outdoors, or any parts of such items, for a period of time in excess of seventy-two consecutive hours unless otherwise provided in City Code. This subsection does not prohibit machinery installed in the rear setback areas for household or recreational use, furniture designed and used for outdoor activities, trash cans in the front yard during the twenty-four-hour period allowed for garbage pick-up and garbage bins when employed in construction for which a valid building permit has been issued by the City.

E. Buildings that stand vacant for more than 30 consecutive days, unless the code official finds in writing that any of the following applies:

1. The building is the subject of an active zoning or building permit application or permit for repair or rehabilitation and the owner is progressing diligently to obtain such zoning or building permit or to complete the repair or rehabilitation.

2. The building meets all codes, is ready for occupancy, and is actively being offered for sale, lease, or rent.

3. The code official may grant an extension up to twelve (12) months for properties inherited or under probate.

4. The code official may waive the time limit to remedy a blighted building in cases where an event such as fire, flood, or earthquake interferes with the owner's ability to complete the corrective action within the specified time.

Sec. 5-09.04. Declaration of public nuisance.

All or any part of any real property, or any building or structure located thereon, found to be maintained in violation of this article is hereby declared a public nuisance and may be abated pursuant to the procedures set forth in this article. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or abating public nuisances in any other manner provided by law.

Sec. 5-09.05. Notice to owner of abatement of nuisance.

Whenever the City determines that property in the City is maintained as a nuisance as provided for in this article and that abatement of such nuisance is required, it shall:

A. Provide written notice of abatement to the owner in the manner and in the form provided in this article.

B. The notice shall state the proper street address of the subject property and shall be served on the owner. Such notice shall be deemed properly served if a copy thereof is:

(1) Delivered personally to the owner; or

(2) Sent certified or first-class mail, postage prepaid to the owner at their last known address as the same appears on the last equalized assessment roll of the County of Monterey; and

(3) One copy of the notice shall be conspicuously posted at the property that is the subject of the notice.

C. The notice shall advise the owner of a reasonable time limit in which the owner shall take corrective action to remedy the nuisance. In no event shall the owner be given less than seven (7) calendar days, and no more than sixty (60) calendar days to take corrective action, except where there is an immediate threat to public health or safety when shorter notice may be prescribed. The owner must commence the corrective action requested in the notice within thirty (30) days of the date of the notice. The City may waive the time limits of this subsection only if a natural disaster, such as, fire, flood or earthquake interferes with the owner's ability to complete the corrective action within the specified time, the work to be performed is inherently of a nature which cannot reasonably be completed within the time limits, or except as provided in this article.

D. The notice shall specify the section of law violated and state all the facts constituting the nuisance.

E. The notice shall specify the corrective action required, including temporary corrective action when appropriate and inform the owner of City programs, if any, available to assist low-income property owners with repairs to their property. The corrective action shall be such that it eliminates the significant adverse visual impact of the property on the neighborhood and eliminates the contribution of that property to the dilapidated or deteriorated appearance of the neighborhood as determined by the code official.

F. The notice shall advise the property owner that failure to correct the violation may result in levying citations and/or in the City's correcting the violation and collecting the charges by billing or by lien on the property.

G. The notice shall advise the owner of the right to file an appeal within fifteen calendar days if the owner seeks to challenge the charge that a nuisance exists.

H. The notice shall advise the owner he/she must either correct the violation or request an appeal in order to avoid City abatement and liability for cost of abatement.

I. The notice shall advise the owner that failure to appeal shall constitute waiver of the right to an administrative hearing to contest the charge of nuisance.

Sec. 5-09.06. Appeal procedure--Administrative hearing.

The owner may appeal the notice of abatement to the City by filing an appeal within fifteen calendar days of the date of mailing of the notice of abatement. The appeal shall identify the property and state the objections together with all material facts in support thereof.

Sec. 5-09.07. Service of notice of hearing.

A. In the event the owner appeals the notice of abatement, the City shall schedule a hearing before a hearing officer designated by the City.

B. Notice of hearing shall be served personally or by first class mail on the owner, postage prepaid. The notice shall specify the time and place when and where the designated hearing officer will hear and decide upon the objections raised by the owner. Such notice shall be served not less than five days, exclusive of Saturdays, Sundays, and holidays, prior to the time set for the hearing. Service shall be deemed complete at the time notice is personally served or deposited in the mail.

Sec. 5-09.08. Waiver of hearing.

Failure of the owner to appear at the hearing after notice has been served shall be deemed a waiver of the hearing and an admission by said owner of the nuisance charge. In the event of such failure to appear, the hearing officer may order that the nuisance be abated immediately thereafter.

Sec. 5-09.09. Hearing on objections.

The hearing officer shall hear and rule on objections to abatement of the nuisance. The owner may appear at the hearing by counsel. The formal rules of evidence shall not apply. All witnesses shall

be sworn, and each party shall have the right to cross-examine adverse witnesses. The hearing may be continued from time to time. The hearing officer shall either allow or overrule the objections or make such other determinations as are consistent with this article and his/her decision shall be final except as provided in this article.

Sec. 5-09.10. Notice of decision.

The hearing officer shall notify the owner of his or her determination in writing and may direct the owner to abate the nuisance at his or her expense within a specified time period to the extent the nuisance has been found to exist. The time period specified shall be subject to the limitations set forth in this article.

Sec. 5-09.11. Hearing officer's decision final--Judicial review.

The hearing officer's decision shall be final and shall only be subject to judicial review pursuant to Code of Civil Procedure sections 1094.5 and 1094.6.

Sec. 5-09.12. City to perform abatement.

In the event the owner shall fail, neglect or refuse to comply with the notice of abatement, within the prescribed time, and if no appeal has been filed, or the owner appeals the notice of abatement and fails to abate the nuisance within the time specified by the hearing officer in the notice of decision, the City shall have the power to abate such nuisance without further notice, including the power to condemn and destroy any property constituting the nuisance if the nuisance cannot be abated without destruction of such property. Said abatement may be pursued by City personnel or private contractor. The costs of abatement, including administrative and incidental expenses, shall be billed to the owner and shall be due and payable within thirty days thereafter.

Sec. 5-09.13. Costs of City abatement deemed lien.

The costs of abatement, including incidental expenses, incurred by the City shall constitute a nuisance abatement lien or a special assessment lien on the property whereon the nuisance existed as determined by the City and shall be recorded as such pursuant to the procedures set forth in the Municipal Code or any other procedures at law which provide for the recovery of abatement costs.

Sec. 5-09.14. Warrants.

In the event that the owner fails to consent to the City entering his or her property for the purposes of inspecting and/or abating a nuisance under this article, the City shall apply and be granted said warrants from the appropriate court if cause exists pursuant to Code of Civil Procedure Section 1822.52 to issue said warrants.

Sec. 5-09.15. No duty on City to enforce.

Nothing in this article shall be construed as requiring the City to enforce the prohibitions in this article against all or any properties which may violate the ordinance. Nothing in this section or the absence of any similar provision from any other City law shall be construed to impose a duty on the City to enforce such other provision of law.

Sec. 5-09.16. Violations--Penalties and remedies.

A. The remedies provided for under this section, are in addition to any the City or any person might have under applicable law.

B. Any person violating or causing the violation of this article, shall be guilty of a misdemeanor, in addition to any other remedies provided for in this article or under applicable law.

C. Any property owner ordered by the City to abate a property nuisance pursuant to this article on two or more separate occasions within a one-year period, shall be liable to the City for a civil penalty of one thousand dollars for each separate order to abate beginning with the second such order within a one-year period, except as provided in this article and except as may be provided elsewhere in the Municipal Code or applicable law.

D. The City Attorney may bring an action under this section on behalf of the City for injunctive or other relief, including an action for public sale of the property to pay any outstanding liens. In such an action, the City shall recover its costs of abatement, and court costs in addition to civil penalties.

E. Any person who owns or occupies any premises on the same City block on which the nuisance exists under this article or who lives within five hundred feet of such a nuisance (hereafter "aggrieved person") may file a civil action to abate such nuisance only if pursuant to this article the City has notified the owner to abate the nuisance and the owner has failed to abate the nuisance in the manner required by the City. In any action brought under this subsection, the court may grant all appropriate relief against the property owner causing the nuisance, including public sale

of the property, damages and costs which the aggrieved person may have incurred as a result of such nuisance.

F. In any action brought under this section, the court shall award reasonable attorney's fees to any prevailing plaintiff, including the City. Any aggrieved person who initiates a civil action under this section, shall file a copy of his or her complaint against the property owner and a copy of the court's decision with the City Clerk.

Sec. 5-09.17. Annual review.

One year after the effective date of this article, and every year thereafter, the council shall conduct a hearing upon the report submitted by the code official or his duly authorized representative for the purpose of hearing all protests and objections to same, the work done thereunder and the costs contained therein.

A. At least ten days in advance of such hearing, the city clerk shall notify the persons owning property upon which work was performed under Section 5-08.13 of the date, time and place of such hearing and the total cost to be charged against such person and property, which total cost shall include such charges as the council, by resolution, has determined for administrative expenses connected with the removal and the collection of costs thereof.

B. At the public hearing, the council shall hear and determine all protests and objections to the report and the work done thereunder and costs contained therein, and shall, by resolution, confirm, amend, or reject the report, either in whole or in part.

C. Any special assessment filed against real property under this article shall be imposed following the procedure set forth in Division 3 of Article V of Chapter 1 of the City Code.

Sec. 5-09.18. Inspection fees.

The City Council may, by resolution, establish fees for inspection of properties found to be in violation of this ordinance.

SECTION 2. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions

of this ordinance. The Salinas City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, clause, and phase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. Effective Date. This Ordinance will take effect thirty (30) days from and after its adoption.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT. The City Council finds and determines that this Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

PASSED AND ADOPTED this ____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney