



File #: 21-1031, Version: 1

REPORT TO COUNCIL

SUBJECT

Introduction of an Ordinance to Amend Chapter 1.04 of the Sunnyvale Municipal Code Relating to Attorney's Fees and Costs for Abatement of Public Nuisances

DISCUSSION

Any violation of the Sunnyvale Municipal Code (SMC) has been deemed a public nuisance pursuant to SMC Section 1.04.040 (see Attachment 1) and the City has various options available to remedy violations of the SMC. Often, violations are addressed with education, outreach, and warning letters issued by the Department of Public Safety, Neighborhood Preservation Division. However, in instances where the violation is more significant, or where voluntary compliance is not achieving the desired remediation, the City may consider litigation in order to gain compliance.

The City has filed for health and safety receiverships under California Health and Safety Code Section 17980 to address substandard residential properties. This state law provides that the prevailing party may be entitled to attorneys' fees and costs associated with bringing the legal action to court. The legislative purpose behind the attorneys' fees provision is to ensure that taxpayers are not subsidizing the attorney's costs for code violators, and to ensure that the public entity will be made whole for bringing receivership actions. State law also provides that a city may by ordinance provide for recovery of attorneys' fees where it is not entitled to fees by statute (California Government Code Section 38773.5, Attachment 2). This law also provides that any attorneys' fees provision adopted by a city must be reciprocal, which means the prevailing party is entitled to attorneys' fees, and it cannot be limited to just the city. Currently, the SMC is silent as to recovery of attorneys' fees in cases involving public nuisances. The Office of the City Attorney (OCA) anticipates that a reciprocal attorneys' fees provision may be a helpful tool to ensure that OCA can pursue such legal action in the future without negatively impacting its budget and burdening the taxpayers.

Because the Draft Ordinance (Attachment 3) is written to address public nuisances generally, it could be applied broadly to other cases involving SMC violations beyond substandard homes, to include illegal marijuana establishments, construction without permits, and violations of the short-term rental ordinance to name a few.

EXISTING POLICY

Sunnyvale General Plan

Chapter 4, Community Character, Policy CC-1.6 Maintain City neighborhoods as safe, healthy places to live.

Chapter 5, Housing. Goal HE-2.1 Encourage property owners to maintain rental and

ownership units in sound condition through the neighborhood preservation and rehabilitation programs.

ENVIRONMENTAL REVIEW

The adoption of this Ordinance does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility that it may have an impact on the environment. (CEQA Guidelines Section 15061(b)(3)).

FISCAL IMPACT

The ability of the City to recover costs and fees associated with public nuisance actions may make such actions more fiscally feasible in the future.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Introduce an Ordinance Amending Chapter 1.04 (General Penalty) by Adding Section 1.04.080 (Attorneys' Fees and Costs for Abatement of Public Nuisances) to the Sunnyvale Municipal Code and find that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).
2. Introduce an Ordinance Amending Chapter 1.04 (General Penalty) by Adding Section 1.04.080 (Attorneys' Fees and Costs for Abatement of Public Nuisances) to the Sunnyvale Municipal Code with modifications and find that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).
3. Do not introduce the Ordinance and provide alternative direction to staff.

STAFF RECOMMENDATION

Alternative 1: Introduce an Ordinance amending Chapter 1.04 (General Penalty) by Adding Section 1.04.080 (Attorneys' Fees and Costs for Abatement of Public Nuisances) to the Sunnyvale Municipal Code and find that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Prepared by: Anais Martinez Aquino, Assistant City Attorney

Reviewed by: John A. Nagel, City Attorney

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Sunnyvale Municipal Code Section 1.04.040
2. California Government Code Section 38773.5
3. Draft Ordinance