



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: May 5, 2020

Subject

Municipal Code Amendments to Title 1, including but not limited to, Chapter 1.04 (General Provisions), Chapter 1.08 (Right of Entry for Inspection), Chapter 1.09 (Nuisance Abatement), 1.10 (Administrative Citations, Fines, and Penalties), and Chapter 1.12 (General Penalty), for language clarifications, process efficiency, compliance with State Law, and internal consistency pursuant to the FY 2019-2020 Work Program project item titled "Penalties for Violations of Conditions of Approval and Code Enforcement Best Practices." (Application No. MCA-2020-001; Applicant: City of Cupertino; Location: City-wide)

Recommended Action

That the City Council:

1. Find that the proposed actions are exempt from CEQA; and
2. Conduct the first reading of Ordinance No. 20-XXXX entitled: "An ordinance of the City Council of the City of Cupertino amending Chapter 1.04 (Chapter 1.08 (Right of Entry for Inspection), Chapter 1.09 (Nuisance Abatement), 1.10 (Administrative Citations, Fines, and Penalties), and Chapter 1.12 (General Penalty) to improve process efficiency by adopting Best Practices, readability and internal consistency." (Attachment A)

Discussion

Background

Pursuant to the FY 2019-2020 Work Program, City staff has worked closely with the City Attorney's Office to analyze the feasibility of increasing administrative penalties that may be assessed by the City Council, as well as evaluate other areas of the Code for opportunities to improve existing processes, procedures, and policies that pertain to the City's enforcement authority and ability to compel compliance. Through this evaluation process, several areas within the chapters of Title 1 that need improvement in order to

provide consistency with State Law, internal consistency, efficiency, clarification, or the implementation of updated best practices were found.

Amendments have been proposed to the following chapters in the General Provisions Title (Title 1) to implement these improvements:

1. Chapter 1.04 – General Provisions
2. Chapter 1.08 – Right of Entry for Inspection
3. Chapter 1.09 – Nuisance Abatement
4. Chapter 1.10 – Administrative Citations, Fines, and Penalties
5. Chapter 1.12 – General Penalty and Criminal Enforcement

Analysis

The proposed amendments to Title 1, include but are not limited to, the following:

1. Administrative Penalty Limits

Pursuant to Section 1.10.140, the Council may impose an administrative penalty for egregious or ongoing violations as well as the repeated failure to correct violations of the Municipal Code. Currently, Section 1.10.150 establishes the maximum amount of the penalty at \$1,000 per day, not to exceed a total of \$100,000.

Pursuant to Council's request to review the administrative penalty limits as part of the City Council Work Program, staff has worked with the City Attorney's Office to remove the \$100,000 overall limit, thus leaving it to the Council's discretion. State law is clear in limiting City Council's ability to impose a penalty of up to \$1,000 per day per violation. The City Council could impose a higher penalty if this daily maximum were to be increased by the state.

2. Improved Code Enforcement Best Practices

Chapter 1.09, Nuisance Abatement, establishes the process by which public nuisances are determined and how they may be abated. Currently, the structure of the Municipal Code does not allow an immediate response to complaints of public nuisances by requiring abatement. The current process allows a public nuisance to be maintained until the City Council holds a public hearing and makes a finding to authorize the abatement process to begin.

A review of abatement procedures indicate that public nuisance abatement is handled at an administrative level in the following cities in the South Bay:

- | | |
|-----------------|---------------|
| ▪ Palo Alto | ▪ Santa Clara |
| ▪ Sunnyvale | ▪ Los Altos |
| ▪ Saratoga | ▪ Campbell |
| ▪ Mountain View | ▪ San Jose |

In order to ensure that the City has an effective public nuisance abatement process while continuing to incorporate due process rights, an updated abatement process has been proposed. The proposed amendments to Chapter 1.09, streamline the investigation and nuisance abatement process by authorizing an immediate investigation into a complaint of a public nuisance to determine if one exists, and if so, commence the process to have the nuisance abated. The updated process allows an appeal to ensure that the party responsible for abatement has the ability to challenge any decisions made. In addition, the updated process clarifies procedures for reporting abatement costs to property owners, allows appeals to abatement costs, authorization to proceed with abatement work, and the collection of abatement costs billed to responsible parties; all in an effort to be consistent with current code enforcement best practices and to have a clear process for abatement. Emergency abatement procedures have been established to ensure abatement occurs for public nuisances that are an immediate hazard to the public health, safety, or welfare or materially interferes with public travel or passage.

The definition of “Public Nuisance” was revised to allow appropriate implementation of the new procedures by ensuring consistency with state law, internal consistency, and for clarification. The definition was streamlined by adding references to illegal acts already defined in Chapter 9.22 (allowing deletion of duplicated language in the Municipal Code), incorporating language from deleted sections of the former abatement process and incorporating language from Chapter 1.12 (General Penalty) to ensure one consolidated place in which all Public Nuisances are defined. Several other definitions were added to allow implementation of the regulations. These include addition of definitions of “Abate” and “Abatement,” “Appeal Hearing Officer,” and “Private Nuisance.”

Finally, the violation of any provision of the Abatement Chapter has been amended from being an infraction to be a misdemeanor. Doing so allows the City flexibility in pursuing the violation as a misdemeanor or an infraction. However, allowing only a lesser charge of an infraction does not allow the City flexibility in achieving compliance in an efficient manner. Charging a violation as a misdemeanor would rarely be invoked and would only be done in consultation with the City Attorney’s Office when very egregious violations of the code are noted.

3. Consistency with State Law:

- a. Updates to Administrative Citation Fine Amounts:* Section 1.10.070 establishes a schedule for the maximum amount of fines for administrative citations. The maximum amounts for the initial violation, a second violation of the same Code provision within one year, and a third and subsequent violations of the same Code

provision within one year, are set by the CA Government Code. The proposed changes clarify that the fine amount corresponds with each violation of a Code provision instead of each administrative citation. Additionally, increased fines for first, second, and subsequent violations of local building and safety codes were added, as allowed by state law.

- b. *Addition of Hardship Waiver Process for Administrative Citation Fines:* State law requires cities to include a hardship waiver process for relief from payment of fines. Therefore, a new section, Section 1.10.080, establishes a hardship waiver process for the reduction of administrative citation fines. The hardship waiver may reduce the amount of the fine if the person makes a bona fide effort to comply after the first violation, and can show that payment of the full amount of the fine would impose an undue financial burden.
- c. *Deletion of Section 1.10.170, Lien Procedure:* Section 1.10.170 established a procedure for the City to record a lien against real property for the purposes of collecting administrative fines and penalties. However, this section is proposed to be removed under advisement of the City Attorney's Office due to a lack of clarity on whether it is authorized by state law.

4. Clarification, Readability and Internal Consistency:

In addition to several minor corrections to references as a result of the addition or deletion of sections in the Municipal Code, deletion of duplicated language and/or other typographical/clerical errors, clarifications to improve readability and improve internal consistency have been made in all Chapters including but not limited to:

- a. *Chapter 1.04, General Provisions:* The City has a variety of remedies available under state law and the Municipal Code, related to code enforcement, which may be pursued concurrently, or separately, including but not limited to administrative (administrative citation fines and penalties), and legal remedies (civil and criminal action.) This authority, which is not new, is best captured in existing language in Section 1.10.010. This has been reworded for ease of readability and relocated to Section 1.04.030.
- b. *Chapter 1.08, Right of Entry:* The Right of Entry Chapter has been redrafted for ease of readability and to clarify procedures and the circumstances under which the City does or does not need to obtain an inspection warrant.
- c. *Chapter 1.10, Administrative Citations:* Several sections in Chapter 1.10 were amended to provide clarifications, internal consistency and improve readability with no changes to implementation of the existing procedures. These include:
 - i. *Section 1.10.010, Applicability:* Section 1.10.010 has been revised for readability and internal consistency.

- ii. *Section 1.10.020, Definitions:* The definition of “Administrative Citation Fines” and “Administrative Penalty” were added for clarification.
 - iii. *Section 1.10.050, Administrative Citation – Issuance:* Section 1.10.050 which establishes the circumstances under which an administrative citation may be issued as well as the circumstances under which the time to remedy a violation may be extended, prior to the issuance of a citation was revised to provide clarification and internal consistency.
 - iv. *Section 1.10.070, Administrative Citation Fines:* The City has consistently applied Administrative Citation Fines in the same way as General Penalties pursuant to Section 1.12.020; in that a person found to violate the Municipal Code is guilty of a separate offense for each and every day during any portion of which any violation is committed, continued or permitted. This has been clarified in Section 1.10.070.
 - v. *Section 1.10.090, Appeal of Administrative Citation:* Clarification has been added to specify that collection of fines on any administrative citation shall be temporarily stopped during the process of an appeal in subsection F.
 - vi. *Section 1.10.120, Administrative Citation Appeal Hearing:* Minor clarifications have been added related to absences at an appeal hearing.
 - vii. *Section 1.10.130, Hearing Officer’s Decision on Administrative Citation:* Section 1.10.130 was revised to provide clarification regarding information on timing of payment and amount of fines that must be included in the Appeal Hearing Officer’s order.
 - viii. *Section 1.10.150, Administrative Penalties Imposed by Council:* Clarification has been added, as subsection C, to ensure that administrative fines issued by staff and administrative penalties imposed by the Council, cumulatively do not exceed the maximum daily penalties allowed by state law.
- d. *Chapter 1.12, General Penalty and Criminal Enforcement (name updated from “General Penalty”):* This Chapter includes the criminal remedies the City has in enforcing violations of the Municipal Code. Amendments have been made in this Chapter for clarification, internal consistency and readability. These include amendments to the following sections:
- i. *Section 1.12.010, Violation of Code:* Section 1.12.010 defines what a violation of the Code is and what the criminal penalty is for such a violation, whether infraction or misdemeanor. This section was revised for clarification, readability and internal consistency.

- ii. *Section 1.12.030, Public Nuisance Abatement:* As previously mentioned, this section has been incorporated into Chapter 1.09 for clarification and internal consistency.

Environmental Assessment

The project is determined to be not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") in that proposed Ordinance will not have a direct or reasonably foreseeable indirect impact on the environment.

Public Noticing & Outreach

The following noticing has been conducted for this project:

Notice of Public Hearing, Site Notice & Legal Ad	Agenda
<ul style="list-style-type: none">▪ Legal ad placed in newspaper (at least 10 days prior to hearing)▪ Display ad placed in newspaper (at least 10 days prior to hearing)	<ul style="list-style-type: none">▪ Posted on the City's official notice bulletin board (four days prior to hearing)▪ Posted on the City of Cupertino's Web site (four days prior to hearing)

Fiscal Impact

There are no anticipated fiscal impacts to the City. However, in some situations, the City may have to waive collection on Administrative Citation fines due to a valid hardship waiver. This is a necessary requirement under state law.

Sustainability Impact

There are no anticipated sustainability impacts to the City.

Next Steps

The second reading of the ordinance is tentatively scheduled for May 19, 2020. Ordinance No. 20-XXXX will go into effect 30 days after the second reading.

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Reviewed by: Piu Ghosh, Planning Manager
Albert Salvador, Acting Director of Community Development
Approved for Submission by: Dianne Thompson, Assistant City Manager

ATTACHMENTS

A. Draft Ordinance

B. Redline document indicating changes in Chapters 1.04, 1.08, 1.09, 1.10 and 1.12