

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda date: October 20, 2008
Reviewed by: BP

Subject: Resolution Declaring certain activities pertaining to property exteriors as prohibited and constituting a Public Nuisance

Report by: Robert Zweben, City Attorney
Ann Chaney, Community Development Director

STAFF RECOMMENDATION

Adopt Resolution #08-68 declaring certain conditions as prohibited activity and unlawful pursuant to Section 18-1.4 of the Albany Municipal Code.

BACKGROUND

In 2003, the City Council amended the Albany Municipal Code by adopting a Nuisance Abatement ordinance, which may be found in Chapter 18. This City Code defines a *Public Nuisance* as follows:

Public nuisance shall mean an activity or condition which, in the opinion of the City, violates a provision of a City Code, or anything which is injurious to health, or safety, or an obstruction to the free use of property, so as to unreasonable interfere with the comfortable enjoyment of life or property by the occupant(s) of adjacent or neighborhood property or by any number of persons in the City irrespective of whether the annoyance or damage inflicted upon individuals is unequal.

Since the Nuisance Abatement ordinance was passed in 2003, staff has received any number of complaints about conditions existing on properties in the City that are not specifically defined under the ordinance as a public nuisance. Rather than rely on the broader language of the ordinance to address conditions deemed to be a nuisance, the City Attorney has suggested that the conditions that would be considered a public nuisance be more clearly defined.

Staff also works with Alameda County Health Care Services Agency, which responds to complaints primarily when vector infestation is involved.

DISCUSSION

Under the current Nuisance Abatement Ordinance, no provisions explicitly prohibit inadequately maintained exterior properties. The list of Prohibited Activities in Section 18-1.6 primarily relate to buildings or structures (e.g., substandard, abandoned, boarded

up) and poorly maintained landscaping (e.g., fire hazard, harborage for vectors and wild animals). However, Section 18-1.4 authorizes the City Council, by resolution or ordinance, to declare a particular activity or condition in addition to those specifically described in Chapter 18.

18-1.4.b. The City Council shall have the power to declare by resolution or ordinance that a particular activity or condition other than and in addition to those described her in shall constitute a public nuisance subject to abatement. [Emphasis added]

Therefore, the attached Resolution contains a definition for “Visual Blight”, and states that properties that contain visual blight are considered to be substandard, shall constitute a public nuisance, and are an unlawful condition. The Resolution provides a list of items that constitute a public nuisance that would be subject to abatement when located “in front or side yards visible from the public right-of-way”. These include, but are not limited to, the accumulation of junk, debris, garbage, household appliances, parts of furniture, sinks, and scrap metal. Also included as a public nuisance, subject to abatement, are building exteriors, windows, walls, fences, driveways, walkways or sidewalk which are cracked, broken, or in disrepair, to the extent they threaten public health, safety and welfare, and building or structures which are substandard or were constructed or altered without required approvals or permits.

ANALYSIS

There are conditions that exist on private property that are within clear view of the public that fall within the definition of visual blight. The City is receiving an increasing number of complaints about these conditions and typically responds through review of the complaint and contact with property owner. Oftentimes, however, the conditions continue to exist or fall into further blight. In order to effectively pursue their abatement, the City needs the conditions defined by the City Council as contained in the attached resolution.

Section 18-1.12 of the existing Nuisance Abatement Ordinance provides for a hearing process when violations are not corrected or are contested. The City Council has identified the Planning and Zoning Commission as the Hearing Board. To date no such hearings have been held.

FINANCIAL IMPACT

The staff time involved in the abatement of public nuisances depends on the number of properties and the effort needed for compliance or abatement.

Attachments

Resolution #08-68 – Declaring Certain Conditions as Prohibited Activity