



DATE: June 20, 2023

TO: Mayor and City Council

FROM: Acting Development Services Director

SUBJECT: Community Preservation Ordinance: Introduction of an Ordinance Amending, Chapter 5, Article 7 of the Hayward Municipal Code Regarding Community Preservation Standards and Finding that this Action is Subject to the CEQA Common Sense Exemption

RECOMMENDATION

That Council introduces an ordinance (Attachment II) to amend the Community Preservation Ordinance (Chapter 5, Article 7 of the Municipal Code) by Amending Section 5-7.10 relating to definitions, amending Section 5-7.20 relating to public nuisances, renaming Section 5-7.30 relating to administrative citation/abatement notice to authority and enforcement to include expanded subsections, and adding Section 5-7.140 cumulative remedies. It is further recommended that Council find that this action is subject to the CEQA Common Sense Exemption.

SUMMARY

This report presents proposed amendments to the City of Hayward Community Preservation Ordinance (Chapter 5, Article 7 of the Municipal Code). The amendments aim to update and clarify the existing ordinance by amending strategic sections and adding a new section as proposed below. As part of the City’s Strategic Plan to Enhance Community Safety and Quality of Life, updates to the ordinance are provided to assure focus on improving the ordinance’s ability to combat blight and improve neighborhood livability. Additionally, this report presents proposed changes to the Community Preservation Ordinance in response to council direction associated with the enforcement of fireworks through the community preservation process.

The purpose of the proposed amendments to Chapter 5, Article 7 of the Hayward Municipal Code relating to Community Preservation are meant to improve the ordinances capability of combating blight and improving neighborhood livability. The following changes are proposed to address these issues:

- 1) Amend Section 5-7.10 “Definitions” to update the definition section necessary for the administration of the code. Updates include, alphabetization of definitions section,

and the addition of Fireworks, State Housing Law, and Vacant Properties as new defined terms due to increased use of the ordinance to address these issues.

- 2) Update and organize Section 5-7.20 “Public Nuisance” to combat blight and property degradation, to include:
 - a. Consolidation of standards that are similar in intent, to reduce redundancy. For example, Sections 5-7.20 -subsections “a” and “b,” both refer to the keeping of junk, trash and debris-related items on property as a public nuisance. Consolidating subsections with similar intent into one subsection will provide improved clarity and less redundancy in the code.
 - b. Clarification that violations of Hayward’s Building regulations, Fireworks regulations, State Health and Safety regulations and Zoning regulations are subject to the administrative enforcement process contained in Chapter 1, Article 3 (Penalties) and Chapter 1, Article 7 (Administrative Citation Program) of the Hayward Municipal Code, as well as to the nuisance abatement processes contained in Chapter 5, Article 7 (Community Preservation Ordinance).
- 3) Rename and Expand Section 5-7.30 “Administrative Citation/Abatement Notice” to “Authority and Enforcement” to provide clarity in the Notification, Penalty/Fee, Inspection and Rights of Entry processes consistent with administrative enforcement processes contained in Chapter 1, Article 3 (Penalties), Chapter 1, Article 7 (Administrative Citation Program), and Chapter 5, Article 7 (Community Preservation Program).
- 4) Add Section 5-7.140 “Cumulative Remedies” to provide a comprehensive and flexible approach to enforcement. This section provides additional clarity in the allowance of multiple remedies to be pursued simultaneously or consecutively in response to a violation, such as imposing fines, administrative fees and pursuing injunctive relief, and is consistent with established practices.

No new fees or penalties are proposed to be adopted through this action.

BACKGROUND

The Community Preservation Ordinance and its supportive Code Enforcement program have grown over time utilizing Chapter 5, Article 7 – Community Preservation Ordinance as a primary enforcement agent for a variety of ordinances and concerns, including the Weed Abatement Ordinance, the Graffiti Ordinance, Zoning Regulations, the Vacant Property Ordinance, and other adopted state building standards.

The City Council initially adopted ordinances establishing the City’s Community Preservation Ordinance and associated Community Preservation Program in 1990. In 2015, the City Council adopted ordinances revising the previously adopted Community Preservation Ordinance to address the needs of fencing necessary for vacant properties. In the interim, staff has identified a need for clarifying language related to definitions, standards and processes to strengthen the enforcement mechanisms for violations of the

Community Preservation Ordinance and align it with the needs of established strategic goals implemented to enhance community safety and quality of life.

DISCUSSION

The Community Preservation Ordinance (Article 5, Chapter 7) does not currently contain any specific definitions for Fireworks, State Housing Law, and Vacant Properties often utilized in the enforcement process to assure compliance with provisions of the code. The Community Preservation Ordinance (Article 5, Chapter 7) does not currently contain any specific provisions regarding enforcement of Fireworks, Building Standards, Health and Safety Standards, other than general statements that it is unlawful to violate any code or ordinance adopted by the City.

The Administrative Citation/Abatement Section (Section 5-7.30) of the code provides little clarity on how it relates to Chapter 1, Article 3 (Penalties) and Chapter 1, Article 7 (Administrative Citation Program) of the Municipal Code. Additionally, this section provides no language or transparency on established notification, inspection or rights of entry authority, or processes as it pertains to the enforcement of the code.

The Community Preservation Ordinance (Article 5, Chapter 7) currently has no cumulative remedies section. A cumulative remedies section in an ordinance is an important provision that outlines the legal options available to the City in case of a violation of the ordinance. This section serves as a crucial tool to ensure that the ordinance's enforcement is effective, consistent, and fair. The cumulative remedies section provides a clear framework for addressing violations of the ordinance by establishing a range of remedies that can be pursued by the City. These remedies may include administrative penalties, fines, injunctive relief, administrative cost recovery, or even criminal prosecution.

The proposed amendments would clarify that existing administrative enforcement provisions of the Hayward Municipal Code are applicable to violations of Fireworks regulations, State Health and Safety Standards, Building Standards as well as other adopted Codes. Additionally, the proposed amendments would clarify Citation, Penalty, Notification, Inspection, and Rights of Entry processes utilized in the enforcement process. As a final improvement, the addition of a cumulative remedies section to the ordinance will clarify and provide transparency in the application of additional remedies used in the enforcement process which mitigate health, safety and other public nuisance violations.

This action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Support Quality of Life. Specifically, this item relates to the implementation of the following project(s): Plan Item - Enhance Community Safety and Quality of Life

Project 3, Goal Q15: Revamp community preservation ordinance to combat blight and enhance neighborhood livability.

FISCAL IMPACT

No new fees or penalties are proposed as part of this item.

SUSTAINABILITY FEATURES

Preventing public nuisance conditions on private property that contribute to neighborhood degradation and pollution of city streets, and private lands will benefit Hayward's neighborhoods and the health and safety of Hayward Residents and Businesses.

PUBLIC CONTACT

Staff reached out to 23 active Homeowner Associates (HOAs) between January 5, 2023, and March 30, 2023, for public input in regard to neighborhood preservation concerns and changes associated with the community preservation ordinance update. While meetings with HOAs indicated no concerns over the proposed updates, some HOA groups such as Old Highland Hills Association (OHHA) and Eden Shores HOA expressed concerns on topics currently being resolved such as Fireworks and graffiti. Other zoning-related concerns were mentioned, and those issues were forwarded to the appropriate departments for review. Notice of this meeting was published in *The Daily Review* newspaper on June 2, 2023, and June 9, 2023 of Council's scheduled review of this item. No responses to the notice have been received by staff at the time of finalization of this report.

NEXT STEPS

If the City Council introduces the ordinance, it will be brought back for adoption at a subsequent City Council meeting. The ordinance will take effect 30 days from the date of adoption by the City Council.

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Recommended by: Sara Buizer, Acting Development Services Director

Approved by:



Kelly McAdoo, City Manager