

ACTION CALENDAR

September 21, 2010

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Vacant Lot Maintenance

RECOMMENDATION

Adopt the proposed Ordinance to :

- a) amend Berkeley Municipal Code (B.M.C.) Chapter 12.92 (“ANTI-BLIGHT”) to require that vacant lot property owners maintain their property to standards equivalent to those enforced for non-vacant lots, and to adjust the timeline of compliance for owners whose property is found to be a public nuisance;
- b) amend B.M.C. Chapter 12.40 (“LITTER, DEBRIS AND NOXIOUS PLANTS”) to establish a fine for repeated violations of Chapter 12.40.

BACKGROUND

Many vacant lots in the City are severely neglected. Vegetation is allowed to grow uncontrolled, posing a public safety fire hazard. These neglected lots also substantially contribute to the dilapidated and blighted appearance of the neighborhood, host criminal activity, and threaten the health, safety, and general welfare of citizens.

Application of Chapter 12.92 ANTI-BLIGHT to severely neglected vacant lots:

As it currently stands the B.M.C. does not permit the classification of a severely neglected vacant lot as a public nuisance. Because of the specific conditions enumerated in Chapter 12.92, only properties that have a structure (or contain large debris, such as abandoned furniture or appliances), can currently be classified as property nuisances and addressed by the City for abatement under the Anti-Blight Statutes (12.92).

The proposed Ordinance would amend Chapter 12.92 to distinguish between properties that have a structure and vacant lots, and to allow vacant lots to be declared public nuisances which contribute to blight and require abatement. At the discretion of the city, abatement for a vacant lot may include constructing and maintaining secure fencing of the perimeter of the property, posting “No Trespassing” signs, and filing a No

Trespassing Letter with the Berkeley Police to authorize police enforcement of the trespassing ordinance (pursuant to Section 13.52.010-020).

More effective enforcement of Chapter 12.40 LITTER, DEBRIS AND NOXIOUS PLANTS:

Pursuant to Chapter 12.40 owners must keep their property free of hazardous debris that pose a fire hazard, harbor rats, or are otherwise a menace to the life, health, comfort or convenience of the community.

Unfortunately, this law fails to be fully effective because the B.M.C. requires only posted notice to the property owner (it suggests but does not mandate that a notice be sent by mail) and does not provide a penalty for repeat violations. The result is the City is often responsible for repeatedly removing weeds, vines, shrubs, and other debris from a property and the cost is billed as a tax lien the following year. By amending Chapter 12.40.050 to require that the order to remove debris also be sent by mail, and by creating a civil penalty for repeat non-compliance (the same \$500 that is the penalty for repeat violations of the anti-blight law), we can make the code more effective and further reduce the public fire hazard caused by overgrown lots.

FINANCIAL IMPLICATIONS

Unknown. The establishment of a fine for repeated non-compliance of Chapter 12.40 and the application of Chapter 12.92 to vacant lots could result in increased revenue by means of civil penalties for repeat violations (see existing Section 12.92.170C and the proposed amendment to Section 12.40.130). Vacant lots would also now be subject to the inspection fees described in Section 12.92.190 for properties that have been found in violation of the Anti-Blight ordinance.

CONTACT PERSONS

Jesse Arreguín, Councilmember, District 4

981-7140

Attachments:

1. Proposed Ordinance amending B.M.C. Chapters 12.40 and 12.92.

ORDINANCE NO. – N.S.

AMENDING SECTION 12.92.030 TO THE BERKELEY MUNICIPAL CODE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 12.92.020 of the Berkeley Municipal Code is amended to read as follows:

Section 12.92.020 Definitions.

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

A. "Building Official" shall mean, for the purposes of this code, the City Manager or his or her designee.

B. "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.

C. "Low income owner" shall mean an owner whose annual family income is less than eighty percent of the median annual income for the SMSA as calculated by the Department of Housing and Urban Development.

D. "Owner" shall mean any person owning at least a fifty percent ownership interest of record in the property, as shown on the last equalized assessment roll of the county of Alameda.

E. "Small property" shall mean any residential property with four or fewer units in which an owner of record of at least a fifty percent ownership interest in the property resides in one of the units as his/her principal place of residency.

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. (Ord. 6303-NS § 2, 1995; Ord. 6169-NS § 2, 1993; Ord. 6157-NS §2, 1992)

I. "Vacant lot" shall mean any residential, industrial, commercial, or other real property which does not contain any structure.

Section 2. That Section 12.92.030 of the Berkeley Municipal Code is amended to read as follows:

Section 12.92.030 Unlawful nuisance--Inadequately maintained property—**Property containing one or more structures.**

This section shall not be applicable to a single dwelling, intended for use by one family, where the dwelling is located by itself on a single parcel of property which is occupied by the owner(s) thereof. This exemption shall apply even where the owner is temporarily absent therefrom during the period necessary to complete needed repairs to such dwelling. This exemption shall only be applicable if the owner intends to return to occupy such dwelling upon completion of such repairs.

Except as exempted above, 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 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, rank growth, 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. 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. Where property is vacant and otherwise required to be boarded up, the boarding shall be done in a manner approved by the building official and which does not itself have a significant adverse visual impact on the neighborhood nor substantially contribute to the dilapidated or deteriorated appearance of the neighborhood. To the extent feasible, the boarding up shall cause the property to have the appearance of an occupied residence as determined by the building official. (Ord. 6303-NS § 3, 1995: Ord. 6169-NS § 3, 1993: Ord. 6157-NS § 3, 1992)

Section 3. That Section 12.92.035 of the Berkeley Municipal Code is added to read as follows:

Section 12.92.035 Unlawful nuisance--Inadequately maintained property--Vacant lots.

It shall be an unlawful nuisance for any person owning, leasing, renting, occupying or having charge or possession of a vacant lot to maintain or allow to be maintained such property in such manner that either 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, rank growth, rubbish, junk, garbage, litter, debris, flyers or circulars.

B. 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. 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.

Section 4. That Section 12.92.040 of the Berkeley Municipal Code is amended to read as follows:

Section 12.92.040 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 Section 12.92.030 **or 12.92.035** of this chapter are hereby declared a public nuisance and may be abated pursuant to the procedures set forth in this chapter. 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. (Ord. 6303-NS § 4, 1995: Ord. 6157-NS § 5,1992)

Section 5. That Section 12.92.050 of the Berkeley Municipal Code is amended to read as follows:

Section 12.92.050 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 chapter and that abatement of such nuisance is to be required, it shall:

- A. Provide written notice to abate to the owner in the manner and in the form provided in this chapter.
- B. The notice shall state the proper street address of the subject property and should be served personally on the owner or by first class mail, postage prepaid. Additionally, one copy of the notice shall be conspicuously posted on the property.
- 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 calendar days, and no more than sixty 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 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 Section 12.92.060.

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 building official.

Owners of vacant lots determined to be a nuisance under Section 12.92.035 may be required as corrective action to construct and maintain secure fencing of the perimeter of the property, post “No Trespassing” signs, and file a No Trespassing Letter with the Berkeley Police to authorize police enforcement of the trespassing ordinance (pursuant to Section 13.52.010-030).

F. The notice shall advise the property owner that failure to correct the violation may result in the City's correcting the violation and collecting the charges by billing or by lien on the property, **and that any property owner who violates this Chapter on two or more separate occasions within a one year period is liable to the City for a civil penalty of five hundred dollars for each separate order to abate, beginning with the second order within a one year period.**

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.

J. As to any small property, the notice shall advise the owner that in addition to requesting a hearing, s/he may elect to mediate the dispute with any party complaining of the nuisance, other than the City, and that if such mediation is elected and agreed to by the complainant, the cost, if any, of such mediation shall be borne equally by the owner and complainant and the mediation must be completed within thirty (30) days. If mediation is elected, any hearing requested by the owner will be scheduled as provided under Section 12.92.070 only after the period of mediation has expired. (Ord. 6303-NS § 5, 1995; Ord. 6169-NS § 4, 1993; Ord. 6157-NS § 6, 1992)

Section 6. That Section 12.40.050 of the Berkeley Municipal Code is amended to read as follows:

12.40.050 Removal—Order issued when—Notice required.

If and when it shall appear that weeds, vines, shrubs, dead or damaged trees, brush and/or debris have been placed upon or are upon private property in the City in violation of any of the provisions of Sections 12.40.030 or 12.40.040, or both of said sections, and constitute or may become a menace as hereinabove set forth, the council of the City may by appropriate resolution order the removal of **such weeds, vines, shrubs, brush, dead or damaged trees, and/or debris. In such case the City shall:**

A. Provide written notice to the owner to the effect that such weeds, vines, shrubs, brush, dead or damaged trees, and/or debris must be removed within seven days from and after date of such posting.

B. The notice shall state the proper street address of the subject property and should be served personally on the owner or by first class mail, postage prepaid. Additionally, one copy of the notice shall be conspicuously posted on the property.

C. The notice shall specify the section of law violated and state all the facts.

D. The notice shall advise the property owner that failure to correct the violation may result in the City's correcting the violation and collecting the charges by lien on the property, and that any property owner who receives an order to remove hazardous weeds, vines, shrubs, dead or damaged trees, brush and/or debris on two or more separate occasions within a one year period is liable to the City for a civil penalty of five hundred dollars for each separate order to remove a fire menace under 12.40.030 or 12.40.040, beginning with the second order within a one year period.

Section 7. That Section 12.40.130 of the Berkeley Municipal Code is amended to read as follows:

12.40.130 Violation--Penalty

A. Any person violating any provision or failing to comply with any of the requirements of this chapter shall be deemed guilty of an infraction as set forth in Chapter 1.20 of this code. (Ord. 5591-NS § 1 (part), 1984: Ord. 3602-NS § 13, 1957)

B. Any property owner ordered by the City to remove weeds, vines, shrubs, dead or damaged trees, brush and/or debris pursuant to this chapter on two or more separate occasions within a one year period shall be liable to the City for a civil penalty of five hundred dollars for each separate order to remove, beginning with the second such order within a one year period.