

FINANCE AND ADMINISTRATION COMMITTEE

September 28, 2023

2:00 p.m.

Councilman Denny Wayne Conference Room (Busch Building, 4th Floor)

MEMBERS

PRESENT: Matthew Simpson, Chair; Heather Hardinger; Monica Horton; and Brandon Jenson.

MEMBERS

ABSENT: None.

STAFF

PRESENT: Jason Gage, City Manager; Maurice S. Jones, Deputy City Manager; Collin Quigley, Deputy City Manager; Rhonda Lewsader, City Attorney; Duke McDonald, Assistant City Attorney; Brock Rowe, Director of Building Development Services; David Holtmann, Director of Finance; Anita Cotter, City Clerk; and Lauren Fischer, City Clerk Administrative Specialist.

GUESTS: None.

Mayor Pro Tem Matthew Simpson, Chair, called the meeting to order at approximately 2:03 p.m., and roll call was conducted. Present: Heather Hardinger, Monica Horton, Brandon Jenson, and Matthew Simpson. Absent: None.

Councilwoman Horton moved to approve the minutes from the March 29, 2023, and March 30, 2023, meetings as presented. Councilwoman Hardinger seconded the motion, and it was approved by the following vote: Ayes: Horton, Jenson, Hardinger, and Simpson. Nays: None. Absent: None. Abstain: None.

Mayor Pro Tem Simpson noted the topic of discussion for the meeting was the Nuisance Property Resolution 10722 (Exhibit A).

Jason Gage, City Manager, provided an overview of the charge to the Committee outlined in Resolution 10722, Section 2 (Exhibit A). He noted the Committee is required to conduct an analysis of escalating fees and fines related to chronic nuisance properties and provide its recommendations to City Council no later than six months after the adoption of Resolution 10722.

Brock Rowe, Director of Building Development Services (BDS), discussed Chapter 26 and Chapter 76 of the City Code (Exhibit B). He noted Chapter 26, Article III, Section 26-62, refers to the dangerous, blighted, and nuisance building code and includes a baseline of information for blighted properties. He explained Section 26-62 defines items that constitute a blighted building, such as interior walls that lean or buckle to such an extent that a plumb line passes through the center of gravity of any such wall, buildings that show 33 percent or more of damage or deterioration, and buildings under construction upon which work has ceased to the point that substantial progress has not been made for a period of 30 consecutive calendar days. He further noted Section 26 of the City Code does not list any information relating to escalating fees for blighted building abatement.

Mr. Rowe noted the blighted building process takes approximately 275 days (Exhibit B). He noted the first 15 days of the process allow the property owner time to fix the reported issues and are not required by State law. He noted escalating fees are not applied to the blighted building process because of the length of the abatement process.

Mr. Gage asked if the blighted building process is used for all property maintenance issues including dangerous structures. Mr. Rowe responded affirmatively.

Mr. Rowe explained in the first 15 days of the blighted building process, BDS notifies the property owner of the complaint by sending a letter of condition after an initial inspection is completed. He noted on day 20 of the blighted building process, an inspector is sent to reinspect the property. If the property is not in compliance, a title search is ordered to identify the property owner. He noted once the title search report is received, a notice of abatement is sent using certified mail. He noted it can take up to 45 days for BDS to receive confirmation of the delivery of the notice. He further noted it is required by law for BDS to post the notice of abatement on the property.

Mr. Gage clarified the reason the notice of abatement takes up to 45 days is because State law requires the mail to be certified. Mr. Rowe noted this process could be shortened if the City could use other types of mailing services.

Mr. Rowe noted once BDS receives confirmation the abatement order was received, a follow-up inspection is completed. He noted a hearing notice is then sent using certified mail which can take up to 45 days to receive confirmation it was received by the property owner. He explained a hearing is then conducted to help the property owner understand how they are in violation of the City Code.

Councilwoman Hardinger asked how a hearing is conducted. Mr. Rowe replied hearings are held at City Hall. He explained the hearing allows the property owner to present their case to the hearing officer. He further noted all information is taken into consideration before a decision is rendered.

Mr. Rowe noted a finding of fact order is issued after the hearing is conducted. He explained the finder of fact judgement either requires the property owner to correct the issue or demolish the property. He noted the property owner has 30 days to appeal the finding of fact decision and correct the issue with the property. He further noted if the property owner does not correct the issue or appeal the decision, an asbestos test is ordered, and BDS then solicits bids for demolition.

Mr. Gage asked about the last day an owner can intervene in the blighted building process to save their property. Mr. Rowe responded once the bid for demolition has been awarded, the property owner can no longer intervene in the process. He further noted the goal of the blighted building process is to save the structure by allowing the property owner time to address the violation before reaching the point of demolition. He reiterated the blighted building process takes up to 275 days which allows the property owner time to comply with the City order before it reaches the point of demolition.

Councilman Jenson asked Mr. Rowe about the \$50 per day fine listed in Section 26-77-Penalty for failure to comply with order of director of Building Development Services. Mr. Rowe replied BDS does not enforce the fines listed in Section 26-77 because the property owner is accumulating other costs to address the violations through the blighted building process. Duke McDonald, Assistant City Attorney, explained fines can cause an undue hardship for the property owners who are trying to comply with City Code. He noted BDS does not apply the fines in Section 26-77 because it would delay the City's objective for a safe city landscape by putting additional financial strain on the property owner.

Councilman Jenson explained the purpose of the resolution was to create a definition for chronic nuisance properties to help differentiate between property owners with financial hardships and neglectful property owners. Mr. Gage asked Councilman Jenson if a chronic nuisance property owner would have a different fee or fine assessed to them than a property owner who experiences a hardship. Mr. Jenson replied responded affirmatively.

Councilwoman Horton expressed her opinion landlords and absentee property owners also contribute to chronic nuisance property issues by allowing homes to sit and deteriorate for years.

Councilwoman Hardinger expressed her opinion there is a difference between property owners who have expressed financial difficulties, but are working with the City, versus a large corporation with an absent property owner who is not making any attempts to correct the issues.

Mr. Rowe explained the blighted building process does not stop unless the violation is abated or the City abates the issue. He noted a change in ownership of the property can delay the blighted building process and allow the new owner to bring the property into compliance with City Code.

Mayor Pro Tem Simpson asked if it is feasible to apply an escalating fee to the violations in City Code related to a single property or to apply an escalating fee to the property owner for each property they own. Mr. McDonald explained applying an escalating fee to the City Code would change the focus from the chronic nuisance property to the chronic nuisance property owner. Mr. Gage clarified applying the fee to an ordinance would help address issues with a property owner who owns multiple properties which fall under the definition of a chronic nuisance property.

Councilman Jenson discussed working with stakeholders to craft Resolution 10722. He noted it would be helpful to have a case study on properties the community considers dangerous buildings. He spoke about a property on Walnut Street which had numerous issues and complaints from community members over several years and was considered a dangerous structure by the people who lived in the neighborhood. Mr. Gage explained a dangerous building must meet certain City Code criteria regarding the physical structure of the building. Mr. Rowe explained the abatement issues with the Walnut Street property were addressed by the property owner each time a violation was reported.

Mr. Gage asked what was considered substantial progress during the blighted building process. Mr. McDonald responded substantial progress is hard to define. He explained a property owner could receive the violation and fix enough to bring the property back into compliance with City Code. He noted the City would see progress when the violation was corrected, but the blighted building process would start over when another complaint was made about the property.

Councilman Jenson commented on the fines listed in Section 26-77 of the City Code. He noted the point of a fine is to deter activities from occurring. He suggested using a stronger enforcement mechanism towards chronic nuisance property owners who continuously allow new issues to arise on their properties. He noted this would encourage the property owner to comply with City Code or pass ownership of the property to a new owner who could address the concerns or demolish the structure.

Mr. Gage clarified there is not a fine for the property owner during the blighted building process, but the City does receive cost recovery for the expenses incurred when the City abates the nuisance. Mr. Rowe responded BDS follows State statute for cost recovery procedures. Mr. Gage asked if the City would need to institute a fine for chronic nuisance properties. Mr. McDonald explained a fine would need to be instituted and applied to the chronic nuisance property owner because the City Code is enforced based on the physical characteristics of the property.

Mr. Rowe reviewed Chapter 74 Article VII. - Nuisances of the City Code (Exhibit B). He noted this chapter provides information regarding the property owner's responsibility to remove or abate nuisances from their lots and lands. He noted a nuisance in Section 74-382 is defined as items such as the remains, accumulation, or scattering of fragments of something broken down or destroyed or rubbish, trash, and debris. He noted any person who has been found guilty of violating Section 74-381 shall be required to pay an escalating fine. He noted the nuisance abatement process can take up to 100 days to complete (Exhibit B).

Councilman Jenson asked if the fines listed in Section 74-386 distinguish between tall grass and nuisance abatement. Mr. Rowe responded there are escalating fees used to address tall grass. Mr. Gage explained a property can have multiple violations listed in Section 74-382 which will prompt the escalating fees if the person is found guilty. He noted chronic nuisance does not have to be the same violation issue in a 12-month period.

Mr. Rowe discussed Chapter 74, Article 7, Division 2, which addresses weeds and other rank vegetation (overgrowth). He noted Section 74-406 lists the fines for overgrowth abatement by the City and applies an administrative fee for repeat overgrowth abatements by the City.

Councilman Jenson suggested reevaluating the fee structure and applying fines based on the occupancy status of a property. He noted the goal of applying escalating fees is not to penalize those who are unable to maintain their yards but to address the larger property maintenance issues. Mr. Rowe noted BDS does not apply the escalating overgrowth fee to the property owner if the property owner can prove the nuisance issue was caused by the tenant because there could be multiple tenants living at that property within a 12-month period.

Mr. Gage clarified Section 74-406 (Exhibit B) applies the charges of overgrowth abatement to the owner of the property, but if the owner proves the abatement was caused by the tenant, the administrative fee is not applied. Mr. Rowe responded affirmatively.

Mayor Pro Tem Simpson expressed his opinion the reason the escalating fees are applied to overgrowth abatement and not dangerous, blighted, and nuisance building ordinances is because the timeline for overgrowth abatement is shorter. He noted overgrowth is the first step of addressing chronic nuisance property issues.

Mr. Rowe noted the blighted building process is long. He clarified BDS defines nuisance as trash and garbage outside the home, and overgrowth is defined as weeds and other rank vegetation.

Councilwoman Horton asked if the complaint-based system is more beneficial than a City-initiated system when addressing nuisance issues. Mr. Rowe responded a complaint-based system relies on citizens to make the complaint which may not happen due to the citizens' fear of retaliation. He noted a more proactive approach would relieve property owners and citizens of the responsibility of reporting. He further noted a proactive approach would provide more accurate information regarding the number of nuisance issues within the City.

Mr. Gage asked why an administrative fee is applied to overgrowth abatement but not to nuisance property abatement. Mr. McDonald replied 60 percent of the housing stock in the City is rental property. He noted when a tenant moves from a property, it is more difficult for BDS to hold them accountable for the overgrowth fee. Mr. Rowe noted the fee is applied to the property owner which requires a title search to be completed. Mr. Gage suggested reevaluating the various fee structures to compare the two different escalating fee models.

Councilman Jenson provided the Committee members with his suggested timeline (Exhibit C) for the Committee to accomplish the charge listed in Resolution 10722 (Exhibit A).

Mayor Pro Tem Simpson clarified the timeline provided to the Committee is Councilman Jenson's suggestion and would be taken into consideration by the Committee members.

There being no further business to come before the Committee, Councilwoman Hardinger moved to adjourn. Councilman Jenson seconded the motion, and it was approved by the following vote: Ayes: Jenson, Hardinger, Horton, and Simpson. Nays: None. Absent: None. Abstain: None.

The meeting adjourned at approximately 2:57 p.m.

Completed by Lauren Fischer