

ORDINANCE NO. NS-2876

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING CHAPTER 1 AND CHAPTER 8 OF THE SANTA ANA MUNICIPAL CODE REGARDING CODE ENFORCEMENT PROVISIONS, INCLUDING CIVIL PENALTIES, RECOVERY OF ATTORNEYS' FEES, AND REMOVAL OF UTILITIES.

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

- A. The Community Preservation Division for the City of Santa Ana's Planning & Building Agency seeks supplemental enforcement tools already used by other cities in California, to further safeguard and promote the health and safety of the Santa Ana community. Community Preservation inspectors are tasked with inspecting, analyzing, and enforcing Santa Ana Municipal Code (SAMC) violations to ensure compliance. The proposed Ordinance provides additional enforcement tools to aid in SAMC violation enforcement, including: (1) Civil Penalties, (2) Attorney's Fees and (3) the Disconnection of utilities.
- B. These additions are requested for various reasons. The Community Preservation Division routinely recommends cases to the City Attorney's Office for civil prosecution. At present, successful civil litigation results in a temporary restraining order and/or a preliminary injunction to stop a nuisance. Amending the SAMC to allow for civil penalties and attorneys' fees in those actions for code violations, will help deter continuing violations or nuisances and will allow the City to recover the cost of professional services provided by the City Attorney's Office spent litigating civil cases. Additionally, all businesses are required to have a certificate of occupancy that confirms that the business is operating in compliance with the SAMC. If a business does not have a certificate of occupancy, or is not operating in accordance with the certificate of occupancy, this ordinance confirms the City's ability to disconnect the utilities to such businesses until compliance with the certificate of occupancy requirements is obtained. Non-compliant businesses pose a threat to the health and safety, and well-being of the public and to the business owner and its employees due to those violations of the SAMC or other applicable codes.

- C. This ordinance came before the City Council of the City of Santa on February 17, 2015.
- D. The Request for Council Action for this ordinance dated February 17, 2015, and duly signed by the City Manager, shall, by this reference, be incorporated herein, and together with this ordinance, any amendments or supplements.
- E. All provisions of the Santa Ana Municipal Code which are repeated herein are repeated solely in order to comply with the provisions of Section 418 of the City Charter. Any such restatement of existing provisions of the Code is not intended, nor shall it be interpreted, as constituting a new action or decision of the City Council, but rather such provisions are repeated for tracking purposes only in conformance with the Charter.

Section 2. Pursuant to the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, the adoption of this ordinance is exempt from CEQA review pursuant to 14 California Code of Regulations section 15061(b)(3), which is applicable if it can be seen with certainty that there is no possibility that the project may have a significant effect on the environment. As a result, a Notice of Exemption will be filed upon adoption of this ordinance.

Section 3. Section 1-8 of Chapter 1 of the Santa Ana Municipal Code is hereby amended to read as follows:

Sec. 1-8. Violations – general penalties; continuing violations; fines; alternative enforcement

(a) Criminal Violations. Unless otherwise specifically stated in this Code, it shall be unlawful and a misdemeanor for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor in this Code, the violation of any provision of this Code shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for a term not exceeding six (6) months or by both such fine and imprisonment. However, any such violation constituting a misdemeanor under this Code may, at the discretion of the city attorney, be prosecuted as an infraction. Each day any violation of any provision of this Code shall constitute a separate offense.

(b) Administrative Violations. In addition to any other remedy provided by this Code, violations of this Code may be addressed through the use of an administrative citation as set forth in sections 1-21.1 through 1-21.9. Use of sections 1-21.1 through 1-21.9 shall not prevent the use of other methods of enforcement or abatement as provided by this Code. Such methods include but are not limited to criminal and civil actions.

(c) Civil Violations – Injunctions and Civil Penalties.

(i) In addition to any other remedy provided by this Code, any provision of this Code may be enforced by injunction issued by the Superior Court upon a suit brought by the City of Santa Ana.

(ii) As part of a civil action filed to enforce provisions of this Code, a court may assess a maximum civil penalty of two thousand five hundred dollars (\$2,500) per violation of the Municipal Code for each day during which any person commits, continues, allows or maintains a violation of any provision of this Code.

Section 4. Section 1-13 of Chapter 1 of the Santa Ana Municipal Code is hereby amended to read as follows:

Sec. 1-13. Same – Abatement as Nuisance; special assessment; attorneys' fees

(a) Public Nuisance Abatement. In addition to the penalties provided in this Code, any condition caused or permitted to exist in violation of any of the provisions of this Code, uniform or adopted codes, or any provision of State or Federal law that may be enforced by the city, shall be deemed a public nuisance and may be, by this city, summarily abated as such by filing criminal or civil actions, and each day such condition continues shall be regarded as a new and separate offense.

(b) Recovery of Attorneys' Fees Authorized. The prevailing party in any judicial action, administrative proceeding, or special proceeding to abate a nuisance may recover its reasonable attorneys' fees, provided that the city elected, at the initiation of such individual action or proceeding, to recover its own attorneys' fees. In no judicial action or administrative proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the judicial action or administrative proceeding. A judicial action includes, but is not limited to, any civil or criminal action, inspection or abatement warrant, administrative proceeding, or appeal from an administrative proceeding. "Abatement" shall include any action taken by the City to cause or otherwise obtain compliance with this municipal code or other codes, as specified herein, even if the violation is ultimately corrected by the violator. Any recovery of attorneys' fees for abatement of a nuisance shall be in accordance with this section.

Section 5. Section 8-95 of Chapter 8 of the Santa Ana Municipal Code is hereby amended to read as follows:

Sec. 8-95. Certificate of occupancy (Chapter 1, Division II, Section 111).

Chapter 1, Division II, Section 111.1 of the building code is amended to read as follows:

Chapter 1, Division II, Section 111.1—Certificate of Occupancy

(1) Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made, until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or other ordinances of the jurisdiction.

Exception: Certificates of occupancy are not required for work exempt from permits under Section 105.2

(2) No alteration to an existing building which changes the floor area of the building or which changes the means of egress from the building shall be made until the building official has issued a certificate of occupancy therefor as provided herein.

(3) No change of occupant within a building or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein.

Exception: Group R, Divisions 2 and 3, and Group U Occupancies.

(4) Code violations-Disconnection of utilities

- (i) No building or structure shall be occupied, nor shall a business operate without a valid Certificate of Occupancy. A business operating in a manner inconsistent with its Certificate of Occupancy is operating in violation of this code provision.
- (ii) Violation of this code provision may result in the disconnection of any or all utilities.
- (iii) A building, structure, or business whose utilities have been disconnected shall not have the utilities reconnected until an inspection has been made by the city's building official and the building official has determined that the building complies with this code.
- (iv) A building or structure that is new construction can likewise not be occupied or its utilities connected until an inspection has been made by the city's building official and the building official has determined that the building complies with this code.
- (v) Removing or defacing a notice posted in relation to violations of this code provision or this code, shall constitute a separate and distinct violation of this code provision.

Section 6. Any provision of the Code that is inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

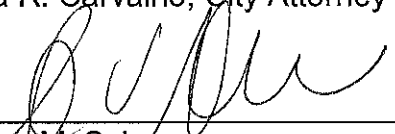
Section 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 8. This ordinance shall become effective thirty days after its adoption by the City Council.

ADOPTED this 3rd day of March, 2015


Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: 
Sandra M. Schwarzmann
Senior Assistant City Attorney

AYES: Councilmembers: Amezcu, Benavides, Martinez, Pulido, Reyna, Sarmiento, Tinajero (7)

NOES: Councilmembers: None (0)

ABSTAIN: Councilmembers: None (0)

NOT PRESENT: Councilmembers: None (0)

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, MARIA D. HUIZAR, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-2876 to be the original ordinance adopted by the City Council of the City of Santa Ana on March 3, 2015 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 3/6/2015

Maria D. Huizar
Clerk of the Council
City of Santa Ana