

ORDINANCE NO. 2010-277

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALABASAS ADOPTING CHAPTER 1.18 IN TITLE 1 OF THE CALABASAS MUNICIPAL CODE REGARDING RECORDATION OF NOTICES AND RECOVERY OF ATTORNEY'S FEES.

THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS FOLLOWS:

WHEREAS, often, code enforcement properties which are the subject of a Notice of Violation are slow to respond to City demands for compliance, and;

WHEREAS, the delay to the City in obtaining compliance from property owners results in additional costs to the City and detriment to the public health, safety and welfare, and;

WHEREAS, the City's code enforcement efforts and costs are further complicated by a transference of title prior to the correction of the violations, and;

WHEREAS, as of this date, fourteen properties which are the subject of a code enforcements action are currently listed for sale;

WHEREAS, among other things, this ordinance allows the city to record a Declaration of Substandard or Nuisance Property on any property which has been served by a Notice of Violation, and to permit the city to recover any associated attorney fees incurred in connection with an action where it is the prevailing party, and;

WHEREAS, recordation of a Declaration of Substandard Property would place any potential buyer on notice of violations at the subject property, and;

WHEREAS, recordation of a Declaration of a Nuisance would place any potential buyer on notice of nuisances at the subject property, and;

THEREFORE, be it resolved that the City of Calabasas amends the Municipal Code as follows:

SECTION 1. *New Chapter.* Chapter 1.18 [Recordation of Notices; Recovery of Attorney's Fees] in Title 1 of the Calabasas Municipal Code is hereby adopted to read as follows:

"Section 1.18.010 Recordation of Notices.

A. If the City determines that any property, building or structure, or any part thereof, is in violation of any provision of the Calabasas Municipal Code and said violation has not been fully abated or corrected, as determined by the City, in the manner and time provided in a written notice to a responsible person, then the City, in its sole discretion, may record a "Declaration of Substandard Property" with the Los Angeles County Recorder's Office against said premises. As used herein, "fully abated or corrected" includes the procurement of all required City and/or County approvals, permits, licenses and the passage of all required inspections. This subsection shall supersede any provision of the Calabasas Municipal Code that conflicts with it.

B. All activities, conditions and uses on real property that violate the Calabasas Municipal Code, or that violate any approval, entitlement, license or permit issued pursuant thereto, as well as a responsible person's failure to complete actions in connection with real property that are required by the Calabasas Municipal Code or by a public official in implementing a regulation or other provision in the Calabasas Municipal, are public nuisances by definition and declaration. If the City determines that a public nuisance is being committed or maintained on real property and said public nuisance has not been fully abated or corrected, as determined by the City, in the manner and time provided in a written notice to a responsible person, then the City, in its sole discretion, may record a "Declaration of Public Nuisance." The definition of "public nuisance" in this subsection shall supersede any provision of the Calabasas Municipal Code that conflicts with it.

C. The notices concerning violations or public nuisances under the Calabasas Municipal Code that the City issues pursuant to Subsections A. or B. above shall contain the following provisions:

1. A statement advising responsible person(s) that a "Declaration of Substandard Property" or a "Declaration of Public Nuisance" may be recorded against a property if the violations or public nuisances are not fully abated or corrected in the manner and time stated in said notice."

2. A statement advising that a "Declaration of Substandard Property" or a "Declaration of Public Nuisance" is being recorded to give notice to persons who subsequently acquire a legal interest in the affected real property of the property's non-compliance with the requirements of the Calabasas Municipal Code, but this declaration is not intended to, and does not, alter the requirements of this code. Failure, however, to include such this statement will not invalidate a notice.

D. The forms constituting a "Declaration of Substandard Property" and a "Declaration of Public Nuisance" shall be approved by the City Attorney or the City Prosecutor.

E. The City shall record a "Rescission of Declaration of Substandard Property" or a "Rescission of Declaration of Public Nuisance" with the Los Angeles

County Recorder's Office within ten (10) business days of its determination that a violation or a public nuisance has been fully abated or corrected.

F. The City shall cause copies of notices that are issued and recorded pursuant to this section to be served on all persons having an ownership interest in the subject real property as shown in the last equalized assessment roll of the Los Angeles County Assessor's Office. Notwithstanding any provision of the Calabasas Municipal Code, service thereof shall be by first class mail. Failure of any person to receive such notices shall not invalidate any action or proceeding that is initiated pursuant to the Calabasas Municipal Code.

Section 1.18.020 Attorney's Fees.

A. A prevailing party in any administrative, civil or equitable judicial action to abate, or cause the abatement of, a violation or public nuisance under this code, or in any appeal or other judicial action arising therefrom, may recover reasonable attorney's fees in accordance with the following subsections:

1. Attorney's fees are not recoverable by any person as a prevailing party unless the city manager, or a designee thereof, or an attorney for, and on behalf of, the city, elects in writing to seek recovery of the city's attorney's fees at the initiation of that individual action or proceeding. Failure to make such an election precludes any entitlement to, or award of, attorney's fees in favor of any person or the city.

2. The city is the prevailing party when an administrative or judicial determination is made or affirmed by which a person is found to be responsible for one or more activities, conditions or uses that constitute a violation or a public nuisance. A person is the prevailing party only when a final administrative or judicial determination completely absolves that person of responsibility for all activities, conditions or uses that were alleged, in that action or proceeding, to constitute a violation or a public nuisance. An administrative or judicial determination that results in mixed findings of both a person's responsibility and non-responsibility for activities, conditions or uses that were alleged in that action or proceeding to constitute a violation or public nuisance, shall nevertheless result in the city being the prevailing party.

B. Provided that the city has made an election to seek attorney's fees, an award of such fees to a person shall not exceed the amount of reasonable attorney's fees incurred by the city in that action or proceeding.

C. Unpaid attorney's fees shall constitute a debt that is collectible in any manner allowed by law."

SECTION 2. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this

Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 3. *Construction.* To the extent the provisions of the Calabasas Municipal Code as amended by this ordinance are substantially the same as the provisions of that Code as they read prior to the adoption of this ordinance, they shall be construed as continuations of those prior provisions and not as new enactments.

SECTION 4. *Effective Date.* This ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5. *Certification.* The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

PASSED, APPROVED AND ADOPTED this 9th day of June, 2010.

Barry Groveman, Mayor

ATTEST:

Gwen Peirce, CMC, City Clerk

APPROVED AS TO FORM:

Michael G. Colantuono, City Attorney