



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

May 14, 2024

SUBJECT: Council Discussion and Consideration to Waive the First Reading of and Introduce Ordinance No. 496 Amending Wheatland Municipal Code Chapter 8.16: Relating to the Clean Up of Hazardous Materials, Section 8.08.170: Relating to the Recordation and Collection of Nuisance Abatement Liens, Section 18.30.040: Relating to Conditional Uses Within a C-1 Neighborhood Commercial District, and Section 18.33.040: Relating to Conditional Uses Within a C-2 Neighborhood Commercial District

PREPARED BY: Jennifer Buckman, City Attorney
Gavin Ralphs, Deputy City Attorney

Recommendation

Staff recommends that the City Council waive the first reading and introduce Ordinance No. 496 amending Chapter 8.16 and Sections 8.08.170, 18.30.040, and 18.33.040 of the Wheatland Municipal Code.

Background and Discussion

Chapter 8.16 authorizes the Wheatland Volunteer Fire Department to clean up or abate the effects of any hazardous substance or waste deposited upon or into property or facilities within the City. As the Wheatland Volunteer Fire Department no longer provides fire protection services within the City limits, the City Attorney recommends that the Municipal Code be amended to authorize the Wheatland Fire Authority to undertake the duty to enforce the correction of fire or life hazards within the City limits.

Section 8.08.170 states the manner in which the City must provide notice to the responsible person(s) of a property of which the City abated a nuisance and the subsequent process for recording a lien with the county recorder. The City Attorney recommends that the Municipal Code be amended to update and correct a legal citation within section 8.08.170.

Section 18.30.040 establishes the commercial designation for convenience shopping facilities within Wheatland pursuant to the General Plan, or any applicable Area Plan. Previously, the City adopted urgency ordinances establishing limitations on massage parlors within the City, but those ordinances expired without the City Council making permanent changes to the Municipal Code. At the time, the state of the law was in flux and the Legislature had adopted laws that limited the City's ability to regulate massage parlors. In the subsequent years, the Legislature

restored some of the City's ability to regulate massage parlors (through a 2014 law), and there has been a significant trend of reputable massage parlors such as Massage Envy opening in retail centers. However, law enforcement in some communities continue to report that a number of massage parlors contribute to or facilitate illicit activities, such as prostitution or sex trafficking.

City staff wishes to encourage reputable massage parlors that may want to establish businesses within the City without risking the establishment of criminal or disreputable businesses. The City Attorney therefore recommends that the Municipal Code be amended to include massage establishments as conditional uses within the C-1 and C-2 Neighborhood Commercial Districts. Requiring a conditional use permit for these businesses will ensure that they are subject to conditions intended to ensure that the massage businesses are run in a reputable manner. These conditions would include: (1) the business must be owned by a California Massage Therapy Council certified massage practitioner; (2) the business will employ only persons who are certified by California Massage Therapy Council; (3) the business will not serve alcoholic beverages on the premises; and (4) the business will not be open before 8 AM or after 9 PM. Other conditions may also be added as deemed appropriate for the location and other specific facts related to an application to establish a massage parlor.

Alternatives

The City Council may choose not to introduce the ordinance, or it may choose to direct staff to make revisions to the draft ordinance before introducing it. In that case, the revisions to the authority of the Wheatland Fire Authority and the requirement for a proposed massage parlor to obtain a conditional use permit would not occur, and City staff would not have the power to enforce these proposed laws.

Fiscal Impact

Potential administrative costs for enforcement activity and potential nominal revenue generated from fines that may be imposed.

Attachments

1. Ordinance

ORDINANCE NO. 496

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND, CALIFORNIA,
AMENDING WHEATLAND MUNICIPAL CODE CHAPTER 8.16 RELATING TO THE
CLEANUP OF HAZARDOUS MATERIALS; AMENDING SECTION 8.08.170 RELATING TO
THE RECORDATION AND COLLECTION OF NUISANCE ABATEMENT LIENS; AND
AMENDING WHEATLAND MUNICIPAL CODE SECTIONS 18.30.040 RELATING TO
CONDITIONAL USES WITHIN A C-1 NEIGHBORHOOD COMMERCIAL DISTRICT AND
18.33.040 CONDITIONAL USES WITHIN A C-2 NEIGHBORHOOD COMMERCIAL DISTRICT**

The Wheatland City Council ordains as follows:

SECTION 1: Purpose and Authority.

The purpose of this ordinance is to revise and update provisions of the Wheatland Municipal Code related to the cleanup and correction of conditions that pose a fire or life hazard and correct a typographical error identified in Section 8.08.170. This ordinance is adopted pursuant to Article XI, section 7 of the California Constitution; Health and Safety Code sections 13860 to 13879; and other applicable law.

SECTION 2. Findings.

The Wheatland City Council finds and determines as follows:

- A. In 1985, the City Council adopted Ordinance 301, which authorized the Wheatland Volunteer Fire Department to clean up or abate the effects of any hazardous substance or waste deposited upon or into property or facilities within the City, consistent with Wheatland Municipal Code Chapter 8.16.
- B. In 2005, the City entered into a Joint Powers Agreement with the Plumas Brophy Fire Protection District, under which the Wheatland Fire Authority, a Joint Powers Authority, was established. The Wheatland Fire Authority is now the exclusive provider of fire protection services within City limits.
- C. As the Wheatland Volunteer Fire Department is no longer providing fire protection services within the City limits, the Wheatland Municipal Code is being updated to reflect that tasks previously undertaken by Wheatland Volunteer Fire Department are now being performed by Wheatland Fire Authority.
- D. Wheatland Fire Authority wishes to undertake the duty to enforce the correction of fire or life hazards within the City limits.
- E. Under the Massage Therapy Act of 2104, AB 1147, local land use authorities such as the City have authority to impose reasonable regulations on massage establishments. The City wishes to ensure that any massage establishments are operated in a manner that they do not facilitate or contribute to illicit activities within the City, such as prostitution or sex trafficking, and that massage establishments are located in areas where they are compatible with the other land uses.
- F. The Wheatland City Council finds it necessary to pass and implement these proposed standards to correct a fire or life hazard within the City, and to ensure that any massage

establishments operating within the City are consistent with zoning and compatible with surrounding land uses and character, and that doing so will promote and protect the public health, safety, comfort, morals, convenience and general welfare of the residents within the City.

SECTION 3. Ordinance.

A. Chapter 8.16 of the Wheatland Municipal Code is deleted in its entirety and replaced with the following:

8.16.010 Title.

This chapter shall be known as the "Correction of a Fire or Life Hazard."

8.16.020 Purpose.

This chapter is adopted to provide the Wheatland Fire Authority the power to enforce the correction of Fire or Life Hazards within the City limits.

8.16.030 Definitions.

Unless specifically defined in this section, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter its most reasonable application. The definitions in this section 8.16.030 shall carry the meaning as defined in this chapter, elsewhere in this code, by another ordinance of the City, or by other law.

(a) "City Council" means the Wheatland City Council.

(b) "Fire Authority" means the Wheatland Fire Authority.

(c) "Fire or Life Hazard" means each of the following:

1. Combustible Material: A material that, in the form in which it is used and under the conditions anticipated, will ignite and burn; a material that does not meet the definition of noncombustible or limited-combustible. (Uniform Fire Code, Section 3.3.60.)
2. Fire Hazard: Any situation, process, material, or condition that, on the basis of applicable data, can cause a fire or explosion or that can provide a ready fuel supply to augment the spread or intensity of a fire or explosion, all of which pose a threat to life or property. (Uniform Fire Code, Section 3.3.129.)
3. Hazardous Material: A chemical or substance that is classified as a physical hazard material or a health hazard material, whether the chemical or substance is in useable or waste condition. (Uniform Fire Code, Section 3.3.189.4.)
4. Health Hazard Material: A chemical or substance classified as a toxic, highly toxic, or corrosive material in accordance with definitions set forth in the Uniform Fire Code. (Uniform Fire Code, Section 3.3.189.6.)

(d) "Responsible Person" means and includes each or any of the following:

1. A person that, by action or inaction, causes, maintains, permits or allows a Fire or Life Hazard;
 2. A person whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits or allows a Fire or Life Hazard;
 3. An owner, in whole or in part, of real property on which a Fire or Life Hazard occurs, exists or is maintained;
 4. A lessee or sublessee with a current right of possession of real property on which a Fire or Life Hazard occurs, exists or is maintained;
 5. A person that uses real property on which a Fire or Life Hazard occurs, exists or is maintained;
 6. An on-site manager who regularly works on real property on which a Fire or Life Hazard occurs, exists or is maintained, and who is responsible for the business or other activities on that real property;
 7. The owners, majority stockholders, corporate officers, trustees, general partners or any other person with the authority to act for a legal entity such as a corporation that is a Responsible Person under any or all of subsections 1 through 6 of this section;
 8. If any of the above persons are minors or incompetent, the parents or guardians of such persons shall be deemed a Responsible Person(s) during such minority or incompetence.
- (e) "Served" means the delivery of any notice or other document (1) to the Responsible Person by personal delivery, or by deposit in the United States mail addressed to a Responsible Person at his, her or its last address known to the City, and (2) if the Responsible Person served under (1) is not the owner of the property on which a Fire or Life Hazard occurs, exists or is maintained, then also to the owner of the property by personal delivery or by deposit in the United States mail addressed to the owner's address as it appears on the last equalized assessment roll of Yuba County. Service by mail of a notice or other document in the manner provided for in this section shall be effective on the date of mailing. The failure of any person to actually receive such notice shall not affect the validity of the notice or any proceeding if the requirements of this section are satisfied.

8.16.040 Authority to Inspect.

The Fire Chief of the Fire Authority is authorized to enter upon any property or premises within the City to ascertain whether a Fire or Life Hazard as defined in this chapter exists, and to make any inspection, examination and surveys as may be necessary or appropriate in the performance of their enforcement duties, in accordance with federal and state constitutions. These inspections may include the taking of photographs, samples, or other physical evidence. All inspection, entries, examinations and surveys shall be performed reasonably and in accordance with law. If a Responsible Person refuses to consent to entry and inspection, and if required by the federal or state constitution, the Fire Chief may seek an administrative inspection warrant pursuant to law.

8.16.050 Order to Correct.

- (a) The City authorizes the Fire Authority to issue a written order to correct a Fire or Life Hazard.
- (b) The order to correct a Fire or Life Hazard shall be served upon the Responsible Person(s) in accordance with the provisions of Section 8.16.030(e), and shall describe the means to correct the hazard.
- (c) The Fire Chief of the Fire Authority shall have the authority to issue written orders to correct a Fire or Life Hazard and issue citations for failure to comply with any such final order issued under this chapter 8.16.

8.16.060 Appeal Process for an Order to Correct.

- (a) If the Responsible Person(s) believes that strict compliance with an issued order to correct a Fire or Life Hazard will cause them undue hardship, the Responsible Person(s) may present a written request to the City Council within ten days requesting a hearing on and a review of the order. If the Responsible Person(s) fails to requesting a hearing on and a review of the order, the order shall be deemed final.
- (b) A request for a hearing must state the reasons for making the request, including the bases of any claim for undue hardship or any other challenge to the order.
- (c) In response to a written request for a hearing on and a review of the order, the City Council shall hold a hearing, within 45 days of the receipt of the request, at which it may modify, vacate, or affirm the order.

8.16.070 Notice of Appeal Hearing.

- (a) Notice of the hearing shall be Served upon the Responsible Person not less than ten days before the time set for the hearing.
- (b) Notice of the hearing shall include the time, date, and location of the hearing, a list of the Fire or Life Hazards on the property, and a statement requesting the Responsible Person's attendance at the hearing.
- (c) Notice shall be Served as provided in Section 8.16.030(e).
- (d) Continuance of the hearing may be granted by the City Council on request of the Responsible Person(s) for good cause shown, or on the City Council's own motion. The Responsible Person(s) shall be notified of any continuance in accordance with Section 8.16.030(e). The Responsible Person(s)'s failure to attend or to be represented at a hearing shall constitute an abandonment of the hearing and a failure to exhaust administrative remedies.
- (e) Each and every Responsible Person issued an order to correct a Fire or Life Hazard under this chapter is jointly and severally liable for the correction of any Fire or Life Hazards and any related penalties imposed.

8.16.080 Appeal Procedure.

- (a) At the time, date and location stated in the hearing or continuance notice Served upon the Responsible Person(s), the City Council shall hear and consider all relevant evidence, objections or protests and shall receive testimony from Responsible Person(s), witnesses, Fire Authority personnel, City personnel and other interested persons relative to the alleged Fire or Life Hazard and to the proposed correction of the Fire or Life Hazard.
- (b) The City Council may continue the hearing from time to time and allow the Responsible Person(s) additional time to correct the Fire or Life Hazard. In addition, the City Council may request additional information or evidence from the Responsible Person(s) or from the Fire Chief of the Fire Authority.
- (c) All hearings shall be recorded on a video or audio device, unless the City elects to use a court reporter. If a court reporter is not used, the City need not provide transcripts of any hearing, but, within fifteen days after payment of a reasonable duplication fee, shall provide a copy of the video or audio recording to the Responsible Person(s) or any interested third party. If a court reporter is used, a Responsible Person may obtain a copy of the transcript upon payment of any fees or costs incurred by the City to provide the transcript.
- (d) The hearing need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is of a type upon which reasonable persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make such evidence inadmissible in a civil action. The City Council may exclude irrelevant or unduly repetitious evidence.
- (e) After considering all testimony and evidence submitted at the hearing, the City Council shall issue a written decision to affirm, modify, or dismiss the order to correct a Fire or Life Hazard. The City Council's written decision shall be considered a final order on the matter. The decision shall include the City Council's findings and give notice of the right to seek judicial review pursuant to Code of Civil Procedure Section 1094.5. If the City Council determines that a Fire or Life Hazard exists, they may declare the property to be a Fire or Life Hazard and order the Responsible Person(s) to correct the hazard within twenty days. If the Fire or Life Hazard is declared an immediate threat to the health, welfare or safety of the public the City Council may direct the Responsible Person(s) to abate the nuisance within a ten-day, or shorter, period of time after service of the decision.
- (f) A copy of the City Council's order shall be Served pursuant to Section 8.16.030(e) on all Responsible Person(s). Failure of any interested third party to receive such notice shall not impair the effectiveness of the City Council's decision.

8.16.090 Citation – Misdemeanor.

- (a) If a Fire or Life Hazard is not corrected as directed by a final order to correct a Fire or Life Hazard, then the Chief of the Fire Authority may issue a citation to the Responsible Person(s) for violation of this Code Section. Such citation may, at the discretion of the City Attorney, be processed pursuant to subdivision (d) of Section 17 of the Penal Code.
- (b) The Chief of the Fire Authority is authorized to issue such citations pursuant to Chapter 5C of Title 3 of Part 2 of the Penal Code.

8.16.100 Civil, Criminal or Other Action to Correct.

- (a) The procedures for the correction of Fire or Life Hazards in this chapter shall be in addition to any other proceedings authorized by law. Nothing in this chapter shall be deemed to preclude the City Attorney from commencing a civil or criminal action to abate a nuisance in any manner provided by law.

- B. Section 8.08.170, subsection C. of the Wheatland Municipal Code is deleted in its entirety and replaced with the following:
 - C. The notice must be served in the same manner as a summons in a civil action in accordance with **Code of Civil Procedure** Part 2, Title 5, Chapter 4, Article 3 (commencing with Section 415.10). If the owner of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation pursuant to **Government Code** Section 6062.

- C. Subsection H is added to Section 18.30.040 of the Wheatland Municipal Code, to read as follows:
 - G. Massage establishments, provided they meet all of the following criteria:
 - 1. Owned by a California Massage Therapy Council certified massage practitioner;
 - 2. Employ only persons who are certified by California Massage Therapy Council;
 - 3. Will not serve alcoholic beverages on the premises; and
 - 4. Will not be open before 8 AM or after 9 PM.

- D. Subsection L is added to Section 18.33.040 of the Wheatland Municipal Code, to read as follows:
 - H. Massage establishments, provided they meet all of the following criteria:
 - 1. Owned by a California Massage Therapy Council certified massage practitioner;
 - 2. Employ only persons who are certified by California Massage Therapy Council;
 - 3. Will not serve alcoholic beverages on the premises; and
 - 4. Will not be open before 8 AM or after 9 PM.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held by a court of competent jurisdiction to be invalid or unconstitutional, that portion shall be deemed a separate, distinct and independent provision, and the holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. Effective Date. This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption.

SECTION 6. Posting. Within fifteen (15) days from the date of passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the City.

* * * * *

I **HEREBY CERTIFY** that the foregoing ordinance was introduced and adopted at a regular meeting of the Wheatland City Council, held on the 14th day of May, 2024, and passed and adopted at a regular meeting thereof, held on the ____ of _____, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Rick West, Mayor
City of Wheatland

ATTEST:

Lisa Thomason, City Clerk
City of Wheatland