

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 JUL -1 PM 1:59

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: July 13, 2004

RE: A REPORT AND AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTIONS 15.08.130, 1.08.040, 1.12.040, AND 1.16.040 TO AUTHORIZE FORECLOSURE PROCEEDINGS TO COLLECT NUISANCE ABATEMENT LIENS AND COSTS, AND AMENDING OAKLAND MUNICIPAL CODE 1.08.060 TO INCREASE THE MAXIMUM ANNUAL CUMULATIVE CIVIL PENALTY FROM \$250,000.00 TO \$365,000.00

SUMMARY

This ordinance will amend the Oakland Building Conservation Code (formerly, the Housing Code) and the Administrative Penalty Ordinances to establish nuisance abatement liens as an additional collection method for the City to recover unpaid enforcement and abatement costs and penalties through a court ordered sale of nuisance and problem properties. Judicial foreclosure, which would use the County Sheriff's auction process, would be an alternative to collecting costs through the County Tax Collector's property auction process (tax foreclosure). The City itself would initiate a nuisance property sale with a court judgment three years after the nuisance abatement lien remained unpaid, rather than waiting as long as five years for the County to initiate its tax foreclosure process.

This ordinance would also amend the civil penalty chapter of the Administrative Penalty Ordinance and increase the cumulative annual amount of the \$1,000 per day assessments from \$250,000 to \$365,000 for violations of the Oakland Building, Planning, Housing, and Sign Codes, and the Blight, and various provisions of the Oakland Municipal Code.

FISCAL IMPACT

The fiscal impact of this proposed ordinance on the general purpose fund is not readily determinable. As an alternative method of collecting nuisance abatement liens, the overall fiscal impact will be determined in part by how often this method is used, what if any deterrent impact it has on landowners of nuisance properties, how much if any additional civil penalties may be imposed or recovered, and what impact the faster recovery process will have on increasing property tax revenue as nuisances are abated and properties improved. Any increased collection costs may be offset by decreases in enforcement, clean up costs, and recovery of chronic nuisance properties to useful condition.

- Judicial Foreclosure Sale

Resources and costs for a judicial foreclosure are borne by the City, but are potentially recoverable from proceeds of the property sale. Nuisance abatement liens, however, are junior to other financial encumbrances recorded prior to the court judgment authorizing the sale of the property, and the City, therefore, may not recover all of its costs after the foreclosure process. This process may be started

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Finance and Management Committee ~~ORACOUNCIL~~
July 13, 2004
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after three years rather than five years using the County tax foreclosure method which could/might expedite collection.

- Civil Penalty

Problem property cases which have the potential to reach a maximum of \$365,000 in civil penalties in a calendar year are unusual, and when they do occur, they usually are resolved before a significant penalty has accrued. These occasional cases have demonstrated, however, that the City's ability to reduce significantly or eliminate the economic incentive for maintaining the status quo of a problem property is a very effective tool for motivating otherwise unresponsive owners to return nuisance properties to productive use either by investing their own finances or selling to a responsive owner.

There is no revenue expectation for this ordinance reflected in the FY 2004/2005 Budget.

BACKGROUND

- Tax Foreclosure Sale (existing process)

For many years, the City has collected its delinquent enforcement and abatement costs by recording a tax lien (Special Assessment) on the title of nuisance properties (constructive notice to mortgager, potential buyers, etc.) and by adding unpaid assessments (with accrued interest) annually in August to the parcel's property tax bill (Assessor's general levy). Twice annually, the County Tax Collector forwards reimbursements to the City as owners pay their property taxes. Since the County will only accept full payment of the tax bill, the City is assured that its assessments are collected when property taxes are paid.

When property taxes remain unpaid (tax defaulted) for five years, the state's Revenue and Taxation Code empowers the County Board of Supervisors to authorize an auction of defaulted parcels and sale to the highest bidder (tax foreclosure). The Tax Collector's minimum bid (redemption price) must include the Special Assessments that the City has added to a parcel's general levy. Because the City can add its Special Assessments only in August, the redemption price will not always include the City's assessments recorded in the interim period before the next annual transfer. The purchaser, however, is still responsible for full payment of City assessments not included in the redemption price.

- Judicial Foreclosure Sale (proposed optional process)

The City can initiate a judicial foreclosure sale by petitioning the Superior Court for a money judgment after a nuisance abatement lien has remained unpaid for three years. However, the judicial process may take about one year to be completed. Special Assessments, on the other hand, do not have a similar minimum waiting period. Unpaid (defaulted) property taxes, rather than Special Assessments, start the five-year County tax foreclosure "clock". To be collected with a tax foreclosure, Special Assessment have only to be transferred (added) to a parcel's general levy by the time the County advertises the auction. Legally, the City cannot have both types of liens simultaneously recorded on a property, but it can "switch" from one lien and foreclosure process to the other as it determines which will be more advantageous for recovering costs and remedying problem property nuisances.

KEY ISSUES AND IMPACTS

The City adopted the Special Assessment process years ago and continues to use tax liens and their collection by the Tax Collector because of the certainty of payment (paid before other existing liens and deeds of trust) and the ease of collection (County is the lead agency). In recent years, however, the tax foreclosure process has been much less effective in collecting substantial costs that have accrued on problem properties due to abatement actions such as hazardous material clean-up and demolition and enforcement actions such as civil penalties for nuisance activities. The County's redemption price and other City liens not yet added to the general levy occasionally exceed the appraised value of a nuisance property, and thus, have been a decisive deterrent to potential bidders. Consequently, these chronically unproductive properties have not been able to attract the financial investment that is necessary to resolving nuisance activities in a neighborhood, and thus, have been quickly evolving to problem properties.

Judicial foreclosure, on the other hand, will be another useful tool for the City to return targeted and chronically nuisance properties to productive use. The redemption price (requested by the City in its monetary judgment petition) can be determined to assure investors' interest, and the rehabilitation of the property can be assured with standard controls such as Compliance Plans and performance deposits. Any potential reduction in reimbursement of accrued enforcement and abatement costs from the foreclosure sale would be offset both by the reduction in City resources devoted to continuing property maintenance (blight removal, fire and police response, etc.) and the increase in property tax revenue from the rehabilitated parcel.

SUSTAINABLE OPPORTUNITIES

Economic

Implementing the nuisance abatement lien process will positively impact the property values in targeted Oakland neighborhoods by adding an enforcement tool which can return problem properties to productive use more quickly.

Environmental

Implementing the nuisance abatement lien process will help reduce residual accumulations of toxic substances (lead based paint, asbestos, subsurface hydrocarbons, etc.) in the buildings and grounds of chronic problem properties as they are rehabilitated.

Social Equity

Implementing the nuisance abatement lien process will assist all Oakland residents by reducing the attractions and attractors for nuisance activities associated with problem properties.

DISABILITY AND SENIOR CITIZEN ACCESS

No disabled or senior citizen access issues are directly impacted by implementing the nuisance abatement lien process and increasing the maximum civil penalty.

RECOMMENDATIONS AND RATIONALE

It is recommended that the City Council approve the proposed amending ordinance. Nuisance abatement liens and judicial foreclosure are a potentially beneficial tool for returning targeted problem properties to productive use. Judicial foreclosure can reduce barriers to investment by reducing the otherwise insurmountable financial barriers to investors in situations where the City's accrued costs for enforcement and abatement exceed the market value of the property. Increasing the annual limit for civil penalties will also provide a companion financial disincentive for owners to maintain properties (and the activities associated with them) in a chronically nuisance condition.

ACTIONS REQUESTED OF THE CITY COUNCIL

Accept this report and approve the amending ordinance.

Respectfully submitted,



CLAUDIA CAPPIO
Development Director,
Community and Economic Development Agency

Prepared by:

CALVIN N. WONG
Director, Building Services Division
Community and Economic Development Agency

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE



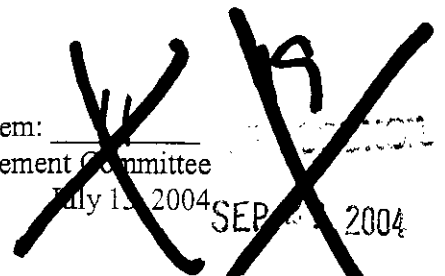
OFFICE OF THE CITY ADMINISTRATOR

Attachment (ordinance)

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Item: _____
Finance and Management Committee
July 13, 2004



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APPROVED AS TO FORM AND LEGALITY
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CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTIONS 15.08.130, 1.08.040, 1.12.040 AND 1.16.040 TO AUTHORIZE FORECLOSURE PROCEEDINGS TO COLLECT NUISANCE ABATEMENT LIENS AND COSTS, AND AMENDING OAKLAND MUNICIPAL CODE 1.08.060 TO INCREASE THE MAXIMUM ANNUAL CUMULATIVE CIVIL PENALTY FROM \$250,000 TO \$365,000

WHEREAS, California Government Code Section 38733.1 authorizes local jurisdictions to adopt by legislation a procedure to collect nuisance abatement and related administrative costs via a nuisance abatement lien; and

WHEREAS, a nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment; and

WHEREAS, nuisance abatement liens would provide the City an additional enforcement tool, useful in limited circumstances, to collect nuisance abatement costs; and

WHEREAS, Oakland Municipal Code Chapter 1.08, section 1.08.060, provides for the assessment of civil penalties in the maximum amount of one thousand dollars (\$1,000) per day, and no more than two hundred fifty thousand dollars (\$250,000.00) cumulatively each calendar year for an individual parcel or separate structure thereon for any related series of violations;

WHEREAS, by increasing the annual maximum amount of the civil penalty under Chapter 1.08, section 1.08.060, to three hundred sixty five thousand dollars (\$365,000.00) the city may charge property owners for every day they are non-compliant within a calendar year, rather than just the first 250 days; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ¹⁵ ORA/COUNCIL HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Revisions. Title 15 Buildings and Construction, Chapter 15 Oakland Housing Code, Article III Permits and Inspections, section 15.08.130 is amended to read as follows:

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15.08.130 Fees and Collection.

A. Fees, Costs, Penalties and Interest for Abatement of Violations.

The fees and costs incurred and the penalties assessed and the interest accrued in obtaining Real Property Ownership Reports, and in repairing, cleaning, remediating, removing, or demolishing a building, structure or surrounding property including, but not limited to, costs incurred in relocating occupants of the building and in securing or cleaning a building structure, lot or parcel by action of the City and in ascertaining violations or affecting abatement thereof and in collecting said fees, costs, penalties, and interest shall be charged against the property and owners.

Said fees, costs, penalties, and interest shall be as established in the Master Fee Schedule and may be recovered by all appropriate legal means including, but not limited to, nuisance abatement lien, special assessment of the general tax levy, and civil and small claims court actions brought by the City.

B. Notice of Demand. Prior to recordation of a special assessment or nuisance abatement lien, the City shall provide an itemized list of the fees, costs, penalties and interest accruing to said lien, with a demand for payment thereof, to the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current. Said demand shall indicate that failure to pay expeditiously will result in the recordation of a special assessment against the property and the owner, heirs, successors, and assigns or a nuisance abatement lien, which will result in a foreclosure action.

C. Collection. If said fees, costs, penalties, and accruing interest are not fully paid within seven days after service of said demand, the City may undertake collection by one of the following means:

1) **Special Assessment Collection by Priority Lien.** The City will record with the Office of the County Recorder of the County of Alameda, State of California, a certification of special assessment which shall be a priority lien against the property described therein until the amount thereof, plus accrued interest, has been paid in full. The amount of such priority lien shall draw interest thereon at a rate as established in the Master Fee Schedule or such higher rate as may be established by the Alameda County Tax Assessor and collector for collection of municipal and county taxes from and after the date of service of the demand. The statute of limitations shall not run against the right of the City to enforce payment.

2) **Alternative Tax Lien Method for Collection of Special Assessment.** As an alternative method of collection of the amount of the special assessment/priority lien, the City may transmit the amount of the special assessment to the Office of the Alameda County Tax Collector, who shall thereupon enter the amount thereof on the County Assessment Book opposite the description of the particular lot or parcel of land, and the amount shall be collected, together with all other taxes levied against the

property. The assessment shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale, in case of delinquency, as provided for all other municipal and county taxes against the property, and all laws applicable to the levy, collection, and enforcement of general property taxes are hereby made applicable to such special assessment; or,

3) **Nuisance Abatement Lien.** The City will record a nuisance abatement lien in the Alameda County Recorder's office which shall, from the date of recording, have the force, effect, and priority of a judgment lien. A nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.

D. **Service.**

1) **Special Assessment.** The initial notice of special assessment shall be served to the record owner of the property by one or more of the following methods of service:

- a. mailing with regular postage to the owner's address as it appears on the last equalization assessment roll of the Alameda County Tax Assessor or as otherwise may be known to the City; or
- b. personal delivery with acknowledged receipt; or
- c. public notification, including but not limited to the following:
 - i. publication in a newspaper or general circulation; or
 - ii. conspicuous posting on or in the vicinity of the property.

Failure to serve any person required by this Code to be served or failure of said person to receive said notification shall not invalidate any proceedings hereunder as to any other person duly served, or relieve any such person from any duty or obligation imposed by this Code.

2) **Nuisance Abatement Lien.** The notice of nuisance abatement lien shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. 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 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Government Code Section 6062.

E. Notice Content.

1) **Special Assessment.** A special assessment authorized by this section shall specify the amount of the assessment, identify the City as the agency on whose behalf the assessment is imposed, the street address and assessor's parcel number of the parcel on which the assessment is imposed, and the name and address of the recorded owner of the parcel.

2) **Nuisance Abatement Lien.** A nuisance abatement lien authorized by this section shall specify the amount of the lien, identify the City as the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

F. Collection Fees and Costs. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien or special assessment and providing notice to the property owner as part of its foreclosure action or other action to enforce the lien or special assessment or recover abatement costs.

G Discharge of Special Assessment or Nuisance Abatement Lien. In the event that the special assessment or nuisance abatement lien is discharged, released, or satisfied, either through payment in full or foreclosure, notice shall be recorded by the City with the Alameda County Recorder.

SECTION 2. Revisions. Title 1. General Provisions, Chapter 1.08 Administrative Assessment of Penalties, sections 1.08.140 and 1.08.160 are amended to read as follows:

1.08.040 Authority.

A. Whenever conditions upon a property or structure thereon constitute a major violation as defined in this chapter, administrative civil penalties may be assessed to effect abatement.

B. The City Manager, or his or her designee, is authorized to assess civil penalties administratively in accordance with the procedures established in this chapter.

C. The responsible person(s) creating, committing, condoning, or maintaining a major violation of any provision of the codes and ordinances identified in this chapter shall be subject to civil penalties as established in this chapter.

D. Each and every day a major violation of any provision of the codes and ordinances identified in this chapter exists shall constitute a separate and distinct offense.

E. Separate civil penalties may be assessed for separate major violations or separate dates of occurrence.

F. Full or partial reimbursement or recovery of civil penalties and administrative expenses shall not excuse the failure to correct the major violations wholly and permanently nor shall it preclude the assessment of additional civil penalties or other abatement actions by the city.

G. Civil penalties and related administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment/priority lien of the general tax levy, or by civil and small claims action brought by the city, or both. (Ord. 11805 § 1 (part), 1995: prior code § 1-6.04)

1.08.060 Assessment.

A. The City Manager, or his or her designee, is authorized to establish a schedule of violations and assessments or similar guidelines for assessing the amount, rate of recurrence, and duration of civil penalties.

B. Civil penalties, excluding accruing interest, shall not be assessed at more than one thousand dollars (\$1,000.00) each day nor more than three hundred sixty five thousand dollars (\$365,000.00) cumulatively each calendar year for an individual parcel or separate structure thereon for any related series of major violations.

C. The assessment of civil penalties may begin to accrue on the date of initial occurrence of the violation, as identified by the city.

D. The assessment of civil penalties shall cease when all major violations are wholly and permanently corrected.

E. Civil penalties shall be assessed based upon the following factors:

1. The duration and frequency of recurrence of the major violation;
2. The detrimental effects of the major violation on the occupants of the property and the surrounding neighborhood and the community at large;
3. The history of compliance efforts by the responsible person to correct the major violation wholly and permanently;
4. The viability of the civil penalty to effect abatement of the major violation wholly and permanently;
5. Other factors that serve justice. (Ord. 11805 § 1 (part), 1995: prior code § 1-6.06)

SECTION 3. Revisions. Title 1. General Provisions, Chapter 1.12 Administrative Citations, section 1.12.040 is amended to read as follows:

1.12.040 Authority.

A. Whenever any provision of the codes and ordinances identified in this chapter

has been violated, administrative citations may be assessed to effect abatement.

B. The City Manager, or his or her designee, is authorized to assess citations administratively, in accordance with the procedures established in this chapter.

C. The responsible person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this chapter shall be subject to administrative citations as established in this chapter.

D. Each and every day a violation of any provision of the codes and ordinances identified in this chapter exists shall constitute a separate and distinct offense.

E. Separate administrative citations may be issued for separate violations or separate dates of occurrence.

F. Full or partial reimbursement or recovery of administrative citations and administrative expenses shall not excuse the failure to correct violations wholly and permanently nor shall it preclude the assessment of additional administrative citations or other abatement actions by the city.

G. Administrative citations and related administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment/priority lien of the general tax levy, or civil and small claims action brought by the city, or both. (Ord. 11805 § 1 (part), 1995: prior code § 1-7.04)

SECTION 4. Revisions. Title 1. General Provisions, Chapter 1.16 Alternative Administrative Procedure for Abatement of Certain Code Violations, section 1.16.040 is amended to read as follows:

1.16.040 Authority.

A. Whenever any provision of the codes and ordinances identified in this chapter has been violated, administrative limitation of property use may be enforced to affect abatement.

B. The City Manager, or his or her designee, is authorized to enforce the abatement actions established in this chapter.

C. The Responsible Person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this chapter shall be subject to abatement actions established in this chapter.

D. Each and every day a violation of any provision of the codes and ordinances identified in this chapter exists shall constitute a separate and distinct offense.

E. Separate abatement actions established in this chapter may be enforced for separate violations or separate dates of occurrence.

F. Enforcement of abatement actions established in this chapter and/or full or partial reimbursement or recovery of administrative expenses shall not excuse the failure to correct violations wholly and excuse the failure to correct violations wholly and permanently nor shall it preclude initiation of additional abatement actions by the city.

G. Administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment/ priority lien of the general tax levy, or civil and small claims action brought by the city, or both. (Ord. 11805 § 1 (part), 1995: prior code § 1-8.04)

SECTION 5. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit hereto is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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~~FINANCE & MANAGEMENT DATE
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NOTICE AND DIGEST FILED
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OAKLAND

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A REPORT AND AN ORDINANCE AMENDING OAKLAND MUNICIPAL CODE SECTIONS 15.08.130, 1.08.040, 1.12.040, AND 1.16.040 TO AUTHORIZE FORECLOSURE PROCEEDINGS TO COLLECT NUISANCE ABATEMENT LIENS AND COSTS, AND AMENDING OAKLAND MUNICIPAL CODE 1.08.060 TO INCREASE THE MAXIMUM ANNUAL CUMULATIVE CIVIL PENALTY FROM \$250,000.00 TO \$365,000.00

This ordinance will amend the Oakland Building Maintenance Code and Administrative Penalty Ordinance to establish an additional collection method for the City to recover unpaid enforcement and abatement costs through a court ordered sale of nuisance properties (judicial foreclosure) and will also amend the Administrative Penalty Ordinance to increase the annual cumulative civil penalty from \$250,000.00 to \$365,000.00.

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