



**DATE:** July 7, 2020

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT** Adopt a Resolution Approving the Report and Nuisance Abatement/Municipal Code Liens with the County Recorder's Office for Non-Abatable Code Violations

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) confirming the report of non-abatable code violations, and penalty liens associated with the Code Enforcement Division and Community Preservation/Rental Housing Programs.

### **SUMMARY**

The purpose of this Nuisance Abatement/Municipal Code confirmation is to consider the proposed report and filings of liens with the County Recorder's Office as a third collection tool for the Community Preservation and Rental Housing Programs. The Resolution will officially confirm the properties in violation of City ordinances and will be filed with the County for recordation on property titles.

### **BACKGROUND**

Hayward's Community Preservation and Improvement Ordinance (Article 7, Chapter 5 of the Hayward Municipal Code (HMC)), otherwise known as the Community Preservation and Improvement Ordinance, makes it unlawful for Hayward property owners to allow the condition of their property to deteriorate to the point that it becomes detrimental to the public health, safety, or general welfare of the community. This includes both inhabited properties and vacant properties, whether residential or commercial. Typical violations include debris, trash, overgrown vegetation, graffiti, signs, zoning issues, abandoned and/or inoperable vehicles, and the like.

Hayward's Residential Rental Inspection Ordinance (Article 5, Chapter 9 of the Hayward Municipal Code (HMC)), otherwise known as the Residential Rental Inspection Ordinance (RRIO), creates an inspection program for residential rental units in the City. The purpose of the RRIO is to safeguard the stock of safe and sanitary rental housing by inspecting units for violations of housing and building codes. This includes all rental housing units and hotels and motels. Typical violations include housing violations such as inadequate maintenance, and unpermitted building, plumbing, electrical and mechanical work.

Hayward's Public Nuisance Ordinance (Article 1, Chapter 4 of the Hayward Municipal Code (HMC)), otherwise known as the Public Nuisance Ordinance, defines a public nuisance as anything that is injurious to health, or is indecent, offensive to the senses, or an obstruction to the free use of property that interferes with the comfortable or safe enjoyment of life or property in the community.

These ordinances provide staff an alternative method of enforcement and collections for non-abatable violations of the HMC. A condition on property is considered non-abatable when City staff cannot perform the abatement and the property owner fails to comply with the City's requirement to perform abatement. Examples of non-abatable conditions include fence height(s) and/or structures that do not meet setback requirements, illegal structures, businesses operating without an approved use permit (if applicable) or failing to comply with Conditions of Approval of an approved use permit, parking violations, rental housing violations, and illegal units. Adoption of the resolution will authorize staff to file a lien against properties in violation with the County Recorder's Office.

This additional enforcement process does not affect or change the Administrative Hearing request process, nor the Special Assessment Process. However, this Nuisance Abatement/Municipal Code Violations lien process is an additional means of enforcement when dealing with non-abatable code violations. Staff utilizes the lien and special assessment processes independently or in conjunction to enhance compliance efforts. The lien process differs from that used for special assessments in that a violation and fees are recorded on a property's title to alert potential buyers or those with a fiduciary interest in the property, such as a lending institution, of the property violation and the need to pay a fee. The primary function of special assessments, related to action taken by Council, is to allow the City to collect past due fees via annual tax bills. Authority for this process is granted under the Community Preservation and Improvement Ordinance, Residential Rental Inspection Ordinance and Government Code Section 38773.1.

## **DISCUSSION**

As of the date of this report, there are fourteen (14) properties being submitted to Council for the filing of a Nuisance Abatement/Municipal Code Violations lien, as listed in Exhibit "A" in the attached resolution (Attachment II). The unpaid charges, which total \$114,782.00 plus any administrative costs of the County, will become liens on the property titles. When the properties are sold or refinanced, the liens will be paid.

Staff sends a minimum of three notices to the property owner in question and, if applicable, to the tenants. The first notice informs the recipient of the violation and the right to an Administrative Hearing to dispute the factual findings. The notices are sent by first class mail with proof of service. The final notice is also delivered by way of process server. The final notice details all related costs and/or fees and informs the affected parties of the opportunity to request an Administrative Hearing. The notice also encourages them to make the needed corrections(s) to bring their properties into compliance. To date, no Administrative Hearings have been requested to be heard by the City's hearing officer. A confirmed copy of the

Nuisance Abatement/Municipal Code Violations form will be sent to the owner, tenant and lender once received from the County Recorder's Office.

### **ECONOMIC IMPACT**

The filing of liens with the County Recorder's Office supports the community preservation/ rental inspection programs in ensuring funding is available to keep well maintained, safe and sanitary neighborhoods and properties.

### **FISCAL IMPACT**

There is no negative fiscal impact to the City of Hayward resulting from this action. There will be 100% cost recovery reimbursement through the lien process. To change ownership of a property, a lien must be satisfied. If the property is sold or the owner refinances, the City will receive reimbursement. All reimbursed funds are allocated to the General Fund and support the Code Enforcement Division's on-going compliance efforts.

### **STRATEGIC ROADMAP**

This agenda item is a routine operational item and does not directly relate to any of the projects outlined in the Council's Strategic Roadmap.

### **SUSTAINABILITY FEATURES**

The recommended action for this report will not directly result in physical development; the purchase of a product or service; new policy or legislation related to sustainability.

### **PUBLIC CONTACT**

Notice of City Council's confirmation of this report was published in *The Daily Review* on June 26 and July 3, 2020.

### **NEXT STEPS**

A copy of the lien list will be forwarded to the Alameda County Assessor's Office. Upon receipt, the Assessor's Office will attach the City of Hayward's fees past due and violations as a lien against each parcel. That lien will then appear on the property title until the fees have been paid and violation(s) are abated.

*Prepared by:* Phillip Nichols, Code Enforcement Manager

*Recommended by:* Laura Simpson, Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

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Kelly McAdoo, City Manager