



**DATE:** July 18, 2017

**TO:** Mayor and City Council

**FROM:** Interim Director of Development Services

**SUBJECT** Filing Nuisance Abatement/Municipal Code Liens with the County Recorder's Office for Non-Abatable Code Violations

### **RECOMMENDATION**

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

### **SUMMARY**

The filing of liens with the County Recorder's Office as a third collection tool for the Community Preservation and Rental Housing Programs allows for enhanced enforcement to ensure violations are identified and compliance is achieved.

### **BACKGROUND**

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 the following City ordinances and will be filed with the County.

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 which is injurious to health, or is indecent, offensive to the senses, or an obstruction to the free use of property to interfere with the comfortable or safe enjoyment of life or property of 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 fee 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 on July 18, 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 seventeen (17) 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 \$85,284 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 through escrow.

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 well maintained, safe and sanitary neighborhoods and properties.

### **FISCAL IMPACT**

There is no 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 through escrow. All reimbursed funds are allocated to the General Fund and support the Code Enforcement Division's on-going compliance efforts.

### **SUSTAINABILITY FEATURES**

N/A

### **PUBLIC CONTACT**

Notice of City Council's confirmation of this report was published in the Daily Review on July 7<sup>th</sup> & 14<sup>th</sup> 2017. In addition, all notices include specific language giving the property owner an opportunity for a Lien Hearing to contest the fees and/or penalties and encouraging them to pay their bills to avoid having a lien placed on the title of the property.

## **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:* Eusebio Espitia, Code Enforcement Manager

*Recommended by:* Stacey Bristow, Interim Director of Development Services

*Approved by:*



---

Kelly McDoo, City Manager