

**DATE:** July 20, 2010

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT:** Filing Nuisance Abatement Lien Notices with County Recorder's Office (Nuisance Abatement/Municipal Code Violations) for Non-Abatable Code Violations

### **RECOMMENDATION**

That Council adopts the attached resolution confirming the filing of Nuisance Abatement Lien Notices for non-abatable code violations and fees, associated fees, and any penalty charges to become a lien against the below listed properties, to be filed with the County of Alameda, Recorders Office, pursuant to Government Code Section 38773.1.

### **BACKGROUND**

The purpose of the Nuisance Abatement Lien report is to consider and confirm the proposed report and filings of liens with the County Recorder's Office as a third collection tool for the Community Preservation Division. The properties in violation will be officially confirmed by resolution, which will be filed with the County.

Article 7, Chapter 5 of the Hayward Municipal Code (HMC), otherwise known as the Community Preservation Ordinance, currently 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, vegetation, graffiti, signs, zoning issues, abandoned and/or inoperable vehicles and the like.

"Public nuisance" is defined in the Ordinance, as are the procedures for enforcing the provisions of the law. The Ordinance provides due process protections that guarantee the property owners who are cited for violations of the Ordinance notice and the opportunity to be heard.

Staff has identified a need for an alternative method of enforcement and collections for non-abatable violations of the Municipal Code, including but not limited to, fence height(s) and/or location, required setback(s), illegal structures, businesses operating without an approved Use Permit (if applicable) or failing to comply with the Conditions of Approval of an approved use permit, parking violations, and illegal units. This process is one of several available enforcement and collection tools. Others include seeking injunctions against the property/business owner and/or revocations of the approved Use Permits and Site Development Review through the City Attorney's Office and Planning Department.

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 Violation lien process is an additional means of enforcement when dealing with non-abatable code violations. Non-abatable violations consist of those types of violations, which have substantial financial impact to the City. Authority for this new process is granted under Government Code Section 38773.1.

## DISCUSSION

As of the date of this report, there are two (2) properties being submitted to Council for the filing of Nuisance Abatement Liens as listed below. The unpaid charges, plus any administrative costs of the County, will become a lien of the property title. When the property is sold or refinanced, the lien will be paid through escrow.

<u>Address</u>	<u>Violation</u>	<u>Lien Amounts</u>
1. 593 Meek Ave.	HMC 10-1.2725g(a): Fence(s), hedge(s) and/or wall(s) exceed the maximum permitted height.	\$1,651.00
2. 597 Meek Ave.	HMC 10-2.2725g(a): Fence(s), hedge(s) and/or wall(s) exceed the maximum permitted height.	\$1,651.00

Staff sends three letters to each of the current property owner(s) in question and/or tenants if applicable. The first two letters, sent at intervals, inform the owner of the right to an Administrative Hearing to dispute factual findings. Letters are sent by proof of service mail. After a minimum of ten (10) days after the second letter, a third letter is delivered by way of a process server. The third letter details all related costs and/or fees and informs the affected parties of the opportunity to request a lien hearing, and encouraging them to pay their bills to minimize fees. No requests for Administrative or Lien Hearings were requested in calendar year 2009 or in the first quarter of 2010. A conformed copy of the Nuisance Abatement/Municipal Code Violation form will be sent to the owner, tenant, and lender once received from the County Recorder's Office.

## FISCAL IMPACT

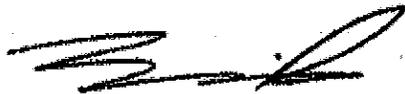
There is no negative fiscal impact to the City of Hayward. There will be 100% cost recovery reimbursement through the lien process. In order to change ownership of a property, a lien must be satisfied. If the property is sold or the owner refinances, the City will receive 100% reimbursement through escrow. All reimbursed funds are allocated to the General Fund.

## **PUBLIC CONTACT**

Notice of City Council's confirmation of this report was published in the Daily Review on July 10, 2010.

*Prepared by:* Stacey Sorensen, Neighborhood Partnership Manager

Approved by:



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Fran David, City Manager

Attachment:

Attachment I Resolution Confirming the Report

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

Introduced by Council Member \_\_\_\_\_

RESOLUTION CONFIRMING THE REPORT AND NON-  
ABATABLE CODE VIOLATIONS AND PENALTIES LIEN  
LIST ASSOCIATED WITH THE COMMUNITY  
PRESERVATION PROGRAM FOR THE PERIOD FROM  
JANUARY 1, 2009 THROUGH MARCH 31, 2010

WHEREAS, in connection with the Community Preservation Program, the Neighborhood Partnership Manager has rendered an itemized report in writing to this Council showing the Community Preservation and Zoning Ordinance non-abatable code violations and related fines, fees, penalties and lien costs for certain properties in the City of Hayward described in the report; and

WHEREAS, the hour of 7 p.m. on Tuesday, July 20, 2010, in the Council Chambers, City Hall, 777 B Street, Hayward, California, was fixed as the time and place for this Council to receive and consider the report, and a copy of the report has been posted and published in the manner required by section 5-7.110 of the Municipal Code; and

WHEREAS, the report was presented at the time and place fixed, and the City Council has considered the report and all comments with respect thereto.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that, except as may be amended by Council, the report of the Neighborhood Partnership Manager of the City of Hayward Community Preservation Program on costs and non-abatable ordinance violations from the properties therein described.

BE IT FURTHER RESOLVED that payments of all fines, fees, penalties and lien costs confirmed hereby may be received by the City of Hayward Finance Director within 10 days from the date of this resolution and thereafter such official shall transmit the unpaid charges to the County Recorder's Office for a Nuisance Abatement Lien on said property(s) listed in report.

IN COUNCIL, HAYWARD, CALIFORNIA July 20, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

MAYOR:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

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City Attorney of the City of Hayward