



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: February 20, 2018
TO: Carolyn Lehr, City Manager
FROM: Sheri Hartz, City Clerk
SUBJECT: **Resolution Of The City Council Of The City Of Emeryville Confirming the Public Works Director's Report And Authorizing Costs Incurred by the City of Emeryville In the Matter of the Appeal From Notice and Order of Intention to Demolish Property Owned by André Carpiaux, 1264 Ocean Avenue, Emeryville CA (APN 049-1469-008), Case No. ADBC 15-001 To Be Charged As A Special Assessment In the Amount of \$50,145.75 Against the Property; And Directing the City Manager To Take Related Actions**

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and thereafter adopt the above-referenced resolution authorizing charging the Property with a special assessment in the amount of \$50,145.75 (Fifty Thousand, One Hundred, Forty-Five Dollars, and Seventy-Five Cents) to recover the City's costs incurred in abating a nuisance at the subject Property.

BACKGROUND

On July 30, 2015, the Chief Building Official for the City of Emeryville issued a Notice and Order regarding violations of the 1994 Uniform Code for the Abatement of Dangerous Buildings at 1264 Ocean Avenue, Emeryville, CA ("**Property**"), and ordering the property owner to abate the violations. The property owner, Mr. Carpiaux, took no action to begin abatement of the violations.

On October 19, 2015, the Chief Building Official issued a subsequent Notice and Order regarding violations of the 1994 Uniform Code of the Abatement of Dangerous Buildings, and ordering the demolition of the structure on the Property. Mr. Carpiaux appealed this Notice and Order to demolish ("the **Appeal**"). Pursuant to Chapter 12 of Title 8 of the Emeryville Municipal Code in effect at the time of the Appeal (relevant code is now Chapter 16 of Title 8 of the Emeryville Municipal Code)¹, the Board of Appeals through a subset of the Board of Appeals, the Board of Examiners, heard the Appeal as provided by the 1994 Uniform Code for Abatement of Dangerous Buildings. At the conclusion of the hearing, the Board of Examiners found numerous violations of the Uniform Code of the Abatement of Dangerous Buildings, and found that "rehabilitation of the premises is not only logistically infeasible, but would [create] a greater economic burden to Mr. Carpiaux than demolition and construction of a new structure." The Board of Appeals

¹ The City Council adopted Ordinance No. 16-008, effective December 15, 2016, which adopted the 1997 Uniform Code for the Abatement of Dangerous Buildings, now codified at Emeryville Municipal Code section 8.11.01

adopted the recommended decision of the Board of Examiners to uphold the Notice and Order to demolish the structure on the Property at a public meeting held on August 23, 2016 (“**Final Decision**”). On August 25, 2016, Mr. Carpiaux was served with the Final Decision.

On December 22, 2017, the City obtained an abatement warrant in Alameda Superior Court Case No. 2017-3912 for the purposes of implementing the Board of Appeals’ Final Decision by demolishing the structure and carrying out related nuisance abatement activities (“**Abatement Warrant**”). The work was completed by January 5, 2018, and the warrant returned.

DISCUSSION

Pursuant to Government Code section 38773.5, the City may adopt an ordinance to establish a procedure to make the cost of the abatement of a nuisance upon a parcel of land a special assessment against that parcel. The City proceeded with the abatement of the Property under the 1994 Uniform Code for the Abatement of Dangerous Buildings, adopted by prior Section 8-6.01 of the Emeryville Municipal Code (“**Code**”).² Chapter 9 of the Code provides for how the City may recover its expenses and costs associated with the abatement. The City may charge the Property with a special assessment to recover the costs.

Pursuant to Section 901 of the Code, to initiate the cost recovery process, the Public Works Director submits a report to the City Clerk providing information about the expenses incurred by the City (“**Report**”). The City Clerk’s Office then forwards the Report to the City Council for consideration. At its February 6, 2018, regular meeting, the City Council adopted Resolution No. 18-12, setting a public hearing for its February 20, 2018, regular meeting so that it could consider the merits of the Report.

The Report indicates that the City incurred costs in a total amount of **\$50,145.75 (Fifty Thousand, One Hundred, Forty-Five Dollars, and Seventy-Five Cents)** to abate the nuisance.³ The purpose of the hearing is solely for the Council to consider the Report, and any written protests or objections to the report. The merits of the underlying decision, i.e., whether code violations existed, and whether demolition was appropriate, may not be considered. At the conclusion of the public hearing, the Council may confirm, confirm with modifications, or reject the Report. Once the Report is confirmed, the City Council may order the confirmed amount to be charged as either a personal obligation or as a special assessment against the Property.

² The City Council adopted Ordinance No. 16-008, effective December 15, 2016, which adopted the 1997 Uniform Code for the Abatement of Dangerous Buildings, codified at Emeryville Municipal Code section 8.11.01.

³ The City also incurred attorneys’ fees. However, the City may only recover attorney’s fees if it has an adopted ordinance at the time the code enforcement action commences authorizing the recovery of attorney’s fees. (Gov. Code, § 38873.5; see also *City of Monte Serrano v. Padgett* (2007) 149 Cal.App.4th 1530.) At the commencement of the code enforcement action at issue, the City had no ordinance explicitly authorizing the recovery of attorney’s fees. On November 17, 2016, the City Council adopted Ordinance No. 16.005, which is codified as Chapter 7 of Title 1 of Emeryville Municipal Code, and which allows for the recovery of attorney’s fees in certain instances.

Staff recommends charging the amount against the Property as a special assessment because that is the most efficient way to recover the costs. The special assessment becomes a lien against the Property, and collected in the same manner as property taxes, which means it has priority over other liens against the Property.⁴

FISCAL IMPACT

The City has already expended the **\$50,145.75 (Fifty Thousand, One Hundred, Forty-Five Dollars, and Seventy-Five Cents)**. By adopting the proposed resolution, the City would be in a position to receive reimbursement for those funds.

STAFF COMMUNICATION WITH THE PUBLIC

The City Attorney's Office has communicated with Joel Levine, trustee for The Joel Sherman Levine Revocable Trust Dated February 28, 1991, which has an interest in the Property, regarding the City's costs and the process by which the City may recover those costs. In addition, there have been numerous communications with Mr. Carpiaux regarding the abatement proceedings, but none of those communications discussed the City's costs and the process by which the City may recover those costs.

CONCLUSION

The City Council should consider this report and attachments, open the public hearing to receive any written protests or objections, close the public hearing, and adopt the proposed resolution.

PREPARED BY: Andrea Visveshwara, Assistant City Attorney

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Carolyn Lehr, City Manager

ATTACHMENTS

- Resolution
- Public Works Director's Report (with attachments)

⁴ Gov. Code, §§ 38773.5(c); 53935.