



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** February 6, 2018

**TO:** Carolyn Lehr, City Manager

**FROM:** Sheri Hartz, City Clerk

**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Setting a Public Hearing For February 20, 2018, at 7:16 P.M., At City Hall Council Chambers, 1333 Park Avenue, Emeryville, CA, To Consider A Report from the Acting Public Works Director Related To Costs Incurred by the City of Emeryville In the Matter of the Appeal From Notice and Order of Intention to Demolish Property Owned by Andre Carpiaux, 1264 Ocean Avenue, Emeryville CA (APN 049-1469-008), Case No. ADBC 15-001; And To Consider Authorizing Charging a Special Assessment Against The Property To Recover The Costs; And Directing the City Clerk To Take Related Actions**

## RECOMMENDATION

Staff recommends that the City Council adopt the above-referenced resolution to set a public hearing at which the City Council will consider the Public Work Director's Report related to the City's expenses incurred in abating the nuisance at 1264 Ocean Avenue, and may authorize charging the property with a special assessment to recover those expenses. Staff recommends the public hearing be set for February 20, 2018, at 7:16 p.m., at City Hall Council Chambers, 1333 Park Avenue, Emeryville, CA 94608.

## 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)<sup>1</sup>, 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

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<sup>1</sup> 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

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 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**”).<sup>2</sup> 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 has received the Report, which is attached. If the Council would like to consider the Report, as well as any written protests or objections to the Report, it must set the matter for a public hearing, and provide notice to the individuals identified in the Report.

## **FISCAL IMPACT**

The cost to set the matter for public hearing and to deliver the notice to the individuals identified in the Report is minimal.

## **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.

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<sup>2</sup> 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.

## **CONCLUSION**

The City Council should adopt the above-referenced resolution setting a public hearing for February 20, 2018, to begin at 7:16 p.m. or as soon as possible thereafter at City Hall Council Chambers, 1333 Park Avenue, Emeryville, CA 94608, at which the Council will consider the Report, and may authorize a special assessment against the Property to recover the City's costs related to the abatement of the Property.

**PREPARED BY:** Andrea Visveshwara, Assistant City Attorney

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



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Carolyn Lehr, City Manager

## **ATTACHMENTS**

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