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REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2671
www. CityofSacramento.org

Consent
August 29, 2006

Honorable Mayor and
Members of the City Council

Title: Ordinance Amending Sections 8.04.430 and 8.96.360 of the Sacramento City Code relating to Recovery of Costs Incurred in the Enforcement of the Nuisance Code, Housing Code, and Dangerous Buildings Code

Location/Council District: City-wide

Recommendation: Adopt an **Ordinance** amending Sections 8.04.430 and 8.96.360 of the City Code relating to recovery of costs incurred in the enforcement of the Nuisance Code, Housing Code, and Dangerous Buildings Code.

Contact: Max Fernandez, Director of Code Enforcement, (916) 808-7940; Randy Stratton, Chief, Housing & Dangerous Buildings, (916) 808-6497, Ron O'Connor, Code Enforcement Manager, (916) 808-8183

Presenters: Not applicable.

Department: Code Enforcement

Division: Neighborhood Code Enforcement and Housing & Dangerous Buildings

Organization No: 4651 & 4653

Description/Analysis

Issue: The current City Code authorizes recovery of the costs by making them a personal obligation of the property owner and/or a special assessment on the properties. The proposed ordinance would provide the City an alternative option of collecting the costs by making them a personal obligation of the property owner and/or placing a nuisance abatement lien on the property. The city may foreclose on the nuisance abatement lien and recover costs associated with the foreclosure action, including attorney's fees.

Policy Considerations: The staff recommendation is consistent with City Council priorities and policies related to compliance with the City's Codes, cost recovery, and the City's goals to improve and expand public safety.

Environmental Considerations: This recommendation does not constitute a "project" and therefore is exempt from the California Environmental Quality Act (CEQA) according to Section 15061 (b)(1) and 15378(b)(3) of the CEQA guidelines.

Committee Recommendations: On July 18, 2006, the Law & Legislation Committee heard this item and unanimously approved staff's recommendation to forward to City Council the proposed amendments.

Rationale for Recommendations: The proposed amendments would provide the City greater flexibility in collecting costs, either by placing a nuisance abatement lien or a special assessment against the property.

Financial Considerations: The proposed ordinance will assist in the collection of abatement costs and enforcement costs of the housing and dangerous building codes. No additional costs to the City are anticipated to implement the proposed amendments.

Emerging Small Business Development (ESBD): No goods or services are being purchased as a result of this ordinance.

Respectfully Submitted by: _____
MAX B. FERNANDEZ
Code Enforcement Director

Recommendation Approved:

Cassandra H.B. Jenning
for RAY KERRIDGE
City Manager

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Background

State law authorizes recovery of nuisance abatement and related administrative costs by making the costs a personal obligation of the property owner and by placing a nuisance abatement lien against the property. (Gov. Code sections 38773 and 38773.1). The nuisance abatement lien is recorded in the County Recorder's office and has the same force, effect, and priority as a judgment lien. The city may foreclose on the lien and recover costs associated with the foreclosure action, including attorney's fees

As an alternative to a nuisance abatement lien, state law provides that the costs may be imposed on the property as a special assessment. (Gov. Code section 38773.5). The special assessment is forwarded to the County Assessor's office and is collected as part of the property tax bill.

The proposed amendments modify Sacramento City Code sections 8.04.430 and 8.96.360 to virtually reflect each other. Copies of ordinances from other cities were obtained for information on procedures other cities employ to recover abatement costs. A summary of those findings is provided in Attachment 4. Nearly every surveyed city provides for recovery of nuisance abatement costs as nuisance abatement liens.

On August 22, 2006, the City Council passed the Ordinance title for publication as required by Sacramento City Charter 32(c). The Ordinance title was published in the Daily Recorder newspaper by the City Clerk on August 25, 2006.

Attachment 2

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING SECTION 8.04.430 OF CHAPTER 8.04, AND AMENDING SECTION 8.96.360 OF CHAPTER 8.96 OF THE SACRAMENTO CITY CODE RELATING TO RECOVERY OF COSTS INCURRED IN THE ENFORCEMENT OF THE NUISANCE CODE, HOUSING CODE, AND DANGEROUS BUILDINGS CODE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. Section 8.04.430 of Chapter 8.04 of the Sacramento City Code is amended to read as follows:

8.04.430 Personal obligation, lien, or special assessment.

A. Upon receipt of the delinquency lien hearing officer's report, the city council shall schedule a public hearing at which it shall confirm, reject or modify the report and determine the costs of abatement. The public hearing shall be limited to the issue of whether the hearing before the delinquency lien hearing officer was conducted in accordance with applicable city ordinances. Only those owners who file an objection or protest and appear before the delinquency lien hearing officer shall be permitted to protest at the city council hearing.

B. Upon taking action under subsection A, the city council may order that the costs of abatement be made a personal obligation of the property owner and either a nuisance abatement lien or a special assessment against the property.

C. If an action or proceeding is commenced to recover the costs, the prevailing party shall be entitled to recover reasonable attorneys' fees, provided that, pursuant to California Government Code section 38773.5, attorneys' fees shall only be available where the city has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

D. A nuisance abatement lien may be recorded and enforced against the property pursuant to the provisions of California Government Code section 38773.1. A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment. As part of the foreclosure action, the city may recover reasonable attorneys' fees and costs including, but not limited to, costs incurred for processing and recording the lien and providing notice to the property owner.

E. As an alternative to a nuisance abatement lien, the costs of abatement may be made a special assessment against the property. The special assessment may be collected at the same time and in the same manner as ordinary municipal taxes and shall be subject to the same penalties and procedures, including the sale of the property in case of delinquency, as provided for ordinary municipal taxes. The special assessment shall continue until the assessment and all interest and penalties due and payable thereon have been paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

SECTION 2. Section 8.96.360 of Chapter 8.96 of the Sacramento City Code is amended as follows;

8.96.360 Personal obligation, lien, or special assessment.

A. After the housing board's hearing provided in this article, the city clerk shall transmit the report to the city council. The city clerk shall also send the results of the hearing by first class mail to the objecting owners who appeared before the housing board, and shall include the date and time of the public hearing to be held by the city council no less than ten (10) days after the mailing in accordance with this section. Upon receipt of the housing board's report, the city clerk shall schedule a public hearing at which the city council shall confirm, reject or modify the report and determine the costs of abatement. The public hearing shall be limited to the issue of whether the housing board hearing provided in this chapter was conducted in accordance with applicable city ordinances. Only those owners who both file an objection or protest and appear before the housing board shall be permitted to protest at the city council hearing.

B. Upon taking action under subsection A, the city council may order that the costs of abatement be made a personal obligation of the property owner and either a nuisance abatement lien or a special assessment against the property.

C. If an action or proceeding is commenced to recover the costs, the prevailing party shall be entitled to recover reasonable attorneys' fees, provided that, pursuant to California Government Code section 38773.5, attorneys' fees shall only be available where the city has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

D. A nuisance abatement lien may be recorded and enforced against the property pursuant to the provisions of California Government Code section 38773.1. A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment. As part of the foreclosure action, the city may recover reasonable attorneys' fees and costs including, but not limited to, costs incurred for processing and recording the lien and providing notice to the property owner.

E. As an alternative to a nuisance abatement lien, the costs of abatement may be made a special assessment against the property. The special assessment may be collected at the same time and in the same manner as ordinary municipal taxes and shall be subject to the same penalties and procedures, including the sale of the property in case of delinquency, as provided for ordinary municipal taxes. The special assessment shall continue until the assessment and all interest and penalties due and payable thereon have been paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

Attachment 3

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING SECTION 8.04.430 OF CHAPTER 8.04, AND AMENDING SECTION 8.96.360 OF CHAPTER 8.96 OF THE SACRAMENTO CITY CODE RELATING TO RECOVERY OF COSTS INCURRED IN THE ENFORCEMENT OF THE NUISANCE CODE, HOUSING CODE, AND DANGEROUS BUILDINGS CODE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. Section 8.04.430 of Chapter 8.04 of the Sacramento City Code is amended to read as follows:

8.04.430 ~~Confirmation of report--~~Personal obligation, lien, or special assessment.

A. Upon receipt of the delinquency lien hearing officer's report, the city council shall schedule a public hearing at which it shall confirm, reject or modify the report and determine the costs of abatement. The public hearing shall be limited to the issue of whether the hearing before the delinquency lien hearing officer was conducted in accordance with applicable city ordinances. Only those owners who file an objection or protest and appear before the delinquency lien hearing officer shall be permitted to protest at the city council hearing.

B. Upon taking action under subsection A, the city council may order that the ~~charge~~ costs of abatement be made a personal obligation of the property owner and ~~assess the charge against the property involved as a lien.~~ either a nuisance abatement lien or a special assessment against the property.

C. ~~If the council orders that a charge be made a personal obligation of the property owner, it shall direct the city attorney and finance department to collect the charge.~~ If an action or proceeding is commenced to recover the costs, the prevailing party shall be entitled to recover reasonable attorneys' fees, provided that, pursuant to California Government Code section 38773.5, attorneys' fees shall only be available where the city has elected, at the commencement of such action or proceeding, to seek recovery

of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

D. ~~If the council orders that the charge be assessed against the property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary secured property taxes are collected and shall be subject to the same penalties and the same procedure of sale in case of delinquency as provided for ordinary secured property taxes.~~ A nuisance abatement lien may be recorded and enforced against the property pursuant to the provisions of California Government Code section 38773.1. A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment. As part of the foreclosure action, the city may recover reasonable attorneys' fees and costs including, but not limited to, costs incurred for processing and recording the lien and providing notice to the property owner.

E. ~~The assessments shall be subordinate to all existing special assessment liens previously imposed upon the same property and paramount to all other liens except state, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and penalties due and payable thereon will be paid. All laws applicable to the levy, collection and enforcement of secured property taxes shall be applicable to such assessment. (Prior code § 61.10.1006)~~ As an alternative to a nuisance abatement lien, the costs of abatement may be made a special assessment against the property. The special assessment may be collected at the same time and in the same manner as ordinary municipal taxes and shall be subject to the same penalties and procedures, including the sale of the property in case of delinquency, as provided for ordinary municipal taxes. The special assessment shall continue until the assessment and all interest and penalties due and payable thereon have been paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

SECTION 2. Section 8.96.360 of Chapter 8.96 of the Sacramento City Code is amended as follows;

8.96.360 Personal obligation, lien, or ~~and~~ special assessment.

A. After the housing board's hearing provided in this article, the city clerk shall transmit the report to the city council. The city clerk shall also send the results of the hearing by first class mail to the objecting owners who appeared before the housing board, and shall include the date and time of the public hearing to be held by the city council no less than ten (10) days after the mailing in accordance with this section. Upon receipt of the housing board's report, the city clerk shall schedule a public hearing at which the city council shall confirm, reject or modify the report and determine the costs of abatement. The public hearing shall be limited to the issue of whether the housing board hearing provided in this chapter was conducted in accordance with applicable city ordinances. Only those owners who both file an objection or protest and

appear before the housing board shall be permitted to protest at the city council hearing. ~~If the council orders that the charge be assessed against the property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary secured property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary secured property taxes.~~

~~The assessments shall be subordinate to all existing special assessment liens previously imposed upon the same property and paramount to all other liens except for state, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and penalties due and payable thereon have been paid. All laws applicable to the levy, collection and enforcement of secured property taxes shall be applicable to such assessment. The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is confirmed by the city council. (Prior code § 50.09.905)~~

B. Upon taking action under subsection A, the city council may order that the costs of abatement be made a personal obligation of the property owner and either a nuisance abatement lien or a special assessment against the property.

C. If an action or proceeding is commenced to recover the costs, the prevailing party shall be entitled to recover reasonable attorneys' fees, provided that, pursuant to California Government Code section 38773.5, attorneys' fees shall only be available where the city has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

D. A nuisance abatement lien may be recorded and enforced against the property pursuant to the provisions of California Government Code section 38773.1. A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment. As part of the foreclosure action, the city may recover reasonable attorneys' fees and costs including, but not limited to, costs incurred for processing and recording the lien and providing notice to the property owner.

E. As an alternative to a nuisance abatement lien, the costs of abatement may be made a special assessment against the property. The special assessment may be collected at the same time and in the same manner as ordinary municipal taxes and shall be subject to the same penalties and procedures, including the sale of the property in case of delinquency, as provided for ordinary municipal taxes. The special assessment shall continue until the assessment and all interest and penalties due and payable thereon have been paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

Attachment 4

NUISANCE ABATEMENT LIEN COMPARISON CHART

CITIES	Nuisance abatement costs imposed as personal obligation	Nuisance abatement costs imposed as a special assessment	Nuisance abatement costs imposed as a nuisance abatement lien
Sacramento (current)	Yes	Yes	No
Sacramento (proposed)	Yes	Yes	Yes
Anaheim	Yes	Yes	Yes. Unpaid administrative fines in connection with real property are recorded as a lien. Lien has the same force and effect as a judgment lien.
Fresno	Yes	Yes	Yes. Abatement costs may be recovered by recording a nuisance abatement lien against the property pursuant to Government Code section 38773.1.
Long Beach	Yes	Yes	No
Oakland	Yes	Yes	No
Riverside	Yes	Yes	Yes. Abatement costs may be recovered by recording a nuisance abatement lien against the property pursuant to Government Code section 38773.1.

CITIES	Nuisance abatement costs imposed as personal obligation	Nuisance abatement costs imposed as a special assessment	Nuisance abatement costs imposed as a nuisance abatement lien
San Diego	Yes	Yes	Yes. Abatement costs may be recovered by recording a code enforcement lien or nuisance abatement lien against the property pursuant to Government Code section 38773.1.
San Jose	Yes	Yes	Yes. Abatement costs may be imposed as a lien against the property. The lien has the same force, effect, and priority as a judgment lien.
Santa Ana	Yes	Yes	Yes. Abatement costs may be recovered by recording a nuisance abatement lien against the property pursuant to Government Code section 38773.1.
Santa Paula[1]	Yes	Yes	Yes. Abatement costs may be recovered by recording a nuisance abatement lien against the property pursuant to Government Code section 38773.1.

[1] In a published opinion, City of Santa Paula v. Narula (2003) 114 Cal App 4th 485, the City filed a lien against an apartment building that was in violation of numerous building and safety codes for unpaid administrative costs and penalties. The City obtained a judgment of foreclosure and sale and was also awarded its attorney's fees.