



City Council Agenda Item

City Council Meeting Date: February 21, 2023

TO: Honorable Mayor and City Councilmembers

FROM: Jeff Malawy, City Attorney
jmalawy@awattorneys.com

SUBJECT: Recovery of Cost for Abatement of Public Nuisances at 1128 N. A Street
Via Special Assessment Process

Recommendation:

Staff recommends the City Council confirm the cost report to recover the City's costs from the property owner via a special assessment.

Background:

The City had received complaints from the City's solid waste collector of the difficulty in driving through the alley of 1128 N. A Street (Property) due to the overhanging tree on the Property. The complaints stretched back several months. The City notified the property owner, advised of the violations and necessary corrective actions. Several months later, the same complaints were received from the solid waste collector.

The City then conducted an inspection of the Property and surrounding area, observing that the Property had overgrown and dead vegetation, including weeds and a large tree overhanging into the alley. The overhanging tree was causing damage to the fence along the Property line, leaving debris in the alley, blocking sightlines for drivers, and creating a safety hazard. Another notice was provided to the property owner. After several months, the Property was re-inspected and no change had occurred regarding the dead and overgrown vegetation, the hanging tree impeding the view and access into the alley, as well as the damage to the fence from the overgrown tree.

On September 13, 2022, following consultation with the City Prosecutor, the Property was inspected by the City's arborist and no change had occurred regarding the dead and overgrown vegetation, the hanging tree impeding the view and access into the alley, as well as the damage to the fence from the overgrown tree. The City's arborist, Mr. Sean O'Neil, advised upon his inspection and observation of the overgrown tree, that there were *two* trees creating the issues. Further, if left unaddressed, the trees would soon grow into the City-owned electrical lines, creating a fire hazard. Mr. O'Neil recommended removal and a chemical stump treatment to prevent regrowth.

On October 18, 2022, the City issued a Notice and Order to Abate to the owner. On November 4, 2022, the City posted the Notice and Order to Abate at the Property. Between past and the most current code compliance efforts, the owner had received more than adequate notice.

On December 6, 2022, the City Attorney's Office obtained an abatement warrant from the court to enter the property and abate the public nuisances on the property. On December 16, 2022, the City hired a landscaping and tree service to complete the abatement of the overhanging tree, consistent with the arborist's recommendations. The abatement was completed on December 20, 2022.

Discussion:

LMC Section 17.628.010(A)(4) states it is a public nuisance for a person owning, leasing, occupying, managing, or having the charge of any premises to maintain such premises in a manner resulting in the following conditions: Vegetation, including dry grass, dead shrubs, dead trees, and overgrown grass or weeds; (e.g., average height greater than one foot above the ground.

LMC Section 17.628.010(A)((4)(d) states it is a public nuisance for a person owning, leasing, occupying, managing, or having the charge of any premises to maintain such premises in a manner resulting in the following conditions: A danger to public safety and welfare.

LMC Section 17.628.090(A)(1) states the Director shall keep an account of the costs (including attorney's fees and incidental expenses) for abating any public nuisance on each separate lot or parcel where the work is done and shall render an itemized report in writing to the Council showing the cost of abatement and the rehabilitation, demolition, removal, or repair of the premises, buildings, or structures, including the value of any salvaged materials. Incidental expenses shall include the actual and overhead expenses and cost of the City to prepare notices, specifications and contracts, and to inspect the work, and the costs of printing and mailing required.

LMC Section 17.628.090(A)(2) states at least 10 days before the cost report is considered by Council, a copy of the report with a notice of the date and time of the Council meeting shall be posted at the subject premises and mailed to the owner(s) of the premises via certified mail if the owner's identity can be determined from the County Assessor's or Recorder's records

LMC Section 17.628.090(B) states the Council shall consider the cost report together with any objections or protests, and shall confirm, confirm in modified form, or reject the report.

LMC Section 17.628.090(C)(1) states the total cost of abating such nuisance, as so confirmed by the Council, shall constitute a special assessment against the respective lot or parcel of land where the nuisance occurs, and upon recordation of a Notice of Lien, in

the office of the County Recorder, shall constitute a lien on the respective lot or parcel for the amount of such assessment.

LMC Section 17.628.090(C)(2) states the assessment may be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and procedure under foreclosure and sale in case of delinquency as provided for ordinary property taxes.

Fiscal Impact:

City's Abatement Costs – Miller's Landscaping & Maintenance:	\$3,027.00
Legal Fees/Costs of Abatement:	<u>\$2,324.00</u>
Total Recovery:	\$5,351.00

Conclusion:

If approved by the City Council, the City can submit the final cost bill to the County Clerk, Recorder, Assessor, and Registrar of Voters for collection from the property owner via a special assessment, which is collected in the same manner as property taxes. This includes the City's actual enforcement costs and legal expenses associated with the abatement.

Alternatively, the City Council can reduce the amount of the cost report thereby lowering the City's recovery by the reduced amount.

Finally, the City Council can reject the cost report, which will prohibit the recovery of the abatement costs.

Staff recommends approval of the full cost report to allow the City full recovery of the fees and costs expended to bring the property into compliance with the Lompoc Municipal Code.

Respectfully submitted,



Jeff Malawy, City Attorney

- Attachment: 1. Miller's Landscaping Bill
2. Legal Bills Associated with Abatement