



City Council Agenda Item

City Council Meeting Date: October 3, 2023

TO: Honorable Mayor and City Council Members

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

SUBJECT: Public Hearing for Recovery of Cost for Abatement of Public Nuisances at 127-129 North E Street Via Special Assessment Process; Adoption of Resolution No. 6607(23) Assessing Costs of Abatement

Recommendation:

Staff recommends the City Council:

- 1) Hold a public hearing to accept objections;
- 2) Determine whether to confirm the cost report to recover the City's costs from the property owners of 127-129 North E Street via a special assessment; and
- 3) Adopt Resolution No. 6607(23) assessing the costs of nuisance abatement and directing the County Tax Collector to collect the costs as a special municipal tax on the next round of property tax assessments.

Background:

On October 17, 2021, the City received a complaint from the public concerning the rear yard of the second unit of the two residential buildings forming 127-129 North E Street (Property), which was clearly visible from the alley. At that time, the reporting party claimed the nuisance had been in existence for over five years. The Property was severely overgrown with shrubbery and there were items such as appliances and furniture stored in public view from the alley. The City notified the property owners, advised them of the violations, and necessary corrective actions.

Over the course of the past two years, several contacts were made with the property owner(s), several time extensions were granted, and some progress was made to clean up the Property. On June 21, 2023, the Property was inspected by the City's Code Enforcement Officer and it was apparent that the property owners had come to a point where no further progress was being made. In fact, conditions appeared to be gradually reverting.

On June 5, 2023, the City issued a Notice and Order to Abate to the owners, which was posted on the Property. Between past and the most current code compliance efforts, the owners had received more than adequate notice.

On July 20, 2023, the City Attorney's Office obtained an abatement warrant from the court to enter the property and abate the public nuisances on the property. The warrant was served on July 25, 2023, by posting at the property. Staff hired a landscaping service to complete the abatement of the Property. However, when the Property was inspected prior to abatement on August 2, 2023, the resident property owner had completed the abatement and the Property was voluntarily brought into compliance.

Discussion:

Lompoc Municipal Code (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: 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 City 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 the City Council, a copy of the report with a notice of the date and time of the City 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. (The property owners were notified by mail on September 14, 2023, and the Property was posted on September 18, 2023. See Attachment 2.)

LMC section 17.628.090(B) states the City 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 City 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:

Since the Property was brought into compliance by the property owner(s) there was no abatement cost. However, legal fees were incurred for the process of obtaining an abatement warrant.

Legal Fees/Costs of Abatement:	<u>\$1,738.50</u>
Total Recovery:	\$1,738.50

Submission to the Tax Collector will result in reimbursement to the City, even if the taxes are not collected, as the City is a “Teeter” city and Santa Barbara County has agreed to pay the taxes due to the City whether or not they are collected. In exchange, the County keeps the penalties and interest on the taxes when they are eventually collected.

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 owners 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 recommend 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

- Attachments: 1) Resolution No. 6607(23)
2) Notice of Hearing; Report of Costs of Abatement