

REPORT TO THE CITY COUNCIL



DATE: March 7, 2017

TITLE: Receiverships, Code Enforcement Legal Actions, and Public Nuisance Abatement Warrants

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Sponsored by: At Direction of the City Council

RECOMMENDATION

Receive and file; or provide further direction as the City Council deems fit.

DISCUSSION

The City Council's decision to authorize the City Attorney's office to pursue receiverships as a remedy for abating some of the most egregious substandard residential and lodging properties in the community has proven to be a wise and prudent decision. The opportunity to seek the appointment of a receiver in cases has served as a great tool to use to motivate owners of substandard residential units, apartment buildings, inns, hotels and motels to bring their properties in compliance with all applicable health and safety laws, rules and regulations -- in a timely and cost efficient manner for both the property owner and the City.

Moreover, the City Council's decision (through the budget) to allocate additional resources to the City's Code Compliance and Community Preservation Division has also proven to be a wise and prudent decision since it has allowed the City to make significant progress in abating public nuisance conditions throughout the City in a timely and cost effective manner. Incidentally, the City's abatement costs are subject to reimbursement by the property owner which is secured by a special assessment recorded against the subject property which must be paid along with the property taxes imposed on the subject property.

1. Receiverships

The California State Housing Law¹ provides that, where certain conditions exist on real property to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants of a building (deemed "substandard" conditions), a receiver may be appointed by a court to take control of the substandard property and to bring it into compliance with all laws and regulations. The receiver is generally authorized to take out a "super-priority" loan against the property in order to obtain the funding to rehabilitate it. The property owner is ousted from control over the subject property for the duration of the receivership, and at the end of the process the owner must either "cure" the receivership by paying off all receivership obligations, or face losing the property permanently via court-ordered sale to satisfy the receivership obligations.

The availability and appropriateness of the receivership remedy is limited to very narrow circumstances due to the following factors:

- The legislature intended the remedy to be used only for occupied residential properties which are afflicted by substandard conditions;
- The remedy is only practical when applied to properties which carry significant value, due to:

¹ Cal. Health & Saf. Code §§17910 *et seq.*

- the receiver's need to borrow against the property to obtain the funding to rehabilitate it;
- the City's and the receiver's need to recover the costs incurred in getting the receiver appointed and carrying out the receivership²;
- The City, in seeking a court order appointing a receiver, must have a proposed receiver ready and willing to accept the appointment, and as such, the desired receiver must first indicate (to the City Attorney's office) a willingness to accept an appointment over the subject property;
- The remedy is considered a serious remedy by the courts because of the deprivation of property rights involved, which means the City must show that it has afforded the property owner ample due process prior to seeking appointment of a receiver;
- The prevailing party in the lawsuit is entitled to recovery of its attorneys' fees, which means that if the City seeks appointment of a receiver when the circumstances are not appropriate and the Court sides with the property owner by denying the receivership petition, the City must pay the property owner's attorney's fees.

A. Properties within the City Under Receivership

Currently, since the City Attorney's Office and Code staff have been able to pursue other more efficient remedies, there are only two properties within the City which are subject to State Housing Law receiverships: (1) the single family residence located at 66125 2nd St.; and (2) the Flamingo Hotel, located at 67221 Pierson Blvd.³ Both such properties have undergone substantial improvement since commencement of the receiverships.

i. 66125 2nd Street (Single Family Homes)

- a. This property is a single family residence. The owner died and the estate had no money to rehabilitate the property. The trustee of the estate stipulated to appointment of a receiver. The City Attorney encouraged the County to conduct a tax sale, which resulted in a sale to new owner Farnaz Sonboli for \$25,300. Ms. Sonboli has appeared in the receivership action and is thus subject to the jurisdiction of the court. The new owner is undertaking the rehabilitation on her own volition under receiver Mark Adams' supervision. As of late, Ms. Sonboli has significantly cleaned up and secured the lot, but the ramshackle residential structure still needs to be demolished or repaired. The receiver and City are providing Ms. Sonboli time to complete the repairs.

ii. 67221 Pierson Blvd (Flamingo Hotel)

- a. This property is a hotel (although not currently operating as such) and has been in receivership since 2012. In or about 2013, the property was sold to Victor Butte, who is in the process of reconstructing the site. Mr. Butte is a DHS resident and has a family business in the Coachella Valley. Although Mr. Butte took some time to get the

² Note, however, that where a receiver is appointed over a property which does not have sufficient value to facilitate remediation and reimbursement under the receivership, the receivership can often still have a positive effect on the long-term condition of the property by facilitating a sale of the property to a more responsible owner who is willing to voluntarily remediate the property under the supervision of the receiver.

³ This receivership has been in place for a significant period of time and is being handled by Green de Bortnowsky LLP.

financing together to make the rehabilitations, the property is in the process of being rectified. At this point, the receivership is ongoing and the receiver, Mark Adams, is currently monitoring the property.

B. Costs Associated with Receivership

In a receivership, the City must initially pay the administrative and legal fees required to perform the necessary pre-lawsuit code enforcement work, file the receivership lawsuit, and obtain the court order appointing the receiver. If the City obtains such order, it will generally be considered the prevailing party in the lawsuit for purposes of cost recovery. The prevailing party is entitled to reasonable attorney's fees and costs as fixed by the court, and as such the court order appointing the receiver will contain provisions entitling the City to recovery of its legal and administrative costs and fees in connection with or prior to discharge of the receiver.

2. Public Nuisance Abatement via Abatement Warrant and Summary Abatement

A. Abatement Warrant

The public nuisance abatement warrant is a court order that authorizes the City to enter onto real property upon which public nuisance conditions exist to abate said conditions at the expense of the property owner. Although there is no statutory scheme unique to abatement warrants, the process is generally governed (by analogy established by California case law) by the statutory scheme applicable to inspection warrants.⁴ The abatement warrant remedy can be used for any type of property and for any public nuisance condition (including substandard conditions under the State Housing Law). Such conditions range from draining stagnant water from a pool to removing a fence to repairing or demolishing a building. **In Desert Hot Springs, this remedy is particularly useful for clearing the many abandoned and fire-damaged residential structures located throughout the City.**

As always, the City must adhere to the subject property owner's procedural due process rights in connection with obtaining an abatement warrant. This is particularly important where the contemplated abatement work involves a serious deprivation of property rights. Many due process protections are built into the laws that the City relies upon to obtain abatement warrants, such as the City's Municipal Code, the State Housing Law, and the Uniform Code for the Abatement of Dangerous Buildings. However, because due process is a constitutional right independent of any other specific law, providing the property owner with ample notice and time to correct the violations, as well as an opportunity to be heard, is vital to ensuring the City does not incur liability in the process.

The abatement warrant is a very valuable tool in facilitating the City's need to take significant abatement measures to protect public health and safety while protecting itself against liability to property owners. The warrant functions as a judicial acknowledgment that public nuisance conditions existed which necessitated abatement, and that due process was adhered to in connection with such abatement. However, if an abatement warrant is issued erroneously in that due process was not adhered to, it is subject to legal attack by the property owner, and if such attack is successful, the City may be liable for any abatement work performed. For that reason, the City should police itself in ensuring that it safeguards due process at all times rather than merely relying on issuance of an abatement warrant.

The abatement warrant allows the City to take action where the owner is either deceased, absentee, lacks the necessary financial capacity, or simply refuses to comply with the City's orders. The City has had significant success in obtaining abatement warrants. The

⁴ California Code of Civil Procedure Sections 1822.50 *et seq.*

following is a list of fire-damaged properties for which the City has obtained abatement warrants authorizing demolition:

- 66442 Hacienda Avenue (single family residence);
- 66414 Buena Vista Avenue (single family residence);
- 13575 Mesquite Avenue (single family residence);
- 12975 Palm Drive (former Revivals location).⁵

B. Summary Abatement

In extreme emergency situations, the City can utilize summary abatement authority, a process which authorizes the City to abate nuisances prior to a hearing and notice. Summary abatement is used in dire circumstances and generally requires the City to act immediately to preserve health and welfare. That said, the owner is generally entitled to post-deprivation, rather than pre-deprivation, due process safeguards.

C. Costs Associated with Abatements

In executing an abatement warrant or summary abatement, the City must initially pay the cost of the abatement work and its own attorneys' fees. However, once the abatement work is completed, the City is authorized to recover its abatement costs (and its attorneys' fees where authorized by the Court) via special assessment against the property. These expenses are then placed on the property tax rolls and paid in connection with payment of such taxes or in connection with the close of escrow on any subsequent sale of the property.

3. **Conclusion**

Receiverships and public nuisance abatement are two highly effective ways to correct nuisance conditions. **The City Attorney's office (with the diligent assistance of Code staff) has been successful in every attempt it has made to obtain a court-ordered receivership or abatement warrant since the City Council authorized the receivership program and the additional code enforcement resources.** The City Attorney's office has also obtained a number of inspection warrants and overseen the efforts of code compliance staff in identifying and contacting responsible property owners which has led to voluntary owner compliance in numerous other cases.

FISCAL IMPACT

None.

EXHIBIT

None.

⁵ After the warrant was obtained, the owner complied voluntarily.