

**CITY OF SACRAMENTO
CALIFORNIA**

**NEIGHBORHOOD SERVICES
DEPARTMENT**

**1231 I STREET, SUITE 200
SACRAMENTO, CA
95814-2997**

**Housing & Dangerous Buildings
916-264-5404
FAX: 264-6833**

August 24, 2001

City Council
Sacramento, California

Honorable Members in Session:

**SUBJECT: HOUSING CASE FEES AND PENALTIES -- FINDINGS OF FACT FOR
SPECIAL ASSESSMENT LIENS**

LOCATION AND COUNCIL DISTRICT: Citywide

STAFF RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution placing liens on the properties for unpaid fees and penalties and transmit the unpaid costs to the Sacramento County Auditor/Controller as special assessments against the properties.

**CONTACT PERSON: Ron O'Connor, Chief Building Inspector, Neighborhood Services
Department, 264-8183**

FOR COUNCIL MEETING OF: September 19, 2001

SUMMARY:

Delinquent fees and penalties are brought before the City Council to secure the debt by placing liens on the properties for which the fees and penalties were imposed pursuant to Titles 8.96 and 8.100 of the Sacramento City Code.

BACKGROUND INFORMATION:

Prior to the assessment of fees and penalties, each property owner was issued the appropriate legal notices, as set forth in Titles 8.96 and 8.100, and was afforded an opportunity to appear before the Housing Code Advisory and Appeals Board (HCAAB) and/or an appointed third-party examiner. Subsequent to the hearing, a "Decision of HCAAB or Hearing Examiner" notice was issued and mailed to the property owner. Included in this notice were findings and the specific fees and penalties. The decision of the HCAAB or Hearing Examiner is final and judicial review must be conducted in the manner and time frame set forth in California Code of Civil Procedure §1094.6. Sacramento City Code, Chapter 8.100 Article XVI allows the City Council to order the penalty be made both as a personal obligation and a special assessment against the property.

Each property owner listed on the attachment has received all required notices under Titles 8.96 and 8.100, and has been afforded both an opportunity to appear for an administrative hearing and a special assessment hearing. Each has received a final decision notice. None of the listed owners have paid the fees and penalties.

We submit this resolution to the City Council for declaration of a special assessment.

FINANCIAL CONSIDERATIONS:

Lien accruals will be made through County tax collections. The City will also receive partial reimbursement from monies collected by the County based on the "Teeter" legislation agreement with the County. Any money generated from these liens would be included in the approved budget.

ENVIRONMENTAL CONSIDERATIONS:

Per Section 15061(b)(3) of the CEQA guidelines, a Notice of Exemption will be filed. The proposed resolution will not have any adverse environmental impact.


POLICY CONSIDERATIONS:

Conducting the lien hearing is in accordance with Sacramento City Code Titles 8.96 and 8.100. All property owners listed in the attachment were afforded an opportunity to appear before an impartial hearing examiner or hearing board for the stated violation. Each owner was afforded the additional opportunity to protest the imposition of the fees and penalties at a special assessment hearing.

E/SBD ISSUES:

Not applicable.

Respectfully submitted,



Margie Innocenti
for

MAX B. FERNANDEZ
Director, Area 1
Neighborhood Services Department

Recommendation approved:



RPT *for*

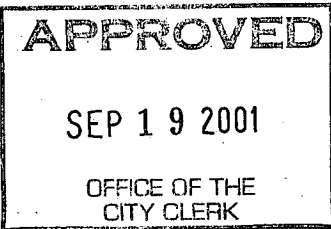
ROBERT P. THOMAS
City Manager



RR

RICHARD RAMIREZ
Deputy City Manager

Attachment



RESOLUTION NO. 2001-634

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION ACCEPTING THE FINDINGS OF FACT OVERRULING PROTESTS AND PLACING LIENS ON PROPERTIES FOR UNPAID ASSESSMENTS AS SHOWN ON ATTACHMENT FOR HOUSING AND DANGEROUS BUILDINGS CASE FEES AND PENALTIES

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO THAT:

WHEREAS, heretofore the Neighborhood Services Department, Code Enforcement Division, Housing & Dangerous Buildings Inspections, in accordance with Sacramento City Code, Chapter 8.96 Article IX did provide a hearing before the Housing Code Advisory and Appeals Board (HCAAB) and/or appointed third-party Hearing Examiner to consider all protests for unpaid fees and penalties, if any; and

WHEREAS, notice of the time and place of hearing was given in accordance with Sacramento City Code, Chapter 8.96 Article IX; and

WHEREAS, the Neighborhood Services Department, Code Enforcement Division, Housing & Dangerous Buildings Inspections, established by competent evidence before the HCAAB and/or appointed thrid-party Hearing Examiner that in each case the unpaid fees and penalties had been imposed in accordance with City Code; and

WHEREAS, the Neighborhood Services Department, Code Enforcement Division, Housing & Dangerous Buildings Inspections, established by competent evidence before the HCAAB and/or appointed third-party Hearing Examiner that in each case the unpaid fees and penalties are due; and

WHEREAS, the City Council has found the unpaid fees and penalties to be a reasonable cost.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

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

1. That, the reasonable penalties in the aggregate amount of \$11,647.70 for unpaid fees and penalties is the sum set forth on the attachment incorporated into this resolution.
2. That, as provided in Section 38773.5 of the California Government Code, the City of Sacramento is entitled to and hereby attaches special assessment liens upon the described properties upon recordation in the office of the County Recorder of the County of Sacramento.
3. That, such liens shall constitute a special assessment against the properties at which the services were rendered, and shall be collectible at the same time and in the same manner as secured property taxes are collected, and shall be subject to the same penalties, priorities, and procedures in the case of delinquency.
4. That, such lien also constitutes a personal obligation against the owner of the property.
5. That, the City Clerk shall transmit a certified copy of this resolution to the Sacramento County Auditor/Controller.

MAYOR

CITY CLERK

Attachment

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

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Line #	Parcel Number	Case Number	Property Address	Property Owner	Amount Due	Invoice Number	Council District	County ID
1	250-0150-027-0000	3525ALTO00	3525 Altos	U.S. Housing Revocable Living Trust	3,436.20	HCE54800	2	0201
2	250-0150-027-0000	3525ALTO00	3525 Altos Av	U.S. Housing Revocable Living Trust	833.75	HCE54711	2	0678
3	250-0150-027-0000	3525ALTO00	3525 Altos Av	U.S. Housing Revocable Living Trust	1,977.75	HCE54667	2	0678
4	263-0163-020-0000	HSG9901275	2678 Forrest St	US Housing Revocable Living Trust	3,800.00	HCE010079	2	0201
5	263-0163-020-0000	HSG9901275	2678 Forrest St	US Housing Revocable Living Trust	1,600.00	HCE010078	2	0656

TOTAL TO BE LIENED:

\$11,647.70

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

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September 19, 2001

Hon. Heather Fargo, Mayor
City Council Members
City of Sacramento
915 I Street, Room 304
Sacramento, CA 95814

Re: Agenda Item 2.11, September 19, 2001

Dear Mayor Fargo and City Council Members:

I represent U.S. Housing Revocable Living Trust. This letter is to protest the adoption of the proposed resolution on today's agenda imposing Special Assessment Liens against the property owner and the properties located at 3525 Altos Avenue and 2687 Forrest Street. The basis for the protest is set forth in the attached letter and additional grounds in this letter.

1. The provisions of the Housing and Dangerous Buildings Codes are unconstitutional in that decision whether to demolish a structure under those codes is arbitrary and capricious and those provisions are applied by the Housing and Dangerous Buildings Division without ascertainable standards. The individual inspectors are given discretion that is not controlled by ascertainable standards and the inspectors use unspecified subjective criteria in the exercise of their powers and duties respecting decisions to demolish structures that have been determined to be either substandard or dangerous.
2. The provisions of the Housing and Dangerous Buildings Codes are unconstitutional in that they do not give property owners adequate notice and opportunity for hearing before a decision is made to demolish structures that have been determined to be either substandard or dangerous.
3. The hearing on the recommendation to impose a lien against the property or the property owner does not afford the owner procedural due process in that the Housing Code Advisory and Appeals Board has not adopted rules of procedure.
4. The hearing on the recommendation to impose a lien against the property or the property owner does not afford the owner procedural due process in that the record of the Housing Code Advisory and Appeals Board includes evidence in the form of the entire Housing or Dangerous Buildings file maintained by the Housing and Dangerous Buildings Division, but the owner is not permitted to review all the documents in the file. In these cases, the entire file was entered into evidence before the Board but documents were removed from the file before the owner was permitted to inspect it. The items removed were claimed to be the subject of attorney-client privilege after the file was entered into evidence before the Board.



5. The hearing was unfair because the Board continued the hearing over the objection of the property owner in order to afford the staff an opportunity to obtain an amendment to the code to correct a procedural defect and then applied the new provision retroactively at the continued hearing, which had begun at a previous meeting without affording the property owner notice of the amendment before the continued hearing.
6. There was no evidence in the record of the hearing before the Board supporting imposition of a lien as a personal obligation against the property owner in addition to imposition of a lien against the property.
7. The procedures used by the Housing and Dangerous Buildings Division are unconstitutional in that the time limits within which a property owner is permitted to apply for a permit to repair a structure and to complete repairs to a structure determined to be substandard or dangerous are imposed arbitrarily, without regard to the facts and circumstances of the particular structure, without any fixed ascertainable standard, and without such time limits being prescribed in either the Housing or Dangerous Buildings Codes.

As a result of these defects, the City Council should not adopt the proposed resolution and should relieve the property owner and the property from all liens and other charges imposed against them in these and prior proceedings.

Yours very truly,

STEVEN P. BELZER

SPB:dtm

cc: Rodney Rose



May 24, 2001

Steve T. Johns, Esq.
Deputy City Attorney
980 Ninth Street, 10th Floor
Sacramento, CA 95814

Re: U. S. Housing Revocable Living Trust/Rodney Rose
3525 Alto00 SB/CAT; APN 250-0150-027-0000
2687 Forrest Street. HSG9901275 SVB/JEG; APN 263-0163-020-0000

Dear Mr. Johns:

At the appeal hearing last evening before the Housing Code Advisory and Appeals Board, I raised certain legal arguments in the above-referenced cases. The board chair requested that I list my points in writing and send them to you. The Board also voted to continue the hearings on these two cases to the next regular meeting of the Board. In compliance with the Chair's request, I provide the following.

I also want to inform you that I intend to seek judicial review of any decision that is adverse to my client, Rodney Rose. I intend to raise the issues contained herein in the judicial proceedings, and to seek whatever remedies are available to my client, including damages and attorney's fees. If a challenge to the validity of certain provisions of the City Code is successful, it appears to me that the City stands to lose a good deal of money because the collection procedures would be invalidated. The City can easily avoid this consequence by dismissing the lien proceedings, writing off charges on these two cases, removing all existing liens for previous charges, and paying my client's attorney's fees. The City Council could then amend the relevant provisions of the code to cure the problem prospectively. I encourage your consideration of this offer.

INVALIDITY OF COLLECTION PROVISIONS OF §8.100.860 (Applies to Both Cases.)

Section 8.100.860(C) of the Sacramento Municipal Code provides the statutory basis for recovery by the City of Sacramento of the costs associated with enforcement of a Notice and Order. It provides in part: "Any such work shall be accomplished and the cost thereof paid and recovered in the manner provided in Articles VIII and IX of Chapter 15.116 of this title." The provision is contained within Title 8 of the code. Within Title 8 there is no Chapter 15.116. If the provision is meant to refer to Title 15, there is within Chapter 15.116, neither an Article VIII nor an Article IX. No provision in Chapter 15.116 relates to the procedure for cost recovery.

Ordinances of the City of Sacramento, a Charter City, have the same force and effect as to municipal matters, as do state statutes as to statewide concerns. They are interpreted and construed under the same rules of statutory construction. The referent code section is part of a penal statute which requires, among other things, forfeiture of property and the creation of liens. Liens may be created only by contract or by operation of law. If the law under which a lien is created does not



afford the owner of property to which the lien attaches due process of law prior to its attachment, the lien is improperly attached to the property and is invalid, or at worst, voidable.

One who reads the above-quoted provisions in order to determine the procedures and standards under which the city's authority to collect and attach liens for activities carried out under the Housing Code, is directed to non-existing sections. One must speculate or guess as to what sections the City Council may have been referring to in subdivision (C). Such a situation does not comport with minimum due process requirements. Accordingly, the Board has no authority to approve cost recovery under the provision, nor does the City Council have the authority to approve such cost recovery orders for recordation as liens against real property.

CASE NO. 3525 Alto00 SB/CAT DEFECTS

I raised the following issues as to this particular case:

There was no evidence in the file of the Housing and Dangerous Buildings, nor was any evidence presented to the Board demonstrating that prior to ordering occupants to vacate the premises, the City Attorney gave approval for such action, in violation of §8.100.860(D). Other actions may also have been taken without prior approval of the City Attorney, but there were certain items redacted from the file which I was not permitted to inspect.

After performing substantial work to correct defects in the structure called out by the City's inspectors, the owner was not informed or apprised of the right to have a hearing before the Board as permitted or required by §8.100.890.

The Housing and Dangerous Buildings file reflects that after staff had actual knowledge of a correct address for the owner, it persisted in mailing various notices to addresses staff knew were incorrect. See mailings in the file and entries on the Case Sheet Property Record and the Inspector Report on 6/22/99, 9/8/99 and 11/22/99, two days before demolition of the structure.

CASE NO. HSG9901275 SVB/JEG DEFECTS

I raised the following issues as to this particular case:

The Notice and Order required completion of repairs within 60 days of the date of the order. It was issued on May 23, 2000 and was mailed to an address that staff had actual knowledge was incorrect. Staff had actual knowledge of the correct address in that it had already personally served other notices on Mr. Rose at the correct address, and had posted the building with a N&O package with the correct address on the documents.

Personal service of the N&O was made on Mr. Rose on June 17, 2000 – the building was demolished by the City's contractor commencing on or about July 28, 2000, less than 60 days after the owner had knowledge of the notice and order.



The final notice, dated June 20, 2000, was not mailed until July 20, 2000, and was not received by the owner until August 2, 2000. By the time the notice was received, the building had already been demolished. The building was demolished approximately 41 days after the N&O had been served on the owner, 19 days less than the 60 days permitted for repairs.

The Final notice was also mailed to an address that staff had actual knowledge was incorrect and was not mailed to the address which staff had actual knowledge was correct.

The interior of one unit of this duplex was never inspected by staff, and at the time of positing the building and the time of demolition, the front unit had never been inspected to determine its condition. The decision to demolish the entire structure was not supported by any evidence of its entire condition.

Please contact me at your earliest convenience to advise whether the City intends to pursue these matters. If it does, I request that you immediately inform me in writing of the names of City staff who will testify at the continued hearing and provide me with a list of the documents and entries in each of the files that have been withheld from my inspection, the particular privileges the city claims as to each such document and entry, the bases for withholding each such document and entry, and your citations to the statutory or case authorities upon which you rely in claiming such privileges.

Yours very truly,

STEVEN P. BELZER

SPB:dtm

cc: Rodney Rose
Housing Code Advisory and Appeals Board