



## Legislation Text

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**File #:** 17-498, **Version:** 1

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*Report Prepared by: Kelly C. Fincher, Chief Deputy City Attorney*

**SUBJECT:** Cost of Assessment and Report Re: 439 East Olive Avenue (Abatement and Demolition of Building)

### REPORT IN BRIEF

Accounting of costs and assessment report for the abatement of a public nuisance located at 439 East Olive Avenue.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Conducting a public hearing and consider all testimony and other evidence with regard to the cost of assessment and report for the abatement of a public nuisance located 439 East Olive Avenue, Merced, California; and,
- B. Reviewing and approving the accounting of costs and assessment report for the abatement of a public nuisance located at 439 East Olive Avenue; and,
- C. Establishing the charge for the abatement in the amount of \$14,254.43; and,
- D. Adopting **Resolution 2018-05**, a Resolution of the City Council of the City of Merced, California, confirming the cost assessment report relating to the nuisance abatement at 439 East Olive Avenue, Merced, California, assessing a charge therefor against the property, directing the tax collector of Merced County to collect the delinquent account, and directing the city clerk to file a certified copy of this resolution with the county recorder to provide notice of the lien.

### ALTERNATIVES

1. Request additional information and continue to a subsequent date.
2. Modify the recommended action.
3. Disapprove the recommended action.

### AUTHORITY

Merced Municipal Code Section 17.16.010.

Chapter 9 of the Uniform Code for the Abatement of Dangerous Buildings:

- Section 901 of the Uniform Code for the Abatement of Dangerous Buildings

states as follows:

“The director of public works shall keep an itemized account of the expense incurred by this jurisdiction in the repair or demolition of any building done pursuant to the provisions of Section 701.3, Item 3, of this code. Upon the completion of the work of repair or demolition, said director shall prepare and file with the clerk of this jurisdiction a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the persons entitled to notice pursuant to Section 401.3.”

- Section 902 provides that the clerk shall present the itemized account of the expense to the legislative body of the jurisdiction for consideration. The legislative body shall hear the report and any protests or objections thereto.
- Section 904 provides that upon the hearing of the matter, the legislative body shall make any such revision, correction, or modification in the report or the charge as it may deem just, and shall confirm or reject the report.
  - Section 905.1 provides that the legislative body may order the charge be made a personal obligation of the property owner or assess said charge against the property involved. If the legislative body opts to make the charge a personal obligation, it shall direct the attorney for the jurisdiction to collect the amount by use of all appropriate legal remedies. If the legislative body orders that the charge be assessed against the property, it shall confirm the assessment, cause it to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property.

## CITY COUNCIL PRIORITIES

As provided for in the 2017-18 Adopted Budget

## DISCUSSION

On June 29, 2017, the City of Merced declared that the condition of the building located at 439 East Olive Avenue (the “Property”), also known as Assessor’s Parcel Number 006-124-003, constituted a public nuisance. The owner of the Property was notified of the violation and ordered to bring the Property into compliance or to demolish the building. The owner failed to abate the nuisance or appeal the finding and order. On August 17, 2017, the City of Merced completed an abatement of the public nuisance by demolishing the building on the Property. The declaration of public nuisance and the abatement thereof were conducted pursuant to and in accordance with the Uniform Code for the Abatement of Dangerous Buildings.

The City of Merced has adopted the Uniform Code for the Abatement of Dangerous Buildings as part of the Merced Municipal Code at Section 17.16.010. The Uniform Code for the Abatement of Dangerous Buildings defines what constitutes dangerous buildings and provides a procedure for identifying dangerous buildings and either making them safe or demolishing them. The Code also provides for notice of violations to the owner(s) of the property and notice of their appeal rights. Finally, as described in the “Authority” section of this report, if the City is forced to abate a nuisance condition, when the abatement is complete, the Code provides for the collection by the City of the

costs of abatement.

### ***History of Abatement of Nuisance on the Property***

Since approximately May 2014, the Property was “Red-tagged” and the house posted “Unsafe to Occupy” due to lack of water, sewer, and garbage service. The Property quickly fell into disrepair, attracting transients for activities that were unsafe. A detached garage on the Property was completely destroyed by fire in 2015. The house on the Property sustained significant structural damage from two separate fires in 2016. In an attempt to locate the owner of the Property, it was discovered that the owner passed away in October 2012, and no probate proceeding was initiated with respect to the estate.

On April 9, 2017, an Inspection Warrant was issued by the Merced Superior Court allowing the City and designated representatives to enter upon the Property and determine whether conditions of non-conformity existed in violation of the Merced Municipal Code. On April 11, 2017, Code Enforcement Officer Jackie Hicks inspected the Property along with Assistant Chief Building Official Richard Graves of the City of Merced Building Department, Fire Marshal Mike Stephenson of the City of Merced Fire Department, and representatives of Unruh Bobcat Service and Taylor Backhoe Service.

After the inspection, it was determined that the Property was in violation of many sections of the Merced Municipal Code, the Building Code, and the Uniform Code for the Abatement of Dangerous Buildings. Many of these provisions are overlapping in effect, so City staff complied with the procedures provided in the Uniform Code for the Abatement of Dangerous Buildings to issue the owner of record a “Notice and Order to Repair or Demolish Substandard Housing” which cited the many violations of the Uniform Code for the Abatement of Dangerous Buildings. Included in the Notice and Order to Repair or Demolish Substandard Housing was an instruction to the owner of record to bring the Property into compliance with the codes or to demolish the building. The Notice and Order to Repair or Demolish Substandard Housing stated that if he owner of record did not comply, the City could demolish the building and charge the Property owner for the cost. The Notice and Order to Repair or Demolish also stated the Property owner’s appeal rights. The City did not receive a notice of appeal, and the Property remained in an abandoned, dilapidated and substandard condition.

The City Attorney’s Office sought and obtained an Abatement Warrant for authority from the Court to enter onto the Property and to demolish the building. The Abatement Warrant was issued on August 9, 2017. The City’s hired contractor, Unruh Bobcat Service, completed demolition of the building on August 17, 2017.

The City has expended funds for the cost of demolition, for staff time involved in the inspections and securing the building, and the process of obtaining authority from the Court to abate the nuisance on the Property as set forth in Attachment “A” hereto.

As addressed in the “Authority” section of this report, if the City wishes to recover its costs with regard to abatement, the City Council must review and approve the accounting of the costs presented. The City Council may make changes it deems to be just. Once the City Council has approved the cost report and the charge based thereon, the City Council may order that the charge be made an assessment and a lien against the Property, and not a personal obligation of the owner, in light of the fact that the Property owner is deceased and there are no known heirs or devisees.

## **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

## **ATTACHMENTS**

1. Attachment A - Cost Assessment Report - Public Nuisance Abatement by the City of Merced Pertaining to 439 East Olive Avenue
2. Attachment B - Confirming Resolution