



Legislation Text

File #: 18-214, **Version:** 1

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

SUBJECT: Approval of Legal Service Agreement with the Law Firm Silver & Wright, LLP, for \$75,000 for Special Legal Services Related to Receivership Actions; Waiver of the Competitive Bidding Requirement (Professional Services)

REPORT IN BRIEF

Considers approving a legal services agreement with the law firm Silver and Wright in the not to exceed amount of \$75,000 annually for receivership actions filed under the Health and Safety Code on substandard properties within the City; waives the competitive bidding requirement (Professional Services).

RECOMMENDATION

City Council - Adopt a motion approving a legal service agreement with the law firm Silver & Wright, LLP, for \$75,000 annually for code enforcement receivership actions and waive the competitive bidding requirement (Professional Services); and, authorizing the City Manager or Assistant City Manager to execute the legal services agreement.

ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to conditions other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY

Merced City Charter section 200. Merced Municipal Code section 3.04.210 (exemptions from competitive bidding).

CITY COUNCIL PRIORITIES

Assists the Code Enforcement department and Code Enforcement Taskforce with addressing substandard properties within the City that pose immediate threats to health and public safety.

DISCUSSION

The City's Code Enforcement Department and the Code Enforcement Taskforce have been working to address a variety of issues associated with blighted properties within the City. The primary enforcement tools used by the Code Enforcement Department and the taskforce include issuing

administrative citations and City initiated abatement actions.

Recently, the Taskforce identified several properties that have an extensive history of violations of the Merced Municipal Code, Uniform Building Code, Health and Safety Code, Fire Code and/or Building Code whose owners are non-responsive and have failed to voluntarily bring their properties into compliance with these codes. The condition of these properties have a significant negative impact on their neighborhoods and the City. Moreover, due to their condition, these properties endanger the health and safety of the public and/or occupants.

The Taskforce would like to pursue Health and Safety Code Receiverships over these properties. This process entails filing a Petition with the Court pursuant to California Health and Safety Code sections 17980 - 17992 to have a Receiver appointed to temporarily take control of the property and fully repair and rehabilitate it. If appointed, the Receiver will work as an agent and officer of the court that approved the appointment. Throughout this process, the property will remain under the court's supervision and control. Under the Health and Safety Code, the Court has the discretion to grant a Receiver a variety of powers, including, but not limited to the following powers:

- To take full and complete control over the property;
- To demolish a structure;
- To borrow funds against the property to repair and completely rehabilitate the property;
- To manage the substandard structure and pay operating expenses such as taxes, utilities, insurance and general maintenance;
- To enter into contracts with licensed contractors who can perform the necessary repairs to fully repair the property and bring it into compliance with all applicable codes;
- To pay for the expenses of the rehabilitation; and,
- To pay for relocation benefits.

City staff who regularly deal with Code Enforcement issues relating to blighted properties are excited about the prospect of initiating the Receivership process over the identified properties. Staff believes that this will provide an immediate and comprehensive result and will relieve the burden that these properties are placing on a City Departments.

Perhaps the greatest benefit to the City in pursuing this type of action is that all of the costs associated with the rehabilitation are paid from the property by a lien that has "super priority," meaning it will supersede all other debts, including mortgages. In addition, under the Health and Safety Code, the legal costs incurred will be reimbursed by the Receivership estate. It is anticipated that the legal fees incurred will be reimbursed within about nine months of the receivership order of judgment. Once the funds are reimbursed, they can be rolled over to fund new receivership cases. It is estimated that each Receivership case will cost about \$25,000, therefore the \$75,000 used to fund this Agreement will initially fund three Receivership actions, with additional actions to be pursued once the funds get replenished.

Pursuant to the Legal Services Agreement with Silver & Wright, the City will pay the blended rate of \$197 an hour for attorney services and \$119 an hour for paralegal services. The Law Firm Silver & Wright, focuses on providing cities and counties specialized legal services in the area of Code Enforcement, including handling Health & Safety Receivership actions.

While ideally, the City Attorney's Office would like to handle receivership actions in house, at this time, due to staffing levels, it is impractical to do so. However, it is hoped that by going through the receivership process with the Silver & Wright, the City Attorney's Office, the Code Enforcement department and the members of the Taskforce will become educated about this process so that we could eventually handle these matters in house if there is a need or desire to do so.

If approved, this agreement for Legal Services will provide the City's Code Enforcement department and the taskforce with an additional tool to correct substandard and blighted properties. It satisfies the City Council's goal of improving the community while not having the City bear the burden and cost of rehabilitation.

IMPACT ON CITY RESOURCES

The City will recover its fees and costs from the judgment or settlement in the Receivership action. The up-front costs of these services will be paid by funds already provided by the City Council in the substandard housing abatement fund.

ATTACHMENTS

1. Legal Services Agreement with Silver & Wright, LLP