

***REVISED AGENDA**

*Addition - Special Order
of Business – Items 4 & 5*

**CITY COUNCIL OF THE CITY OF MORENO VALLEY
MORENO VALLEY COMMUNITY SERVICES DISTRICT
CITY AS SUCCESSOR AGENCY FOR THE
COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF MORENO VALLEY
MORENO VALLEY HOUSING AUTHORITY**

January 15, 2013

STUDY SESSION – 6:00 P.M.

City Council Closed Session

First Tuesday of each month – 6:00 p.m.

City Council Study Sessions

Third Tuesday of each month – 6:00 p.m.

City Council Meetings

Second and Fourth Tuesdays – 6:30 p.m.

City Hall Council Chamber - 14177 Frederick Street

Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, in compliance with the Americans with Disabilities Act of 1990. Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to Mel Alonzo, ADA Coordinator at 951.413.3705 at least 48 hours before the meeting. The 48-hour notification will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Marcelo Co, Mayor Pro Tem
Jesse L. Molina, Council Member

Tom Owings, Mayor

Richard A. Stewart, Council Member
Victoria Baca, Council Member

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THE CITY COUNCIL RECEIVES A SEPARATE STIPEND FOR CSD MEETINGS

**STUDY SESSION - 6:00 PM
JANUARY 15, 2013**

CALL TO ORDER

PLEDGE OF ALLEGIANCE - Council Member Marcelo Co

INVOCATION

ROLL CALL

INTRODUCTIONS

PUBLIC COMMENTS ON MATTERS UNDER THE JURISDICTION OF THE CITY COUNCIL

There is a three-minute time limit per person. Please complete and submit a BLUE speaker slip to the City Clerk. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council Member, staff member or other person.

SPECIAL ORDER OF BUSINESS

1. MORENO VALLEY YOUTH SPORTS FEES (PCS/15 MIN)
2. FORECLOSURE & SQUATTERS (POWERPOINT ORAL PRESENTATION) (CEDD/15 MINS)
3. DISCUSSION OF CODE ENFORCEMENT REMEDIES (POWERPOINT) (CA/20 MINS)
- *4. UPDATE ON FUNDING OF RANCHO DORADO SOUTH PROJECT (CMO/15 MINS) ❖
- *5. DISCUSS CONCEPT OF ESTABLISHING A UTILITY COMMISSION OR

AGENDA
January 15, 2013

COMMITTEE (CMO/15 MINS) ❖

6. CITY COUNCIL REQUESTS AND COMMUNICATIONS

(Times shown are only estimates for staff presentation. Items may be deferred by Council if time does not permit full review.)

❖ Oral Presentation only – No written material provided

***Materials related to an item on this Agenda submitted to the City Council/Community Services District/City as Successor Agency for the Community Redevelopment Agency/Housing Authority after distribution of the agenda packet are available for public inspection in the City Clerk's office at 14177 Frederick Street during normal business hours.**

*Revision/Addition

CLOSED SESSION

A Closed Session of the City Council, Community Services District, City as Successor Agency for the Community Redevelopment Agency of the City of Moreno Valley or Housing Authority will be held in the City Manager's Conference Room, Second Floor, City Hall. The City Council will meet in Closed Session to confer with its legal counsel regarding the following matter(s) and any additional matter(s) publicly and orally announced by the City Attorney in the Council Chamber at the time of convening the Closed Session.

- **PUBLIC COMMENTS ON MATTERS ON THE CLOSED SESSION AGENDA UNDER THE JURISDICTION OF THE CITY COUNCIL**

There is a three-minute time limit per person. Please complete and submit a BLUE speaker slip to the City Clerk. All remarks and questions shall be addressed to the presiding officer or to the City Council and not to any individual Council member, staff member or other person.

The Closed Session will be held pursuant to Government Code:

1 SECTION 54956.9(b)(1) - CONFERENCE WITH LEGAL COUNSEL -
SIGNIFICANT EXPOSURE TO LITIGATION

Number of Cases: 5

2 SECTION 54956.9(c) - CONFERENCE WITH LEGAL COUNSEL -
INITIATION OF LITIGATION

Number of Cases: 5

REPORT OF ACTION FROM CLOSED SESSION, IF ANY, BY CITY ATTORNEY

ADJOURNMENT

CERTIFICATION: I, Jane Halstead, City Clerk of the City of Moreno Valley, California, certify that the City Council Agenda was posted in the following places pursuant to City of Moreno Valley Resolution No. 2007-40:

City Hall, City of Moreno Valley
14177 Frederick Street

Moreno Valley Library
25480 Alessandro Boulevard

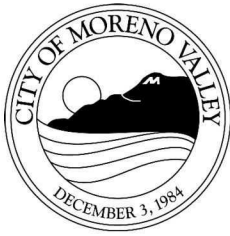
Moreno Valley Senior/Community Center
25075 Fir Avenue

Jane Halstead, CMC,
City Clerk

Dated Posted: January 10, 2013

AGENDA
January 15, 2013

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APPROVALS	
BUDGET OFFICER	<i>CAF</i>
CITY ATTORNEY	<i>[Signature]</i>
CITY MANAGER	<i>[Signature]</i>

Report to City Council

TO: Mayor and City Council

FROM: Michael J. McCarty, Parks and Community Services Director

AGENDA DATE: January 15, 2013

TITLE: MORENO VALLEY YOUTH SPORTS FEES

RECOMMENDED ACTION

Recommendations: That the CSD:

1. Provide direction as to options and opportunities related to local youth baseball/softball organizations.

ADVISORY BOARD/COMMISSION RECOMMENDATION

N/A

BACKGROUND

The allocation of field space for all youth sporting activities is always quite difficult and problematic when adequate "lighted" field areas, complete with snack bar revenue possibilities are not available to accommodate the number of teams participating in Moreno Valley. With all local youth organizations being charged \$2.00 per field rental (this helps offset general maintenance such as water, infield dirt, mowing, field preparation, etc.), plus each organization being responsible for paying their light bills at a discounted rate of \$15 per hour (Attachment 1), some groups have found it difficult to raise necessary funds to cover their expenses. Parks and Community Services Department staff meet monthly with all groups to discuss alternatives, explore creative ideas and negotiate field allocations to help instill equality for all children participating.

In researching all organizations' financial status, City staff documented the fact that several groups were delinquent in their payments (Attachment 2). Staff made some internal adjustments as well as conducting meetings with each affected organization to create a specialized payment plan that would fit within each group's financial

capabilities. Since this time, the deficit has been drastically reduced and in some cases eliminated entirely.

Moreno Valley Little League (MVLL) has found it increasingly difficult for their organization to meet ongoing financial responsibilities and, along with other affected organizations such as Canyon Springs Little League (CSLL) and Diamond Girls Softball (DGS), has recently been meeting with Parks and Community Services Department staff to try and brainstorm ideas to help rectify this situation.

DISCUSSION

The aforementioned meetings with youth baseball/softball board members proved to be quite productive and effective with creating equality, respect, and the implementation of new ideas. The main issue was the perception that MVLL believed they did not have adequate access to refreshment areas, which was creating an obstacle in their revenue generating possibilities. Staff facilitated several meetings and, as a result, CSLL volunteered to relinquish one of their weekday snack bar nights at Sunnymead Park's four-field complex.

The City has offered MVLL the opportunity to share the current snack bar operation at the City's Valley Skate Park (located at March Field Park). This refreshment area currently generates money to help offset events such as the newly created Concerts in the Park and Movies in the Park, both free events to the community. With the opening of the new outdoor soccer arena (soon to be operational seven days and nights per week), this snack bar will be able to help the City offer more events in the future. Being that MVLL conducts some games during the week and all their games on weekends at March Field Park, the idea of sharing this refreshment area will be quite profitable for the league.

The Parks and Community Services Department schedules softball games on Sunday evenings at Sunnymead Park and has offered the opportunity for MVLL and CSLL to operate the snack bar for these games. The group decided MVLL would take seven weeks of the 13-week season, and CSLL will staff the other six weeks, alternating each Sunday evening.

In addition, staff has been actively researching the possibility of selling advertising banners for the outfield fences on three Sunnymead Park athletic fields. During our most recent meetings with the three youth sporting groups, staff offered and all leagues accepted this revenue-generating opportunity.

FISCAL IMPACT

None.

SUMMARY

The annual light bills from Southern California Edison, created from youth sports usage, is approximately \$150,000. The Parks and Community Services Department currently

bills the groups approximately 10-12% less than the actual Edison amount, and the \$15.00 hourly rate is specified in the City's fee schedule (Attachment 3). Staff has written two letters in the past few years to Edison requesting a reduction in fees for youth athletic teams and received no adjustments. Staff contacted other cities (Attachment 4) as to fees passed on to their local youth organizations and found a variety of answers. Some smaller cities have built this fee into their budgets; others have the flexibility of functioning within a city-operated utility system, while some bill the leagues the fees generated. It should be noted that City does not profit in any way from youth athletic group fees.

NOTIFICATION

Posting of the agenda.

ATTACHMENTS

- Attachment 1: Parks Ballfield Lighting Cost
- Attachment 2: Organizations' Outstanding Balances
- Attachment 3: FY 2012/2013 Fee Schedule
- Attachment 4: Light Fee Resource

Prepared By:
Michael McCarty
Director of Parks and Community Services

Department Head Approval:
Michael McCarty
Director of Parks and Community Services

Council Action	
Approved as requested:	Referred to:
Approved as amended:	For:
Denied:	Continued until:
Other:	Hearing set for:

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PARKS BALLFIELD LIGHTING COST - Attachment 1

PARK BALLFIELD SITE									
SUNNYMEAD									
					17.75				
MORRISON									
					16.55				
MARCH FIELD									
					17.60				
MVCP									
					17.10				
J.F.K.									
					15.55				
Woodland									
					14.65				

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Organizations' Outstanding Balances - Attachment 2

Name of Organization	Balance Owed	Balance Outstanding as of 1/1/13	
Inland United	\$ 17,666.00	\$ -	
AYSO	\$ 26,508.87	\$ -	
Adult Soccer	\$ 42,560.53	\$ 2,621.00	
CSL/Intercities	\$ 5,157.00	\$ -	
Moreno Valley Heat (organization disbanded)	\$ 11,110.64	\$ 5,200.00	
Moreno Valley Little League	\$ 9,261.00	\$ 2,810.00	
Canyon Springs Little League	\$ 9,816.90	\$ 3,649.00	
Moreno Valley Youth Federation	\$ 62,399.00	\$ 10,923.75	
Diamond Girls Softball League	\$ 4,656.50	\$ -	
Universal Soccer	\$ 4,477.50	\$ 288.00	
FIATM			Current
Rancho Bellagio Ravens Football.			Current
Rancho Bellagio Panthers Football			Current
Pop Warner Football			Current
Junior All American Football			Current
Kids Come First			Current
Champion Youth			Current
	\$ 193,613.94	\$ 25,491.75	
	Amount Paid to Date	Amount Still Outstanding	
	\$ 168,122.19	\$ 25,491.75	

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Section 6 - Parks and Community Services

Attachment 3

Fee Description	Policy Category	Unit	Resident Fee
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Park Reservations

Non-Resident Fees: Fees for Non-Residents to participate in Recreation Programs and Services will be charged at full cost recovery, which is the Resident Fee plus 30%.

Athletic Field Reservation

Non-Profit Youth Groups per field	N/A	2 Hour min.	\$ 2.00
Adult Non-Profit Groups and Unorganized Group Play per field	N/A	Per Hour	\$ 5.00
Adult & Youth Sports play by Private Groups	N/A	Per Hour	\$ 10.00
Organized Commercial (For Profit) Groups (per field)	N/A	Per Hour	\$ 50.00
Field Preparation - not included - cost recovery of staff overtime	N/A	Per Hour	\$ 50.00
Cancellation / Transfer Fee	N/A	N/A	20%

Athletic Field Lighting

All Users	N/A	Per Hour	\$ 15.00
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Snack Bar (4 Hours or Less Play)

Moreno Valley Youth and Non-Profit Groups	N/A	Per Day	\$ 20.00
Moreno Valley Youth and Non-Profit Groups	N/A	Per Evening *	\$ 10.00
Cleaning Deposit Fee (required for all groups)	N/A	Per Rental	\$ 125.00
Key Deposit (required for all groups)	N/A	Per Group	\$ 25.00

Storage Unit Rental

Storage Units	N/A	Per Month	\$ 35.00
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Over 4 Hour Play

Field Reservation/ Non-Profit (First field preparation included.)	N/A	Per Field	\$ 100.00
Field Reservation/ Private Group (First field preparation included.)	N/A	Per Field	\$ 175.00
Field Preparation - Weekday-Cost Recovery	N/A	Per Field	\$ 50.00
Mound Drop and Removal	N/A	Per Event	\$ 175.00-300.00
Admission Gate (Pre-Approved by Director)	N/A	Per Event	25% of Gate
Snackbar Cleaning Deposit Fee (required for all groups)	N/A	Per Event	\$ 200.00
Snackbar	N/A	Per Day	\$ 50.00
Vendor Fee	N/A	Per Event	\$ 100.00
Facility Deposit	N/A	N/A	\$ 100.00
Cancellation/ Transfer Fee	N/A	N/A	20%
Gate Admission Must be Pre-Approved by Director Per Event	N/A	N/A	20%

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Attachment 4

Light Fee Resource

Resident Youth Non Profit

City	Field/Light Fee
Corona	Cost recovery per location
Rancho Cucamonga	\$5-\$10 donation per participant of league
Yucaipa	\$8/hr with or without lights
Perris	\$7/hr with or without lights
Fontana	\$2 all fields Going to City Council to increase to cost recovery
Rialto	\$11/hr
Riverside	\$2 without lights/ \$4 with lights Has increased in last 2 years and are proposing a continual increase until cost effective Riverside operates under its own utility system
Temecula	No fee without lights - \$5/hr with lights Cost recovery built into annual budget
Murrieta	All fees based on facility used Average range of \$15/hr

* An overwhelming majority of the cities listed have an extremely high adult and non-resident fee to offset the low cost of the resident teams.

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CITY OF MORENO VALLEY

Foreclosures
&
Squatters

CITY OF MORENO VALLEY

Foreclosure Program

Foreclosure Strike Team

- ❖ Program initiated July 2008, at the direction of City Council.
- ❖ Address the proliferation of unmaintained foreclosed residences Citywide.
- ❖ Necessary Code provisions were in place to require financial institutions to maintain foreclosed residential dwellings.

Code Provisions

- ❖ Chapter 6.04 – Abatement of public nuisances

Property maintenance issues;

- Overgrown vegetation
- Lack of landscaping
- Polluted pools
- Unsecured pools and residences
- Junk, trash and debris

Code Provisions

❖ Chapter 1.10 – Civil Citations

- Authority to issue civil citations to all responsible parties for Municipal Code violations.

❖ SB1137

- Lender can be held responsible if it fails to maintain the exterior of the property.
- City may impose a civil fine up to \$1,000 per day per violation.

Staff Resources

- ❖ Foreclosure Strike team originally was comprised of four team members
 - Two full-time Code Compliance Officers
 - One part-time Planner (CDBG)
 - One part-time Building Inspector (CDBG)

Current Resources

- ❖ Current team consists of eight members that work foreclosures part-time.
 - One part-time Planner (CDBG)
 - One part-time Building Inspector (CDBG)
 - Two part-time Code Officers (JAG Grant)
 - Three Code Officers working foreclosure cases part-time
 - One Code Compliance Volunteer

Stages of Foreclosure

- The Notice of Default(NOD)is filed by the bank when the loan becomes delinquent.
- Notice of Trustee Sale notifies the homeowner that the bank intends to sale the property.
- Foreclosure. This stage occurs when ownership is relinquished to the financial institution or another party.

Enforcement Process

- ❖ Code Case is initialized due to a citizen complaint or generated by code personnel.
- ❖ Staff determines ownership through the following databases and/or services;
 - Dataquick
 - Realquest
 - MERS –Mortgage Electronic Registration System
 - S.E.C. – Security & Exchange Commission
 - Lane Guide
 - Spokeo
 - LexisNexis

Enforcement Process

- ❖ Notify all respective parties which include;
 - REO Broker/Realtor
 - Property Owner
 - Financial Institution
 - Servicing Company
 - Tenant

- ❖ Issue a Notice of Violation or Notice to Abate

Enforcement Process

- ❖ Final Notification is issued to all responsible parties.
- ❖ File a Notice of Non-Compliance at the Riverside County Recorder's Office.
- ❖ Begin the Civil Citation Process
 - First Citation - \$100 per violation
 - Second Citation - \$200 per violation
 - Third Citation - \$500 per violation
 - Case forwarded to the City Attorney's Office for legal proceedings. Initiate SB1137 fees.

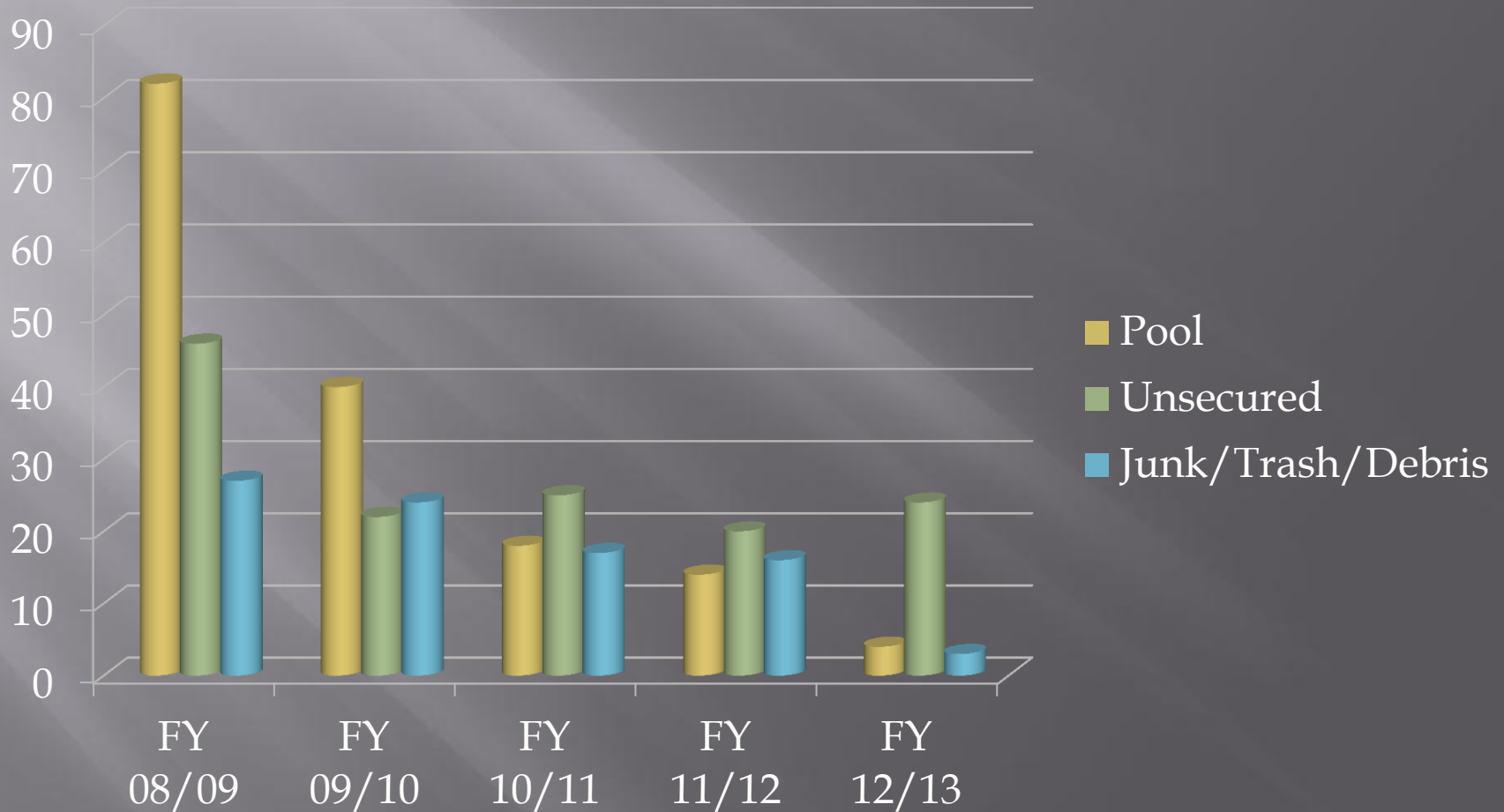
Abatement Process

- ❖ Code Compliance staff performs the abatement of nuisances at vacant foreclosed properties when urgent circumstances exist and responsible parties cannot be reached and/or are non-cooperative.
- ❖ This includes;
 - ❖ All junk, trash and debris cases.
 - ❖ Potential vector issues as a result of polluted pools.
 - ❖ Health & safety issues related to unsecured residential structures.

Abatement Process (con't)

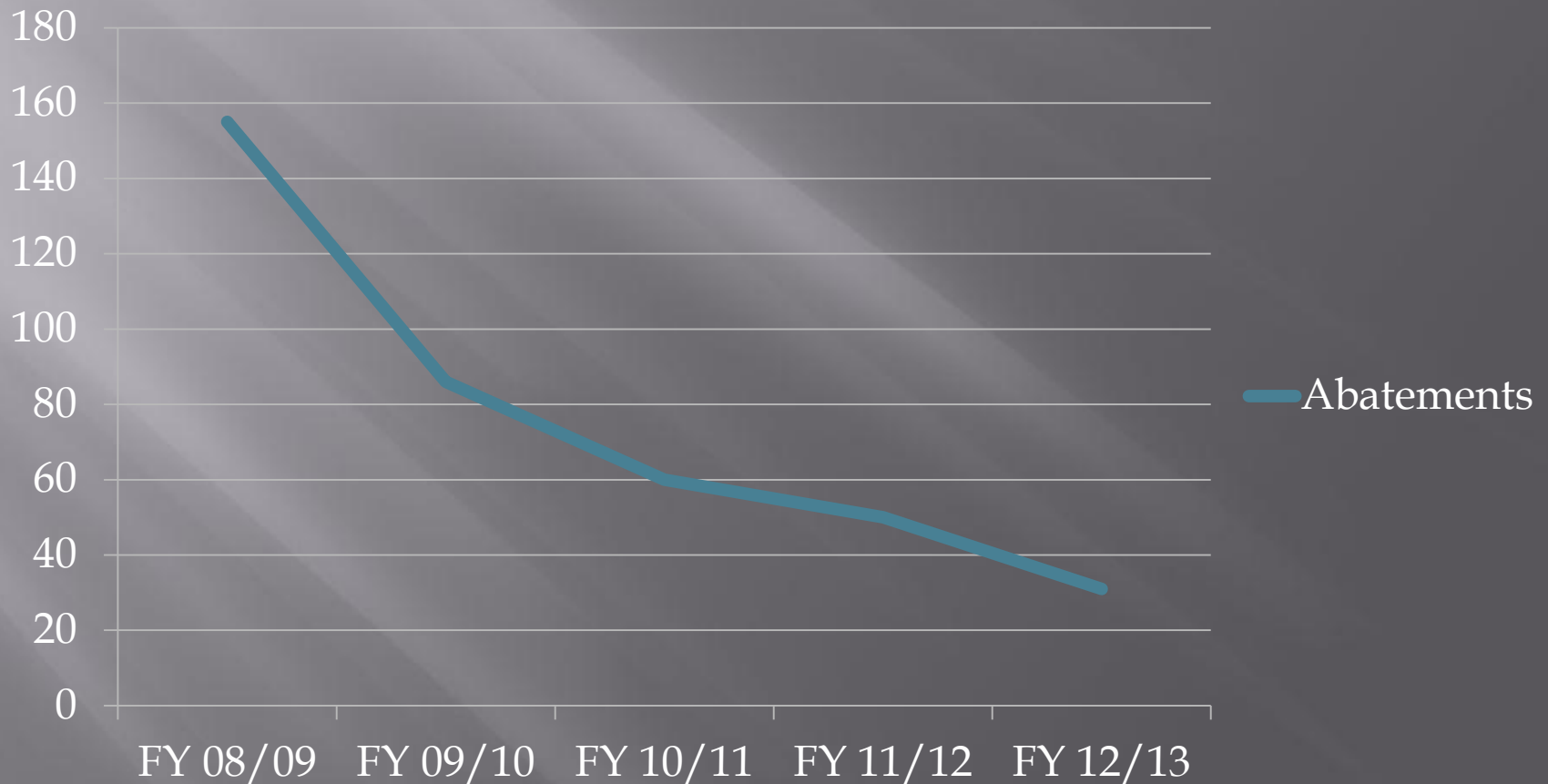
- ❖ Cost of abatements performed by code staff are funded through past SB1137 funds collected by the City Attorney's Office.
- ❖ The City is reimbursed for the abatement at the close of escrow by the buyer or financial institution.
- ❖ The funds are then deposited into the SB1137 account for future abatements.

Abatement Chart (by type)



Abatement Chart (total)

Abatements



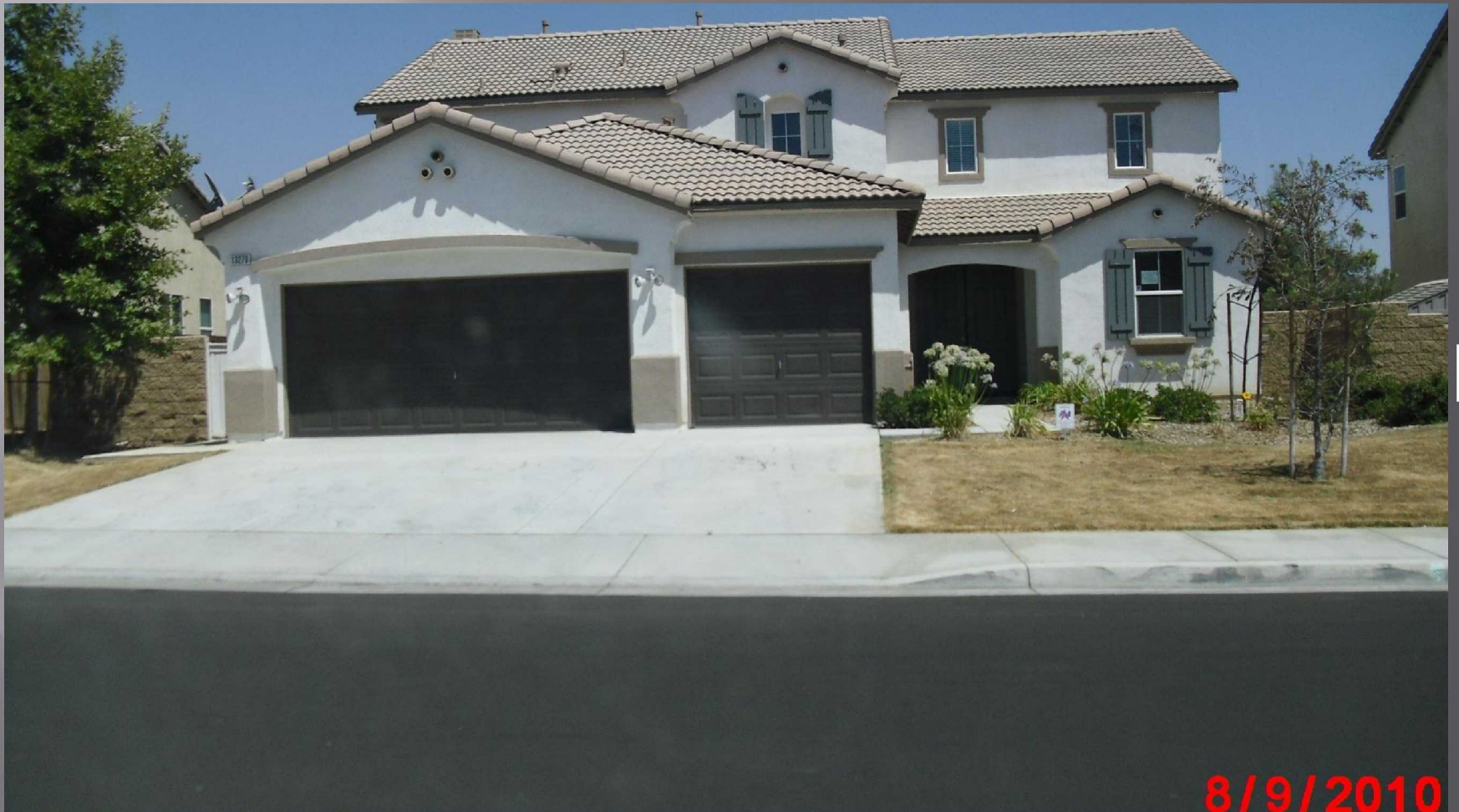
Abatement Process

- ❖ Significant decline in number of abatements performed by city contractors because of the following:
 - Decrease in the number of foreclosed properties Citywide.
 - Aggressive monitoring by our Foreclosure Strike Team and MVPD.
 - Financial institutions, brokers and realtors have taken a more pro-active approach to monitoring their properties.
 - Improved communication between the City and property ownership.

Foreclosure Program Statistics

- ❖ Since the inception of the program, the City's Foreclosure Strike Team has achieved the following;
 - Initiated 2,324 cases
 - Resolved 1,856 cases
 - 468 cases are currently pending
 - Approximately 25% of pending cases are now occupied and ownership is progressing towards compliance. (30 day agreement)

Before



After



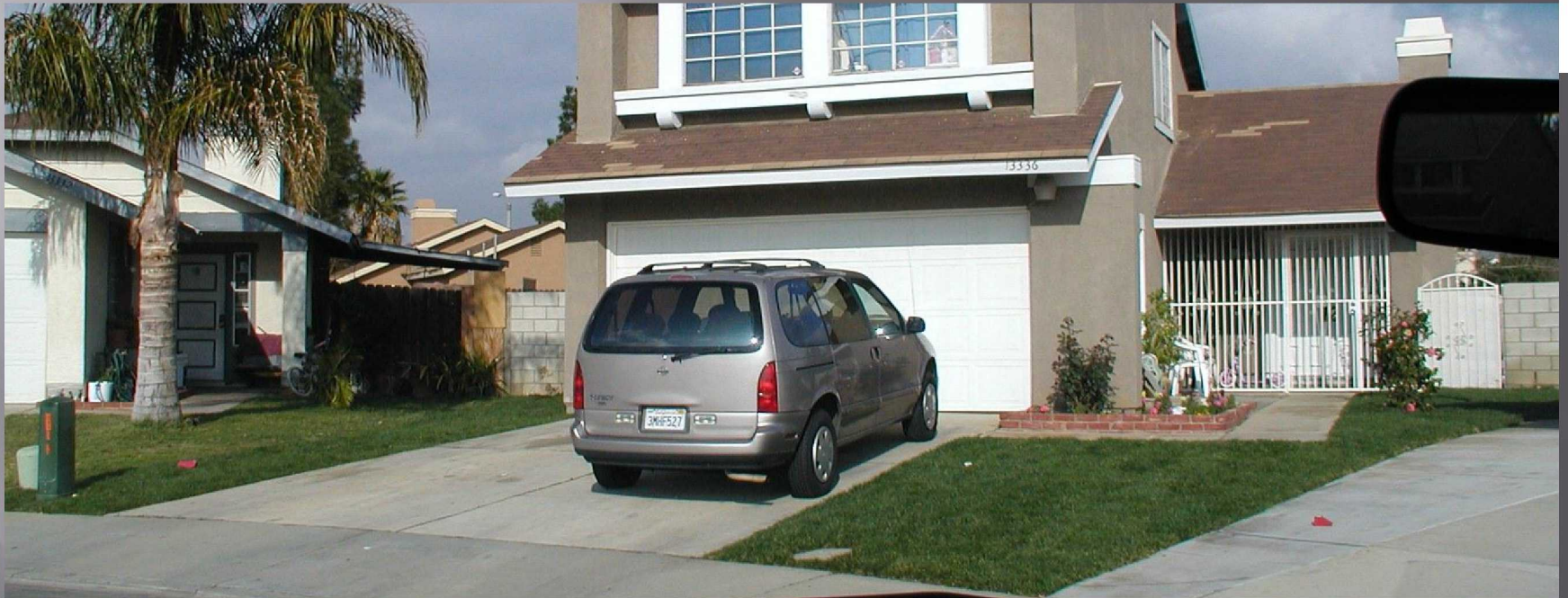
Item No. 2.

-37-

Before



After



Item No. 2.

-39-

Before



After



Item No. 2.

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04/12/2011

Before



After



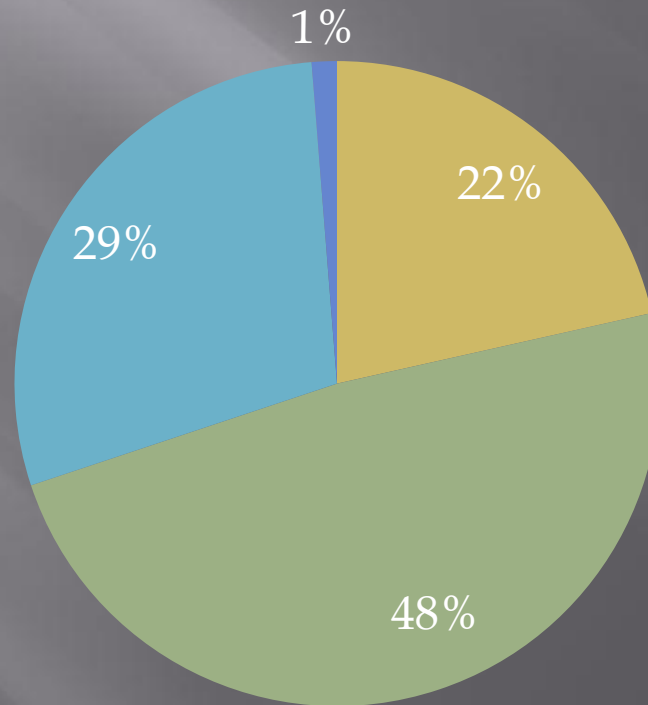
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Program Revenue

Revenue

■ Civil Cites ■ Inspection Fees ■ SB 1137 ■ Demand Fees



Vacant Property Registration (VPR) Ordinance

- ❖ First VPR ordinance was adopted in California on May 13, 2005.
- ❖ 121 Cities and/or Counties have enacted these provisions in the past seven years.

Requirements of VPR Ordinance

1. Pay a registration fee (some exceptions)
 2. Provide contact information for responsible parties.
 3. Require owners maintain their properties to code standards.
 4. Keep the residence secured at all times.
- ❖ Note: Our current code already requires the property be maintained and secured but does not require registration or the additional fee.

Benefits of VPR Ordinance

- ❖ Placing the burden of registration on the banks will decrease staff's need to research ownership.
- ❖ Requiring a point of contact (POC) via registration will reduce the need for costly abatements.
- ❖ The POC information will assist MVPD with the identification and removal of squatters at the registered properties.

Disadvantages of VPR Ordinance

- ❖ Does not directly prevent squatters or the regulation of them.
- ❖ Ordinance is not popular with local realtors, financial institutions or HUD.
- ❖ Requires additional staff time to administer the program.

Registration fees

- ❖ Vary from jurisdiction to jurisdiction
- ❖ The highest fee is \$632 annually.
- ❖ Six cities do not charge a fee for registration.
- ❖ Surrounding municipalities fee ranges from \$18.00 to \$150.00 annually

20 Cities, plus Riverside County have VPR's including:

Jurisdiction /Fee (in dollars)			
Banning	\$75	Beaumont	\$150
Blythe	\$100	Calimesa	\$150
Canyon Lake	\$130	Cathedral City	\$130
Coachella	\$65	Desert Hot Springs	\$65
Eastvale	\$70	Indian Wells	\$139
Indio	\$100	Jurupa Valley	\$100
Lake Elsinore	\$71	Menifee	\$125
Murrieta	\$70	Palm Springs	\$18
Perris	\$130	Riverside County	\$70
San Jacinto	No Fee	Temecula	No Fee
Wildomar	\$100		\$100
Average is \$94			

Squatter Legal Remedies

- ▣ A “squatter” is someone that occupies real property for long term residential purposes under color of right. A squatter may start as a mere trespasser but claim to own, lease or otherwise rightfully occupy property.

CA Penal Code 602(m)

- ▣ Declares it a misdemeanor and a trespass by “[e]ntering and occupying real property or structures of any kind without the consent of the owner, the owner’s agent, or the person in lawful possession.”
- ▣ Can be enforced by PD and prosecuted by the DA.
- ▣ Can be difficult to prove and requires thorough investigation.

MVMC 11.40.090

- ▣ Property owners can authorize PD to remove trespassers for a period of up to one year or property can be posted with “No Trespass” signs.
- ▣ Police can ask a trespasser to leave property.
- ▣ If they fail to leave after officer’s request, subject to arrest and misdemeanor criminal prosecution by city Attorney.
- ▣ If occupants present under a legal right, City cannot remove them and owner must use Unlawful Detainer process.

Health & Safety Regulations

- ▣ Building and Housing Codes require all residential housing to be structurally safe and provide hot and cold running water, heat and electricity.
- ▣ Building Official can declare a building unsafe to occupy if lacking these requirements.
- ▣ Persons entering or failing to leave a “tagged” building or structure are subject to arrest and misdemeanor criminal prosecution by City Attorney.

Receivership

- ▣ For properties with substantial nuisance conditions, where landlord is absentee or uninvolved (e.g. bank owned properties).
- ▣ Court appoints receiver. Receiver removes the occupants through negotiation or unlawful detainer action.
- ▣ Costs assessed against the property.

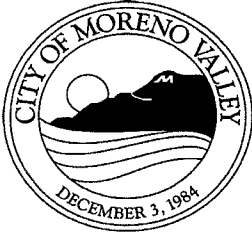
Utility Blocks

- ▣ Structures within the MVU jurisdiction can be flagged not to initiate new service without proof of legal residency (deed or lease).
- ▣ Homes without utility can be tagged by Building Official.
- ▣ Those that submit fraudulent documents can be prosecuted for perjury or fraud.
- ▣ Ineffective as to properties serviced by other utilities that have been uncooperative with City.

Next Steps

- ❑ Consider whether to adopt a Vacant Property Registration Ordinance.
- ❑ Implement a Public Information Program on Foreclosure Maintenance and Squatters to be presented to Homeowners Associations (HOA's).
- ❑ Work with HOA's on a Signage Program for Illegal Trespassing (Squatting).
- ❑ Consider forming a Squatter Strike Team similar to the Foreclosure Strike Team.

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MEMORANDUM

Date: January 15, 2013
To: City Council
From: Paul Early, Deputy City Attorney
Subject: Code Enforcement Remedies & Alternatives

Code Enforcement Remedies

There are three main categories of code enforcement remedies the City may use to resolve code violations; Administrative Enforcement, Civil Litigation, & Criminal Prosecution. The various available remedies are not mutually exclusive and many are frequently used in conjunction with one another other. The benefits and shortcomings of each of these processes are outlined below.

Administrative Enforcement

Administrative Enforcement includes all actions to abate a public nuisance undertaken by City staff under the authority granted by the City's Municipal Code. Administrative actions typically do not involve the courts. Examples of administrative remedies include:

- Notices and Orders
- Administrative Citations
- Civil Penalties and Assessments
- Summary Nuisance Abatement
- Liens

Administrative actions are typically the first tools of enforcement in most jurisdictions. Although not governed by court rules and procedures, administrative actions are subject to Constitutional Due Process requirements. Accordingly, when the City takes any of the aforementioned administrative actions, it is still required to give proper and reasonable notice and an opportunity to appeal any such determination to a neutral hearing officer.

Notices and Orders

Currently, Code Enforcement staff will first issue a notice and order to correct a violation. As a technical matter, this determination that a code violation exists may be appealed. As a practical matter, however, it rarely is. In the case of violations of the building code, notice is legally required to be given before any further action can be taken. As a matter of course, notice is routinely given in almost all property related code violations. Many code violation cases resolve at this level without significant expense to either the City or property owner.

Administrative Citations

Administrative Citations (also known as Civil Citations or “Admin Cites”) are a form of citation authorized by state law whereby code enforcement officers (and other City Manager Designees) may issue a citation for violations of the municipal code. The citations are similar in many respects to a parking ticket. They are issued by City staff, do not go through the court system, and the City retains the entire fine amount. Currently, Admin Cites are issued in amounts of \$100 for 1st offenses, \$200 for 2nd offenses and \$500 for 3rd or subsequent offenses in a one year period. Current practice is to issue Admin Cites only after a Notice and Order to Abate has been ineffective at gaining compliance. These citations can be very effective in compelling individuals to comply with the City’s Codes at minimal cost to the City.

Administrative Citations are currently processed by a third party contractor that charges a small fee for each citation processed. This contractor also handles collections on delinquent accounts and provides a hearing officer when citations are appealed. The City pays these costs. There is a small, per citation, cost associated with processing each citation, however, the entire fine amount is retained by the City. Revenue collected through the Admin Cite process is significantly higher than expenses to run the program. Revenue collected from Admin Cite fines may be used for any purpose.

Advantages

- All citations are handled by City. No court appearance or filings necessary.
- The total fine amount is retained by the City.
- Easily administered by contractor agency at minimal cost to City.
- Tax-intercept program diverts state tax refunds to unpaid citation balances.

Disadvantages

- May be ignored by many property owners.
- City pays costs of any appeals.
- Fine only. No means to ensure compliance.
- Assessed against an individual and do not become a lien on the property.

Civil Penalties and Assessments

In addition to fines imposed through an administrative citation process, some cities have adopted a civil assessment program whereby penalties are assessed against real property for violations of city codes. One example of a civil assessment option is provided for in state law pursuant to Senate Bill 1137. This bill allows a city to impose an assessment of up to \$1000.00 per day on properties that contain public nuisance violations and are owned by a person or entity that obtained that property by foreclosure. The City of Moreno Valley currently utilizes this assessment. Another example of a civil assessment is the process used by the City of Riverside. These penalties are imposed as a lien on the real property. If the fines remain unpaid and compliance is not achieved, the sole remedy the City has is to foreclose on the lien and take ownership of the property. Civil assessments can be effective at persuading some people to bring property into compliance. However, for those that ignore the assessments, there is little recourse left but for the City to foreclose.

Advantages

- Significant revenue generated.
- High rate of recovery through liens.
- Flexible settlement options.

Disadvantages

- All Revenue must be placed in separate account to be used for public nuisance abatement programs (only for SB1137 Assessments).
- Does not compel compliance. Banks often ignore problems and just pay fines when property transfers to clear title.
- Foreclosure only way to force recovery.

Summary Nuisance Abatement

When Notices, Citations and Assessments fail to gain compliance, the City has one remaining Administrative option to gain compliance. The City may undertake to make the corrections itself through summary abatement. This process requires either the consent of the property owner or a warrant issued by a judge to enter the property. The nuisance conditions are then corrected by City contractors pursuant to the municipal code. The costs of such abatement are then assessed against the property as a tax assessment and collected with future property tax payments. Because the city has to pay the upfront costs of summary abatement, this tool is reserved primarily for those cases where the nuisance creates an immediate public hazard or has been longstanding and other methods have been unsuccessful. Abatement is routinely done to remove overgrown weeds, board up vacant buildings or to remove hazardous structures.

Advantages

- Immediate abatement of the nuisance conditions.
- 100% cost recovery within three years.

Disadvantages

- City must pay upfront costs of abatement.
- Exposure to liability resulting from lawsuits from property owners if not done properly or costs of defending those lawsuits even if done properly.
- Not always effective (removing weeds or boarding up a vacant house may require constant monitoring and repeat abatements).

Liens

A lien can be placed on property for both informational purposes and as a means to collect a debt. Currently, the City places an informational lien on all properties where a code violation has been discovered. This lien is entitled a “Notice of Substandard Property” and informs any potential purchaser or lender that code violations exist thereon. While an informational lien does not directly authorize the payment of a debt, it is often used as a tool in negotiating payment of outstanding fines and fees when a sale is pending. The City offers to release the lien upon payment of all outstanding debts and a written agreement from the prospective purchaser of the property to correct the violation within an agreed upon timetable.

When the City performs a summary abatement action, state law authorizes the City to assess the costs of conducting any such abatement as a lien on County tax rolls. It takes, on average, 3 years from the date of the abatement, to recover the City’s costs. As tax liens, these amounts take priority over traditional liens and are, therefore, almost always collected.

Some cities have adopted an ordinance allowing for the imposition of liens for unpaid assessments and fines directly on a parcel. There is a split of opinion on whether such liens are valid. While it is universally agreed that state law establishes the priority of liens on a parcel, some cities argue that they are not pre-empted from allowing for the imposition of such a lien without a court order. There are no known court rulings on the validity of such ordinances.

Advantages

- High rate of cost recovery
- 100% cost recovery within three years for tax liens.
- Efficient, may be done administratively.

Disadvantages

- If pursuant to City adopted ordinance, subject to legal challenge.
- Does nothing to correct ongoing violation until a sale, transfer or refinance is contemplated.

Summary of Administrative Remedies

The City of Moreno Valley currently utilizes most available administrative remedies and combinations of all of the aforementioned options. Current policy has been to attempt to compel compliance from property owners with the minimum expense to both the City and the property owner. Notices and fines are effective against a majority of people; however, there are a fraction of cases where these notices and fines are ignored. In those cases, the City is left with two administrative alternatives; 1) foreclose on all the fines, assessments and liens on the property, resulting in the property owner losing the property or 2) summary abatement.

Civil Remedies

When administrative remedies fail to gain compliance, the City has the option to bring an action in the state court system. This action may be brought in either the Civil or Criminal Divisions of the state courts. This section discusses options for filings within the Civil Division. In the code enforcement context, the civil courts are commonly used in the following types of actions:

- Lawsuits to recover money
- Foreclosures
- Injunctions
- Receiverships

Lawsuits to Recover Money

When an individual owes the City money, either from unpaid fines or from costs of enforcement (including inspection and attorney fees), the City has the option to file a lawsuit to obtain a judgment against that individual for the unpaid amounts. Once a judgment has been obtained, the City would then need to collect on that judgment through liens on property, wage garnishments or other collection efforts.

The City does not currently file lawsuits against individuals for these unpaid debts. Most individuals owing money to the City resulting from code violations have debts of less than \$10,000.00. Such cases would be handled in Small Claims Court, where attorneys may not advocate on behalf of the City. The City Attorney's Office has been exploring the feasibility of bringing such cases to court.

Advantages

- Cost Recovery

Disadvantages

- Staffing to appear in small claims court.

- Difficulty recovering judgments in present economy (liens on homes with no equity have no value).

Foreclosures

When assessments against a property have grown and compliance has not been obtained, the City may initiate an action to foreclose on those liens and assessments. The property would be put up for auction, the City would recover only after priority lienholders have been paid and the new property owners would take the property subject to the requirements to bring the property into compliance. The City does not currently initiate foreclosures on property because the result of such an action (the property owner losing their home) is a drastic measure that is against current Council policy to compel property owners to correct the violations on the property themselves. Also, foreclosure does not abate any nuisance or correct any violation. Foreclosure simply creates a new property owner to try to compel to abate any nuisances.

Advantages

- New property owner.
- Possible revenue and cost recovery.

Disadvantages

- Property owner loses home.
- Present economy leaves little or no equity and thus low likelihood of revenue recovery.
- No actual correction of violation unless new owner takes immediate steps to correct.

Injunctions

The most common civil action used in the code enforcement context is one seeking an injunction. An injunction is a court order requiring someone to take specific action or to refrain from taking certain action. Nuisance abatement injunction cases involve the filing of a complaint, a lengthy discovery and motion process, a hearing for a temporary order and finally a trial and (if successful) an order from the court. A civil injunction in a code enforcement case may result, for example, with a court order requiring an individual to remove an unpermitted structure.

If an individual fails to comply with a court order, the City can then bring the case back before the court in a contempt proceeding. If the court finds that the individual is not in compliance with the court order, the court can fine the party or place the party into custody in the County jail until such time as the individual is willing to comply with the Court's orders.

Civil cases can take a very long time to resolve and are extremely expensive. Some cities have spent hundreds of thousands of dollars prosecuting injunction cases. In addition, the nature of a civil proceeding involves a lot of paperwork, filings, motions and

discovery. Accordingly, an attorney can handle only a limited number of these cases at any one time.

Advantages

- Court order to compel compliance.
- Attorney fees available to the prevailing party.
- Same ultimate punishment as misdemeanor criminal cases for noncompliance (fines/jail).

Disadvantages

- Can take over a year to get to trial.
- Expensive for City (1 Attorney per approximately 10 active cases).
- Expensive for property owner (No right to free attorney, civil attorneys would charge hourly rates to property owner to defend).
- Attorney fees available to prevailing party (Could be expensive for City if unsuccessful).

Receiverships

Whereas an injunction case is a case against an individual to compel compliance, a receivership action is an action against a particular property. The City acts as Petitioner in the case and asks the court to appoint a receiver, or trustee, to take over custody and control of the property to bring it into compliance. If the court finds that there are public nuisances on the property and that the present owner is unwilling or unable to correct them, the receiver may be appointed. The receiver then has the power to borrow against the property to make the necessary repairs or modifications.

Once appointed, a receiver reports directly to the court and not to the City. The receiver's duty is to the best use of the property and often receivers will go beyond mere correction or abatement of nuisances to maximize the value of the property. Once complete, the costs of all remedial work, along with attorney fees and receiver fees are imposed by the court. Typically, a property owner is unable to redeem these costs and the court authorizes sale of the property at auction. Unlike in a foreclosure case, these costs are primary and become 1st priority liens on the property, subordinating all existing liens. Accordingly, all contractors, attorneys and the receiver are paid first.

The City does currently have Receivership in its toolkit but reserves its use only to the most extreme cases or those where there is no responsible person to compel compliance from. In almost all receivership cases, the property owner loses the property.

Advantages

- Complete compliance (even beyond the City's minimum standards).
- Recovery of all attorney fees.

- Relatively short time line (receiverships have priority over injunction cases in court).

Disadvantages

- Property owner loses home.
- May not be feasible if costs of remediation are more than current value of property.
- Not likely to get Receiver appointed except in most severe cases.
- Not useful for violations that are transient in nature (Peddlers, Signs, Trespassing).

Criminal Prosecution

Every violation of the Municipal Code constitutes a misdemeanor criminal offense punishable by a fine of up to \$1,000.00 and up to six months in jail. The Municipal Code does allow offenses to be reduced to an infraction at the discretion of the citing officer or the City Attorney. An Infraction is a penalty which is punishable by a fine only. Fines imposed under a conviction for either a misdemeanor or an infraction are shared with the courts and the City sees only a small percentage of these fine amounts.

There is no requirement that administrative or civil remedies be sought before a criminal case may be filed. However, current policy is to issue a Notice and Order to comply, a series of three progressively higher administrative citations and a final warning from the City Attorney before filing any criminal action.

The criminal process involves the filing of a complaint, a court date (called an arraignment) where the Defendant hears the charges against them, plea negotiations and eventually a trial. City policy has been to offer to dismiss all criminal charges if compliance is achieved and costs of prosecution are paid before trial. 99% of all cases filed criminally end in dismissal, compliance and cost recovery.

In the event the filing of criminal charges is still not enough to compel a property owner to comply with local laws, the case proceeds to trial. Upon conviction, a defendant is typically placed on a period of probation and ordered to correct the violations as a condition of probation. If a defendant fails to comply with the court order, additional fines or jail time may be imposed. In this respect, the ultimate penalties for a violation of a civil court order and a criminal probation term are the same.

Criminal cases can be handled in bulk and one attorney can manage several hundred criminal cases simultaneously, keeping City costs to a minimum. Furthermore, in the criminal courts, defendants that cannot afford an attorney are appointed a public defender by the court. Many defendants, once informed that they can earn a dismissal upon compliance, choose to represent themselves, thus making the criminal context less costly for them as well.

Advantages

- Short time to trial for compliance (average of 3 months from filing).
- Less costly to City than Civil (1 attorney can handle hundreds of cases, no costly discovery or law and motion proceedings).
- Less costly to property owners than civil proceedings.
- Upon compliance, complete dismissal of case and cost recovery.

Disadvantages

- Stigma of a criminal filing.
- Only effective with cases involving a property owner that is capable of correcting the problem but refusing to do so.
- Smaller percentage of fines collected by City.

Alternatives & Recommendations

The City has many different options and alternatives. Most of the options discussed are can be used together with any of the others and none are mutually exclusive. Below are a few example alternatives for consideration.

1. Current Policy & Practice

The City's current practice is as follows:

- (i) Investigate complaint of code violation.
- (ii) Issue a Notice and Order to correct.
- (iii) Record Notice of Substandard Property
- (iv) Issue 1st Admin Cite at \$100 per violation.
- (v) Issue 2nd Admin Cite at \$200 per violation.
- (vi) Issue 3rd Admin Cite at \$500 per violation.
- (vii) Notice of Intent to file Criminal Complaint
- (viii) Misdemeanor Criminal Complaint / Dismissal
- (ix) Summary Abatement or Receivership

This process allows for several months for Code Enforcement officials to attempt to gain voluntary compliance from offenders. If unsuccessful or if ignored, the case is referred to the City Attorney's Office and a criminal complaint is filed. A date is set for arraignment and at that hearing, property owners are offered a dismissal if they comply with City codes. If they fail or refuse to comply, a trial is set and eventual sentencing including court orders to correct violations. For cases where there is no viable person who could correct the conditions, receiverships are considered and brought to Council in closed session for authorization.

2. Amended Current Policy & Practice

If the City Council wishes to continue to focus on compelling property owner's to take corrective measures (rather than have the City or courts correct the

violations) and also wants to generate and collect more revenue to offset costs of enforcement, the following amendments to current policy are recommended:

- (i) Adopt a civil nuisance penalty similar to Riverside and assess those penalties against all code enforcement parcels.
- (ii) Adopt a parcel lien ordinance authorizing the City to assess a monetary lien against parcels where civil penalties, citations and costs have been incurred.
- (iii) Actively pursue collections on unpaid civil penalties costs and citations through lawsuits, small claims actions and settlement negotiations and ultimately foreclosure proceedings.
- (iv) In addition to compliance, require payment of restitution (all unpaid debts to City) or a payment plan as a condition prior to the dismissal of any criminal case.

3. No Criminal filings / Serious Violations Only

If the City Council wishes to reduce the amount of code enforcement filings or stop using the criminal remedy, the City Attorney could stop filing criminal cases and continue only with the filing of civil injunction and receivership cases against the most serious offenses. The City Attorney would seek authorization for each filing from the City Council in closed session. The costs of prosecuting a civil injunction case are much higher than a misdemeanor criminal case, however, by choosing only the most serious offenses and focusing on cost recovery, those expenses can be controlled. Civil injunctions would not be cost effective for minor violations. For minor offenses, there would be no enforcement beyond the continued issuance of Admin Cites by code enforcement officials.

4. Revenue Driven Focus

If the City Council desired a greater emphasis on cost recovery and revenue generation at the possible risk of longer delays on compliance, the City could adopt the suggestions set forth in Alternative 2, above, and suspend the filing of criminal complaints. An increased focus could be brought on collections lawsuits with the possibility that high fines, liens and assessments will compel a property owner to comply. For properties with high liens and debts that remain out of compliance, the City could pursue foreclosing on the liens, auctioning the property to a (hopefully) more responsible property owner.

5. Compliance Driven Focus

The opposite extreme to Alternative 4, above, would be to file criminal complaints much earlier in the process in place of the issuance of Admin Cites. This would bring the property owners into the courtroom sooner and result in quicker compliance. Summary abatement could be used to correct those properties where no property owner appears in court or where the property owner is physically or financial unable to correct the violation. While compliance could be achieved quickly and costs reimbursed for any abatement, the loss of admin cite revenue would make this more costly for the City.

The above alternatives are merely examples of options available to the City depending on City Council policies and goals. While some alternatives result in quicker compliance, they may have added costs to the City or the property owner.

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CODE ENFORCEMENT REMEDIES

Item No. 3.

-71-

City Of Moreno Valley
Office Of The City Attorney
Suzanne Bryant, Acting City Attorney
Paul Early, Deputy City Attorney

Categories

- ⦿ Administrative
 - Processed entirely internally by City
 - Included appeal rights and hearings
 - May be appealed to Superior Court
- ⦿ Civil
 - Cases heard by Superior Court
 - Seeking Money Damages or Injunction
- ⦿ Criminal
 - Cases heard by Superior Court
 - Seeking Punishment, Restitution & Court Orders

Administrative Actions

- ⦿ Notices and Orders to Abate
- ⦿ Administrative Citations
- ⦿ Civil Penalties and Assessments
- ⦿ Summary Nuisance Abatement

Administrative Citations

- Currently In Use By The City
- **Advantages**
 - All citations are handled by City. No court appearance or filings necessary.
 - The total fine amount is retained by the City.
 - Easily administered by contractor agency at minimal cost to City.
 - Tax-intercept program diverts state tax refunds to unpaid citation balances.
- **Disadvantages**
 - May be ignored by many property owners.
 - City pays costs of any appeals.
 - Fine only. No means to ensure compliance.
 - Assessed against an individual and do not become a lien on the property.

Civil Penalties

- Currently in use only on properties that were acquired through the foreclosure process (SB1137).
- **Advantages**
 - Significant revenue generated.
 - High rate of recovery through liens.
- **Disadvantages**
 - All Revenue must be placed in separate account to be used for public nuisance abatement programs only (SB1137 Assessments Only).
 - Does not compel compliance. Property Owners often ignore problems and just pay fines when property transfers to clear title.
 - Foreclosure only way to force recovery.

Summary Abatement

- ⦿ Currently in use by the City.
- ⦿ **Advantages**
 - Immediate abatement of the nuisance conditions.
 - 100% cost recovery within three years (tax lien).
- ⦿ **Disadvantages**
 - City must pay upfront costs of abatement.
 - Exposure to liability resulting from lawsuits from property owners if not done properly or costs of defending those lawsuits even if done properly.
 - Not always effective (removing weeds or boarding up a vacant house may require constant monitoring and repeat abatements).

Liens

- ⦿ Currently in limited use by City
- ⦿ **Advantages**
 - High rate of cost recovery
 - 100% cost recovery within three years for tax liens.
 - Efficient, may be done administratively.
- ⦿ **Disadvantages**
 - If pursuant to City adopted ordinance, subject to legal challenge.
 - Does nothing to correct ongoing violation until a sale, transfer or refinance is contemplated.

Debt Collection Lawsuits

- ⦿ Currently in use by the City (New Program).
- ⦿ **Advantages**
 - Cost Recovery
- ⦿ **Disadvantages**
 - Staffing to appear in small claims court or attorney fees for larger debts.
 - Difficulty recovering judgments in present economy (liens on homes with no equity have no value).

Foreclosure

- ⦿ Not in current use by City
- ⦿ **Advantages**
 - New (responsible) property owner.
 - Possible revenue and cost recovery.
- ⦿ **Disadvantages**
 - Property owner loses home.
 - Present economy leaves little or no equity and thus low likelihood of revenue recovery.
 - No actual correction of violation unless new owner takes immediate steps to correct.

Injunctions

- ⦿ Not currently in use by City.
- ⦿ **Advantages**
 - Court order to compel compliance.
 - Attorney fees available to the prevailing party.
 - Same ultimate punishment as misdemeanor criminal cases for noncompliance (fines/jail).
- ⦿ **Disadvantages**
 - Can take over a year to get to trial.
 - Expensive for City (1 Attorney per approximately 10 active cases).
 - Expensive for property owner (No right to free attorney, civil attorneys would charge hourly rates to property owner to defend).
 - Attorney fees available to prevailing party (Could be expensive for City if unsuccessful).

Receiverships

- ⦿ Currently in limited use by City
- ⦿ **Advantages**
 - Complete compliance (even beyond the City's minimum standards).
 - Recovery of all attorney fees.
 - Relatively short time line (receiverships have priority over injunction cases in court).
- ⦿ **Disadvantages**
 - Property owner often loses home.
 - May not be feasible if costs of remediation are more than current value of property.
 - Not likely to get Receiver appointed except in most severe cases.
 - Not useful for violations that are transient in nature (Peddlers, Signs, Trespassing).

Criminal Prosecution

- ⦿ Currently in use by City.
- ⦿ **Advantages**
 - Short time to trial for compliance (average of 3 months from filing).
 - Less costly to City than Civil (1 attorney can handle hundreds of cases, no costly discovery or law and motion proceedings).
 - Less costly to property owners than civil proceedings.
 - Upon compliance, optional complete dismissal of case and cost recovery through restitution.
- ⦿ **Disadvantages**
 - Stigma of a criminal filing.
 - Only effective with cases involving a property owner that is capable of correcting the problem but refusing to do so.
 - Smaller percentage of fines collected are retained by City.