



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Terri C. Schaeffer, Code Compliance Officer
MEETING DATE: April 1, 2015
SUBJECT: Resolution approving recordation of a lien at 1009 Forest Avenue
CEQA: The proposed action is not a project under CEQA

RECOMMENDATION

Approve a Resolution authorizing placement of a lien on 1009 Forest Avenue.

DISCUSSION

On August 1, 2014, the owner of 1009 Forest Avenue was cited for violations of the Pacific Grove Municipal Code (PGMC)§ 23.16.021, 18.04.010; International Property Maintenance Code Sections 308.1, 304.5, 603.2; and California Residential Code Section 105.1. After failing to remedy the violations within the prescribed time, a duly noticed Administrative Hearing was held on August 15, 2014.

On September 24, 2014, the Administrative Hearing Officer issued an Administrative Decision/Order (Attachment 2), which found the Property to be in violation of the Municipal Code Sections cited above. The Decision/Order ordered the property owner to pay the City \$ 519 in Administrative costs assessed to the Hearing date.

The Decision/Order also ordered the administrative penalties to continue to accrue at a rate of \$50 per day if by November 1, 2014, proof of compliance was not demonstrated. The Decision/Order specified the \$50 per day penalty be assessed from August 1, 2014 until compliance is met. To date, compliance has not been met. Pursuant to PGMC 1.19.200(a), administrative penalties are limited to \$100,000, exclusive of costs. This total has not been reached.

The time to appeal the Administrative Decision has lapsed. This property continues to be an attractive nuisance on a major City thoroughfare, imposing costs and risks upon the neighbors and upon the community as a whole. The owner has ignored attempts staff has made to help resolve the matter. The City has exhausted all efforts to gain compliance with the zoning and building safety violations.

Pursuant to the PGMC, the City may place a lien on the property to ensure collection of the amounts owed. It is recommended Council adopt the proposed Resolution and direct staff to

record a lien on 1009 Forest Avenue (APN: 006-701-022-000) in the amount of \$12,669 and to continue to accumulate until compliance is achieved.

ALTERNATIVES

1. Decline to adopt the Resolution.
2. Provide alternate direction.

FISCAL IMPACT

If a lien is imposed the City will, at a future date, collect penalties and costs in the amount up to \$100,000.

ATTACHMENTS

1. Proposed Resolution.
2. Administrative Decision/Order

RESPECTFULLY SUBMITTED:



Terri C. Schaeffer
Code Compliance Officer

REVIEWED BY:



Thomas Frutchey
City Manager

RESOLUTION NO. 15

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
APPROVING THE RECORDATION OF A LIEN AT 1009 FOREST AVENUE**

FACTS

1. On August 1, 2014 the owner of 1009 Forest Avenue in Pacific Grove, Rose Marie Coleman (Property Owner), was issued a Compliance Order identifying violations of Pacific Grove Municipal Code Sections 23.16.021, 18.04.010; International Property Maintenance Code Sections 308.1, 304.5, 603.2; and California Residential Code Section 105.1. A Compliance Date of August 15, 2014 was given to the Property Owner.

2. The Property Owner failed to remedy the violations of the Municipal and other codes within the prescribed time.

3. A duly noticed Administrative Hearing was held on September 24, 2014.

4. On October 12, 2014, Administrative Hearing Officer Kim Murdock issued an Administrative Decision/Order. Pursuant to the Decision/Order to date the Property Owners must pay the City the following sums:

Administrative penalties calculated from August 1, 2014 through April 1, 2015 for the failure to complete the work required in the Order is assessed at \$50 per day for 243 days equals \$12,150.00.

Total Penalties	\$12,150.00
City enforcement costs:	<u>\$ 519.00</u>
TOTAL LIEN	\$ 12,669.00

5. To date, compliance has not been met. Pursuant to PGMC 1.19.200(a), administrative penalties are limited to \$100,000, exclusive of costs.

6. The maximum administrative penalty amount has not been reached.

7. The time to appeal the Administrative Decision/Order has expired.

8. The property owner has failed to comply with the Compliance Order and penalties and fines continue to accrue.

9. Section 1.19.260 of the Pacific Grove Municipal Code authorizes liens on real property when a penalty and/or administrative cost imposed by a hearing officer have not been timely paid.

10. In reviewing this matter, the City followed the guidelines adopted the CEQA Guidelines of the State of California, published in the California Code of Regulations, Title 14, Section 15000, et seq. and found this action does not constitute a "Project" as defined by CEQA Guideline section 15378; this is an organizational or administrative activity that will not result in direct or reasonably foreseeable indirect physical changes in the environment.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds the Facts set forth above to be true and correct, and by this reference incorporates each as an integral part of this Resolution.

SECTION 2. The total amount payable to the City is confirmed and shall constitute a lien against the property at 1009 Forest Avenue (APN: 006-701-022-000) in the amount of \$12,669.25 and penalties and fines shall continue to accrue until paid in full.

SECTION 3. The City Manager, or his/her designee, is hereby authorized to place additional liens on 1009 Forest Avenue for any future unpaid administrative penalties and/or costs authorized pursuant to the Administrative Decision/Order.

SECTION 4. The City Manager is directed to take all action necessary to implement this Resolution.

SECTION 5. This Resolution shall take effect immediately following its adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this ____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

ADMINISTRATIVE HEARING
CITY OF PACIFIC GROVE, CALIFORNIA

IN THE MATTER OF

1009 Forest Avenue, Pacific Grove California,
and Rose Marie Coleman.

FILE NO. 14-047

ADMINISTRATIVE DECISION/ORDER

I.
STATEMENT OF THE CASE

This matter came on regularly for hearing before Administrative Hearing Officer Kim Murdock (the “Hearing Officer”) on September 24, 2014 at 10:00 a.m. at the Pacific Grove City Council Chambers, City Hall, 300 Forest Avenue, in the City of Pacific Grove, California (the “City”).

Terri C. Schaeffer, Code Compliance Officer (the “Compliance Officer”), appeared for the City.

Rose Marie Coleman (the “Respondent”) did not appear.

Also present was Alex Lorca, Deputy City Attorney.

The hearing was held pursuant to Pacific Grove Municipal Code (“PGMC”) §1.19 to determine the degree of Respondent’s compliance with the Compliance Officer’s Compliance Orders regarding 1009 Forest Avenue, Pacific Grove, California (the “Property”), dated May 14, 2014 and August 1, 2014, and violations of PGMC Sections 23.16.021, 15.16.030, 18.04.010, 1.16.010, and 23.16.021, California Residential Code Section 105.1, and International Property Maintenance Codes, 2012 (“IPMC”) Sections 308.1, 304.5, and 603.2.

II.
WITNESSES

Compliance Officer and City Building Official John Kuehl (“Building Official”) testified for the City.

No one appeared or testified for Respondent.

III. DOCUMENTS AND EXHIBITS

Prior to the hearing, Code Enforcement Officer submitted a package of documents pertinent to this matter, and sent it to all Parties by Certified and regular mail. This package included:

NOTICE OF HEARING, dated September 12, 2014.

CODE COMPLIANCE STAFF REPORT, signed by Compliance Officer and dated September 24, 2014. The document alleged violations by Rose Marie Coleman of: (1) Pacific Grove Municipal Code (PGMC) §23.16.021 and California Residential Code §105.1 Structure converted into separate undocumented unit without permits found occupied by a tenant; (2) PGMC §15.16.030 Repair required for sidewalk trip and fall hazard; (3) PGMC §18.04.010 All work conducted inside the building has been completed without permits; (4) PGMC §1.16.010 Removal of and complete disregard for Notices posted by the City Building Official on May 9, 2014 were removed sometime between May 12, 2014 and May 13, 2014 subject to a Misdemeanor Offense; (5) IPMC §308.1 Accumulation of rubbish and trash on the exterior of the property; (6) PGMC §23.16.021 Accessory structure constructed without permits; (7) IPMC §304.5 Foundation vent cover missing allowing opening into structure; and (8) IPMC §603.2 Disconnected vent pipe for heater or other combustible appliance.

Exhibit 1: EMAIL thread between Catherine Krysyna, Lawrence Bangert, Joe Vital, Daniel Gho and Compliance Officer re: trip and fall in front of 1009 Forest Avenue.
Dated April 30, 2014

Black and white PHOTOGRAPHS of the raised sidewalk.
Dated April 30, 2014

Exhibit 2: EMAIL thread between Terri Schaeffer, Tom Frutchey, John Kuehl, Steven Matarazzo, Gaudenz Panholzer, and David Reade regarding posting the Property as “unsafe to occupy.”
Dated May 8 through 9, 2014

Exhibit 3: EMAIL thread between Daniel Gho and Compliance Officer regarding an invoice for sidewalk repair in front of the Property.
Dated May 9, 2014

Exhibit 4: LETTER – *Notice Of Compliance Order* and *Notice Of Invoice* from Compliance Officer to Respondent regarding outstanding critical code violations at the Property and demand for payment for sidewalk repairs.
Dated May 14, 2014

COMPLIANCE ORDER to correct violations on the Property, and including penalty assessed for removing notices posted by the City.
Dated May 14, 2014

INVOICE for \$1,170.52 labor and materials used to correct tripping hazard in front of the Property.
Dated May 12, 2014

CERTIFICATE OF SERVICE signed by Compliance Officer.
Dated May 14, 2014

Exhibit 5: EMAIL thread between John Kuehl, Kerry Gage, Thomas Frutchey, Steven Matarazzo, and Compliance Officer regarding tenant at the Property and a padlock that was put on the tenant's door that was not put there by the City.
Dated May 15, 2014

Exhibit 6: FORM to contest the Administrative Citation from Respondent, claiming she is not responsible for the violation. Also ENVELOPE in which form was mailed to Compliance Officer.
Dated May 23, 2014 and Received by the City May 27, 2013

Exhibit 7: LETTER from Compliance Officer informing Respondent that in order to process her request for Administrative Hearing, she must pay a deposit of \$2,170.52, with a deadline of June 16, 2014.
Dated May 28, 2014

CERTIFICATE OF SERVICE signed by Compliance Officer.
Dated May 28, 2014

Exhibit 8: POLICE LOG ITEM – Officer Dan Deis was dispatched to a report of possible squatters at the Property, found to be unfounded.
Dated July 24, 2014

Exhibit 9: LETTER – *Final Notice of Violation and Compliance Order*
Dated August 1, 2014

REVISED COMPLIANCE ORDER to correct violations on the Property, and including penalty assessed for removing notices posted by the City.
Dated August 1, 2014

CERTIFICATE OF SERVICE signed by Compliance Officer.
Dated August 1, 2014

Entered as Exhibits by Compliance Officer at the Hearing:

Exhibit 10: LETTER from Respondent to Debbie Gonzales requesting a 30-day notice of hearing.
Received September 19, 2014

Exhibit 11: CERTIFICATE OF SERVICE signed by Debbie Gonzales accompanying color PHOTOGRAPHS of the original raised sidewalk in front of the Property. Dated September 23, 2014

IV. DISCUSSION

Compliance Officer presented Respondent's request for 30-day notice for Hearing to the Hearing Officer. She stated that Respondent has received many notices and deadlines from the City, none of which she has responded to, although she did respond to the Hearing notice.

Compliance Officer confirmed that the Notice of Hearing conformed to PGMC §1.12 and §1.19.170(c). Compliance Officer also confirmed that Respondent did not submit the required deposit of the fine with her Request for Hearing, nor did she request a hardship waiver. Respondent did not respond to the notice from Compliance Officer stating that the deposit of the fine was required.

Hearing Officer has sole discretion to grant a continuance under PGMC §1.19.170(c). Respondent had advance knowledge of what the herein Hearing was regarding from at least the time she submitted the form requesting a Hearing in May, 2014. Respondent had ample opportunity to interact with the City and prepare her response. Respondent's request was denied and Hearing Officer proceeded with the Hearing.

The Violations

Compliance Officer stated that the City has been monitoring the Property for some months. There had been an Administrative Hearing concerning the Property earlier in the year and as a result, on May 7, 2014, Compliance Officer asked the City Council to impose a lien on the Property. As result of that request, the Council asked Building Official to do a final inspection to determine if the Property was unsafe to occupy.

Compliance Officer stated that prior to this request, on April 30, 2014, the City received a report of a trip and fall on a sidewalk in front of the Property. At that time Compliance Officer had a conversation with the Public Works Superintendent about Respondent's history of not responding to notices. Since the sidewalk was on a well-travelled path for the high school, City staff decided to fix the sidewalk and bill Respondent for the cost of the repairs.

Compliance Officer stated that Building Official did an inspection and determined that there were several obvious conditions that warranted posting "unsafe to occupy" signs in early May 2014.

Compliance Officer stated that at this inspection Building Official also discovered a tenant living in the back of the property in an undocumented unit. Compliance Officer further stated that only a single-family unit is allowed on the Property.

Compliance Officer stated that several days after the notices were posted, they were removed.

Building Official and Compliance Officer returned and posted prominent signs all over the Property so anyone visiting the site would know they should not do so.

Compliance Officer stated that because Respondent was collecting rent and knew the tenant was there, it followed that Respondent and/or her family were there regularly.

Compliance Officer stated that the Building Department clearly said that any work done on the Property should be done with building permits.

Compliance Officer reported that Respondent and her family have never applied for any permit for any work that's been done at the Property.

Compliance Officer reported that the tenant living in the back of the Property had to leave because of the City's posting.

Compliance Officer stated that she notified Respondent by sending the Notice of Compliance Order and Notice of Invoice, and explaining to Respondent that she was being charged for repair to the sidewalk, as well as being fined \$1,000 because Respondent or her representatives entered the Property and removed the posted signs.

Compliance Officer stated that Respondent made contact at this point, requesting a Hearing. Respondent did not respond when Compliance Officer sent Respondent a letter explaining that if Respondent wanted a Hearing, she would have to remit the required deposit.

Compliance Officer stated that the City did not act on the matter for a while, but continued to receive calls from the Police Department and concerned neighbors regarding the abandoned status of the Property.

Compliance Officer stated that the Property has been empty for more than a year and presents a hazard to the neighborhood.

Compliance Officer issued a Final Compliance Order, issuance of which allowed her to call a hearing before the Hearing Officer to ask for some remedy.

Compliance Officer stated that the City should be paid for the work that was done on the sidewalk, and should receive administrative fees for the amount of time spent monitoring the Property.

Compliance Officer also stated that the Property should not be allowed to be occupied until a complete review of the Property's safety can be done by the City.

Testimony of Building Official

Building Official stated that he has been to the site a few times and that the fear about the Property is in what they don't know. The Building Department had received reports from a

previous tenant of some electrical sparking. They had also received reports that they could verify from the outside of some gas-venting appliances that had been disconnected, raising safety issues about carbon monoxide.

Building Official stated that when they inspected the Property per the City Council's request, there were signs of some enclosures and areas where work had been done but they couldn't get access to see them.

Building Official stated that he went back a second time to post "unsafe to occupy" signs, and encountered a gentleman at the back door of what was intended to be a garage. Tenant was unhappy that Building Official was present, but granted permission for Building Official to perform an interior inspection.

Building Official stated that inside he found extension cords serving as outlets, heating plates, and a makeshift kitchen and bathroom.

Building Official stated that when things are installed incorrectly it presents a hazard not only to the Property, but to the occupant who would have no way to get out. Building Official stated the tenant was sleeping in a storage space that had been partitioned off from the garage.

Hearing Officer asked if Building Official had been called to the Property to certify this as a legal unit, would he have done so?

Building Official stated that while the unit had the elements of what the Housing Code requires, they were installed without permits or inspection. Building Official also stated there was no smoke or carbon monoxide alarm, and an accumulation of material inside the unit.

Building Official stated that he told the tenant that the Property had been posted. The tenant said he wondered why. Building Official stated that he gave the tenant until 4:00 p.m. to vacate the Property.

Building Official stated that he returned at 4:00 p.m. and reposted the tenant's door.

Hearing Officer asked Compliance Officer why Respondent may have indicated that she's "not responsible" for the violations.

Compliance Officer stated she wasn't sure but that Respondent still has an argument about a prior case.

Compliance Officer stated that Respondent maintained she wasn't responsible for any of the problems at the Property, and had never allowed the Building Inspector to be on her Property.

Compliance Officer stated that Respondent has said nothing at all as to why she denied responsibility in the case currently being heard.

V.
FINDINGS OF FACTS

1. On April 30, 2014, a trip and fall hazard in front of the Property was reported to the City. On inspection, it was found to be a significant hazard on a well-travelled path for the high school. Photographs were taken. [Exhibit 1, Exhibit 11, testimony of Compliance Officer]

2. Compliance Officer and the Public Works Superintendent discussed the chronic lack of response to notices. Given this and the severity of the hazard the City decided to fix the sidewalk and bill Respondent for the repair. [Testimony of Compliance Officer]

3. Between April 30 and May 9, 2014, the City repaired the damaged sidewalk in front of the Property. [Exhibit 3, testimony of Compliance Officer]

4. On May 7, 2014, Compliance Officer requested that the City Council impose a lien on the Property as a result of a previous Hearing. The City Council asked the Building Official to do a final inspection to determine if the Property was unsafe to occupy. [Testimony of Compliance Officer]

5. The Property has had many reports of safety and building code violations on the Property, as well as work done without permits. [Testimony of Compliance Officer, testimony of Building Official]

6. On May 8, 2014, the City inspected the Property and determined it was vacant and the electric service was turned off, but observed other conditions that warranted posting such as disconnected gas-vents and signs of unpermitted work done on enclosures. [Exhibit 2, testimony of Compliance Officer, testimony of Building Official]

7. On May 9, 2014:

(1) Building Official visited the Property to post “unsafe to occupy” signs. [Exhibit 2, testimony of Building Official]

(2) Building Official discovered a heretofore unknown tenant living in the back of the property in an undocumented unit. [Testimony of Building Official, testimony of Compliance Officer]

(3) Building Official asked tenant for permission to inspect the unit, which was granted. [Testimony of Building Official]

(4) Building Official found numerous safety and building violations in the undocumented unit that made it unsafe to occupy. [Testimony of Building Official]

(5) The tenant was told to vacate by 4:00 p.m. that afternoon. [Testimony of Building Official, testimony of Compliance Officer]

- (6) At 4:00 p.m., Building Official returned, verified that the tenant had left and posted the unit “unsafe to occupy.” [Testimony of Compliance Officer, testimony of Building Official]
8. Between May 12 and May 13, 2014, “unsafe to occupy” signs posted on the Property were removed. [Testimony of Compliance Officer]
9. Upon finding the “unsafe to occupy” signs were removed from the Property, Building Official and Compliance Officer reposted signs more prominently. [Testimony of Compliance Officer, testimony of Compliance Officer]
10. On May 14, 2014, Compliance Officer sent Respondent a Notice of Compliance Order and Notice of Invoice, informing Respondent that she owed the City \$2,170.52 for the repair of the sidewalk, and a fine for removal of the posted signs. The Order also included all PGM, IPMC, and California Residential code violations found by the City, and required compliance by May 29, 2014. [Exhibit 4, testimony of Compliance Officer]
11. On May 15, 2014, the tenant in the undocumented unit called the City complaining that he was locked out of his unit and couldn’t get his tools. [Exhibit 5]
12. On May 27, 2014, Compliance Officer received a written Request for Administrative Hearing from Respondent. Respondent checked the box indicating she is “not responsible for the violation.” Respondent checked a box indicating that she submitted the fine as a deposit, but did not include a check. [Exhibit 6, testimony of Compliance Officer]
13. On May 28, 2014, Compliance Officer sent Respondent a letter informing Respondent that a request for an Administrative Hearing also required the deposit of \$2,170.52 prior to scheduling a hearing. [Exhibit 7, testimony of Compliance Officer]
14. Between May 28 and July 24, 2014, the City received calls from neighbors and the Police Department concerning the abandoned status of the Property. [Exhibit 8, testimony of Compliance Officer]
15. On August 1, 2014, Compliance Officer sent a Final Notice of Violation and Compliance Order to Respondent directing Respondent to obtain all proper permits and correct all outstanding violations by August 15, 2014. [Exhibit 9, testimony of Compliance Officer]
16. On September 12, 2014, Compliance Officer sent Respondent the Notice of Hearing for non-compliance correcting code violations and failure to pay monies owed the City for sidewalk repairs and sign removal. [Notice of Hearing, testimony of Compliance Officer]

VI. DETERMINATION OF ISSUES

Based upon the evidence and testimony presented, Pacific Grove Municipal Code, State law, and in accord with PGMC §1.19.190, I make the following determinations regarding the Alleged Violations:

1. By reason of Findings of Facts 8 through 11, and 16, the City has proven by a preponderance of the evidence that a tenant was occupying an undocumented rental unit on the Property, despite the posted Building Department's "unsafe to occupy" signs.
2. By reason of Findings of Facts 2 and 3, PGMC §15.16.030, and California Streets and Highways Code §5611-5614, the City did not provide proper notice of Respondent's need to repair the sidewalk.
3. By reason of Findings of Facts 5 and 6, the City has proven by a preponderance of the evidence that all work conducted on and in the Property has been done without proper permits.
4. By reason of Findings of Facts 12 and 13, the City did not prove that Respondent was responsible for the removal of the "unsafe to occupy" signs.
5. The City did not present evidence supporting the violation of IPMC §308.1, Accumulation of rubbish and trash on the exterior of the property.
6. By reason of Findings of Facts 6, the City has proven by a preponderance of the evidence that Respondent has constructed an accessory structure without permits.
7. The City did not present evidence supporting the violation of IPMC §304.5, Foundation vent cover missing allowing opening into structure.
8. By reason of Findings of Facts 6, the City has proven by a preponderance of the evidence that Respondent has violated IPMC §603.2, Disconnected vent pipe for heater or other combustible appliance.

VII. ORDERS

1. Respondent is ordered to cause completion of all required work including obtaining all required building permits to correct the violations on the Property, and completing all required work and obtaining a final clearance inspection for all required buildings permits from the Building Department.
2. If this required work is not completed by November 1, 2014, Respondent is ordered to pay a fine of \$50 a day from August 1, 2014 until the date that this Order is complied with, up to a maximum of \$100,000.

3. Respondent is ordered to pay Administrative costs in the amount of \$519.25.
4. Respondent was not properly noticed regarding the repair of the sidewalk in front of the Property, and therefore shall not be responsible for the cost to the City's repair work.
5. City did not prove Respondent responsible for the removal of posted "unsafe to occupy" signs placed on the Property and therefore shall not be fined \$1,000.
6. This decision is effective and final on the date below.

Dated: October 12, 2014



Kim Murdock

Administrative Hearing Officer

This decision may be appealed in accord with PGMC Chapter 1.20.010. To obtain judicial review of this decision, a petition for review must be filed with the Monterey Superior Court in accordance with the timelines and provisions set forth in Section 1094.6 of the California Code of Civil Procedure.