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OFFICE OF THE CITY MANAGER
NO. LTC # 077-2008

LETTER TO COMMISSION

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2008 MAR - 7 AM 8:05
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TO: Mayor Matti H. Bower and Members of the City Commission
FROM: Jorge M. Gonzalez, City Manager
DATE: January 28, 2008
SUBJECT: **LIENS**

For some time, the City Commissioners and the Administration have discussed methods of adjusting the property lien process so as to avoid the accumulation of extraordinary lien/fine amounts resulting from violations (Code, Building, and Fire) on any given property. Various approaches for legislative adjustment, from capping lien amounts and/or adjusting the Special Master process, have been discussed. To date, no one solution has been developed to permanently modify the lien process.

In response to questions raised by North Beach Homeowner Associations, the Administration has recently analyzed the lien process and developed a three part strategy to more globally and systematically address the property lien process. The three principle elements of the lien process strategy include: dealing with an existing backlog or inventory of liens dating a year or more from the date a fine is imposed; the actual lien process steps; and how the City focuses enforcement efforts for buildings with or without liens that create a negative impact upon any given neighborhood. Typically, the subject of liens is referred to and discussed as if it is single faceted. For a longer term and more sustainable result, the most appropriate solution is multi-part, in order to address the different elements of the lien process.

Outstanding Backlog/Inventory of Liens

Citywide, there are approximately 85 liens dating in excess of one year and exceeding \$100,000. The passage of one year of time from the imposition of a fine by the Special Master is significant, as only one year of jurisdiction is available to the Special Master. The 85 liens have accumulated on the respective properties for a number of reasons, including non-compliance, out of state or out of country property owners which may affect the provision of notice of an infraction, and the accuracy of the various data bases that the City must use. There is typically a lag time between a property transaction (for example a sale) and its recording in the data base, typically County tax records. This lag may affect the notice of a violation or Special Master hearing.

In the overall lien analysis, the outstanding inventory/backlog of liens exists in large measure as a result of gaps in the current process flow. If the process can be appropriately impacted at an earlier stage, this specific category will reduce in volume simply as fewer liens become longer standing. With a process adjustment and a concerted one time notice and clean up effort, the category of outstanding old and/or large liens should be virtually eliminated.

The City is undertaking a pilot project in the North Beach area to address outstanding liens/fines that will provide for clean up of the of the overall pool pf outstanding liens in this region and will also provide data for a task force review discussed in the next section. For the pilot project, all properties with liens/fines in excess of \$50,000 and over a year old will be noticed; 30 properties are over the \$100,000 lien amount and 26 are between \$50,000 and \$100,000. Those properties with violations still not in compliance will be noticed by the appropriate enforcement agency, and those with

violations that are in compliance will be noticed by the City Manager's Office of the lien/fine and directed to contact the City to resolve the matter. The notice will not initiate foreclosure, but will identify that as a next step, if necessary.

Process Adjustment

The lien process for violations involves all of the enforcement agencies of the City, including the Building Department, the Fire Department and the Code Compliance Division of Neighborhood Services. The process also involves the Office of the City Clerk and the Special Master's Office, the Office of the City Attorney and potentially the Office of the City Manager.

For purposes of this LTC, liens will only be discussed from the point at which a violation has been issued by one of the City's departments. While many unpaid City fees may become a lien, such as utility bills and resort tax, fines and liens associated with an enforcement action of the City tend to be the largest and more prevalent issue, which is the focus of this memo. The entire compliance process that precedes the violation often involves months of work by any of the respective enforcement agencies and also represents the largest share of the respective enforcement division's workload. As only the lien/fine issue is the focus, this LTC will be limited to that discussion.

Once a violation has been issued by any one of the City's departments, if compliance can not be accomplished, it is referred to the Office of the Special Master for a hearing and possible adjudication. The Special Master hearing process may take over a year for any particular violation and typically has several opportunities for hearings, status reports and the review and discussion of extenuating circumstances. Throughout the Special Master process, the respective enforcement departments maintain a fairly high rate of contact with the violation and its resolution. It is the City's goal to have the majority of the enforcement and compliance cases addressed in the Special Master process.

When progress at compliance and/or cooperation ends, the Special Master will typically rule on the case. If a property owner is found guilty, a daily fine amount will be imposed on the property by order of the Special Master. A daily fine amount typically ranges from \$50 per day to \$200 per day. The Special Master determines the specific amount based on the severity of infraction, whether it is a repeat violation and the level of cooperation of the property owner. The fine continues to run until such time as compliance is achieved on the property. Once compliance is achieved, the fine ceases to run. A number of the larger lien amounts have accumulated in large sums as a result of non-compliance and the addition of interest that is assessed on the outstanding fine amount.

It is at this point in the current process where a gap has been observed. After the imposition of fines and/or liens by the Special Master, there is not a systematic mechanism in place to provide for ongoing monitoring and status reports. Since the responsibility is highly decentralized, the City response is not consistent or routine. Personnel changes that routinely occur in the enforcement divisions or departments also lessens the effectiveness of follow up on the status and resolution of the longer standing issues.

Pending the outcome of the process review discussed in the next section, each of the enforcement departments is being given clear direction that the responsibility to perform periodic monitoring of cases that have had a fine/lien imposed by the Special Master must be undertaken for their specific cases. In cases where multiple department violations exist, the departments will have to coordinate a single party to be responsible for the monitoring.

A general lack of public knowledge of the City enforcement process also contributes to the current process issues and unresolved fines/liens. Many individuals, particularly not from this state or country, incorrectly assume that once an enforcement department has signed off and that there is compliance, the matter is resolved. Some owners do not know that the Special Master process and the lien and fine process continue to travel on until it is also addressed. Other problems associated

with noticing the appropriate individuals and/or spending a sufficient amount of time to develop alternate means of contact enter into the process and further complicate the overall process flow.

The Administration, under the lead of the Office of Budget and Performance Improvement, is undertaking a formalized process review of the enforcement/fine, Special Master and lien process, in an effort to secure timely compliance on violations. This review will be similar in nature to the ongoing Building Task Force and will serve as a model for all of the City enforcement agencies to follow when the review is completed.

One of the specific issues that the process review will assess is whether the City needs to apply its resources in a different manner to assure greater connectivity between the respective agency and an unresolved case. Current review suggests that a single point of contact for follow up and coordination in the office of the Special Master may be necessary. Such a position would be able to better assure that appropriate notice is given to property owners so that they are aware of the action, and to coordinate the continued involvement of the appropriate enforcement agency to see the matter resolved, or that enforcement or legal efforts are escalated so that a conclusion is reached. Data gathered from the pilot project on outstanding liens will help define what staff adjustments may be justified to address work load and process efficiencies.

In the short term, the enforcement agencies are meeting jointly to work on case status and follow up and to place more emphasis on the unresolved cases and to deal with the pilot project properties.

High Impact Buildings

The final part of the overall lien process is the ability of the City to focus its enforcement attention on properties which are routinely problematic and thereby create a negative impact on its particular neighborhood. A property that either receives a large number of violations that go unresolved or a large number of violations that routinely reoccur even though they are resolved would generally signal a property that deserves enhanced enforcement attention. It is important to note that these properties may or may not have liens.

At the present time, as it should, each of the individual departments successfully focuses its attention on its specific discipline. There has not been a good mechanism available in the City to routinely watch for and assess properties that have significant enforcement history across all of the City's enforcement disciplines. The compliance process review task force will address a sustainable method to make this important review a part of the City process.

As part of the North Beach pilot program, the Code Compliance Division has taken the lead to create a working list of properties that are visually and from a known enforcement history problematic. This list is in addition to the outstanding liens effort as the two areas do not necessarily coincide. The working list will be reviewed by the interim joint working group of enforcement agencies to assure that the list captures all disciplines and identifies the highest impact and priority. Initially a list of 5-10 properties will be established (10 most wanted) for the task force to work on. A coordinated task force response will be initiated so that all of agencies deal with the problem in a coordinated fashion to see its resolution. To succeed with the high impact buildings, the coordinated department effort is required, as typically one department's actions will prompt a concern in one of the other departments.

In the longer term, the Office of Budget and Performance Improvement process review of the enforcement/fine, Special Master and lien process will address the systematic monitoring of problematic properties and also to focus on securing compliance on violations in a timelier manner. This monitoring activity is one of the functions that might be added to the Special Master's office.

Conclusion

The short term implementation of the measures identified in the three different parts of the lien process should effectively address and correct the problems which have been noted in the North Beach area. The data gathered from the North Beach pilot project will be useful to the Office of Budget and Performance Improvement process review of the enforcement/fine, Special Master and lien process to develop longer term City wide improvements to the overall lien/fine process. Changes to the fine/lien process will be an added benefit that is accomplished in addressing the main focus of the study, which is to focus on securing timely compliance on violations. The initial letter for cleaning up or addressing the inventory of outstanding liens in the North Beach area will be sent to approximately fifty property owners in the next week. These fifty properties represent the entire list in the North Beach area of those liens in excess of a year and in excess of \$50,000.

The list for problematic properties is being prepared now. As Code is also attempting to address vacant lots and boarded up properties it will take another week to assemble a comprehensive list that identifies the properties that will be the focus of attention. At that point the joint working group will create a short list of the most impact North Beach properties to receive enhanced enforcement attention.

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