



# **CITY COUNCIL AGENDA REPORT**

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MEETING DATE: JANUARY 6, 2009

ITEM NO:

**SUBJECT: DECLARATION OF A PUBLIC NUISANCE AT 2258 ORANGE AVENUE**

**DATE: DECEMBER 24, 2008**

**FROM: DEVELOPMENT SERVICES DEPARTMENT**

**PRESENTATION BY: KHANH NGUYEN, BUILDING OFFICIAL  
DONALD D. LAMM, DIRECTOR**

**FOR FURTHER INFORMATION CONTACT: KHANH NGUYEN (714) 754-5277**

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## **RECOMMENDATION:**

Adopt resolution declaring the property conditions at 2258 Orange Avenue a public nuisance, and direct staff to proceed with abatement procedures.

## **BACKGROUND:**

### **Property Description:**

The property is located on the east side of Orange Avenue, between Albert Place and Cecil Place (see [Attachment 1](#)).

The property is vacant land except for a large open unfinished basement open to the sky; which has a depth estimated to be nine (9) feet; which with no building atop, is now essentially a very big hole in the ground; filled with various building materials, equipments, tools, household goods, and rubbish. The site is also being used to store heavy construction equipment, a tractor, and a large recreational vehicle (see [Attachment 2](#)).

### **Construction History:**

1. June 2005, building permits were issued for the construction of a single-family house with a large basement at 2258 Orange Avenue and 2256 Orange Avenue (adjacent site). The house at 2256 Orange Avenue is 95% complete. Both properties are currently under the same ownership (Michael P. Keeler).
2. November 2005, first inspection at 2258 Orange Avenue revealed the basement walls were not located as detailed on the approved plans.
3. January 2006, various corrections to the basement were made but construction defects were detected by the building inspector.

4. October 2006, building permit expired but reinstated by the Building Division. The owner indicated that he was having problems with the basement contractor and would take over the actual construction.
5. April 2007, the revised footings and walls plans for the basement were approved by the City and built accordingly.
6. Since April 2007, the owner's main focus has been to finish the house at 2256 Orange Avenue; the owner has used 2258 Orange Avenue mainly as a construction staging area.
7. June 2008, building permits for 2258 Orange Avenue expired. No request by the owner for an extension was filed with the Building Division.

**Code Enforcement History:**

1. 2005-2008, the Police Department has towed two vehicles from this location and responded to 47 calls for service. The calls for service were mainly for construction activities after 8 p.m., light and glare impacts, and excessive noise from loud music.
2. 2002-2008, Code Enforcement has made countless contacts with the owner and sent many notice of violations. To date, a total of eight citations have been issued with a total fine of \$3,275.00. All the citations are related to construction activities occurring after 8:00 p.m. To date, only one citation fine has been paid.
3. August 2006, staff met with the owner and his attorney to clarify construction hours, project completion, site maintenance, etc. The attorney indicated that his client will comply and move the project forward in a timely manner.
4. September 2006 to August 2007, the Police Department received 30 calls for service and Code Enforcement received 16 complaints. When staff made contact with the attorney, he indicated he no longer represents the owner.
5. August 2007, the City Council held a public hearing to lien the property with the unpaid fines. The owner's representative came to the meeting to object to the lien and citations and to dispute the neighbors' claims. Council approved the lien on the property and directed staff to set up a mediation meeting to resolve outstanding issues.
6. August 2007, staff met with the owner and neighbors, and all were in agreement to allow the project to continue provided the owner adheres to the construction hours and provides a construction schedule that includes a completion date (see Attachment 3). The submitted schedule indicates a completion date of November 2008 for 2256 Orange Avenue.
7. March 2008 through July 2008, complaints to Code Enforcement started again on previous issues.

8. June 2008, building permits expired and construction activities are no longer permitted.

The Building Division has informed the owner, both verbally and in writing, that building permits have expired. The owner responded that he does not have the resources to construct the house at 2258 Orange Avenue. Staff then directed the owner to:

1. Remove all construction materials, equipment, and household goods;
2. Remove the basement; and
3. Restore the site to a vacant lot with required fencing and erosion control.

To date, the owner has not complied with this directive.

### **ANALYSIS:**

Staff believes conditions on 2258 Orange Avenue constitute a public nuisance for the following reasons:

1. Since 2005, the owner has negatively impacted the surrounding residential neighborhood with excessive noise after 8 p.m., resulting from on-site construction-related activities, and light and glare impacts from improperly placed security lighting, despite numerous violation notices and citations from Code Enforcement.
2. The basement is 1,527 square feet in size, at least 9 feet deep, and is an attractive neighborhood nuisance and hazard even in dry conditions, but all the more so with the recent onset of seasonal rains falling into a large hole in the ground which has no natural or man-made drainage, thus allowing water to accumulate to potentially the nine-foot depth of the basement. It is temporarily secured by fencing, but the long-term remedy is to remove the basement walls and floor, then fill in the remaining hole with compacted soil.
3. The owner has ignored staff's direction to restore this property to a vacant lot, and worse yet, the property has been used as a storage yard since June 2008. In addition to building materials and equipment, household goods and rubbish have also accumulated on the property which contributes further to visual blight in the neighborhood.
4. The owner has indicated he is financially incapable of building a house over the basement, and that he has no intention of performing any more work including restoration of the site to a vacant lot.

This site, 2258 Orange Avenue, is functioning as a construction storage yard with an open basement in a residential zone. To proceed with the abatement process, City Council must first declare, by resolution, that conditions on this site "constitute a public nuisance", and direct staff to proceed with abatement procedures.

**ALTERNATIVES CONSIDERED:**

Council may consider the following alternative:

1. Determine the property's condition does not constitute a public nuisance and direct staff to work with the property owner to remove the basement and fill with compacted soil; remove all vehicles and materials from the property in a timely manner; and, restore the property to acceptable vacant site conditions with appropriate fencing and erosion control.

**FISCAL REVIEW:**

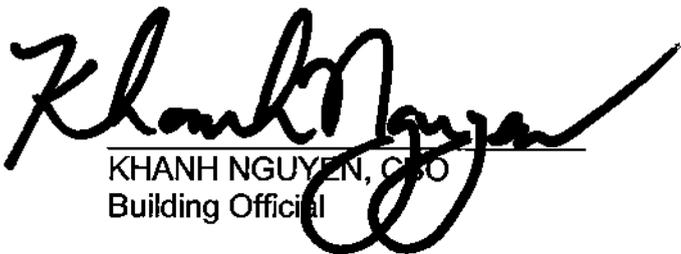
Pursuant to the Municipal Code, the City's cost to abate the public nuisance would constitute a special assessment against the property, and the City would place a lien on the property until the assessment is paid. Although the abatement cost would be paid by the property owner, the City would be responsible for funding the abatement out of this year's budget (08/09). Staff will have an estimate of the abatement cost at Council's January 20, 2009 meeting.

**LEGAL REVIEW:**

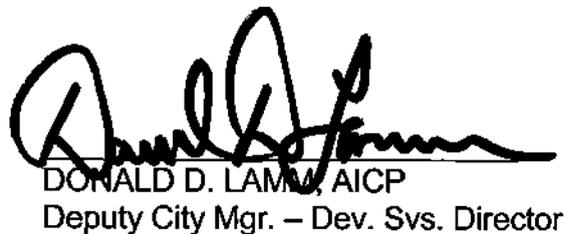
The attached resolution was reviewed and approved as to form by the City Attorney.

**CONCLUSION:**

By Council "declaring" conditions at 2258 Orange Avenue are a public nuisance, staff would then set a final abatement hearing for January 20, 2009. Once Council approves the abatement process, staff would proceed with demolition and site clearing, with the goal of restoring this property to the Municipal Code's standards for vacant lots, and restoring peace and quiet to the surrounding residential neighborhood.



KHANH NGUYEN, CSO  
Building Official



DONALD D. LAMM, AICP  
Deputy City Mgr. – Dev. Svs. Director

Attachments:

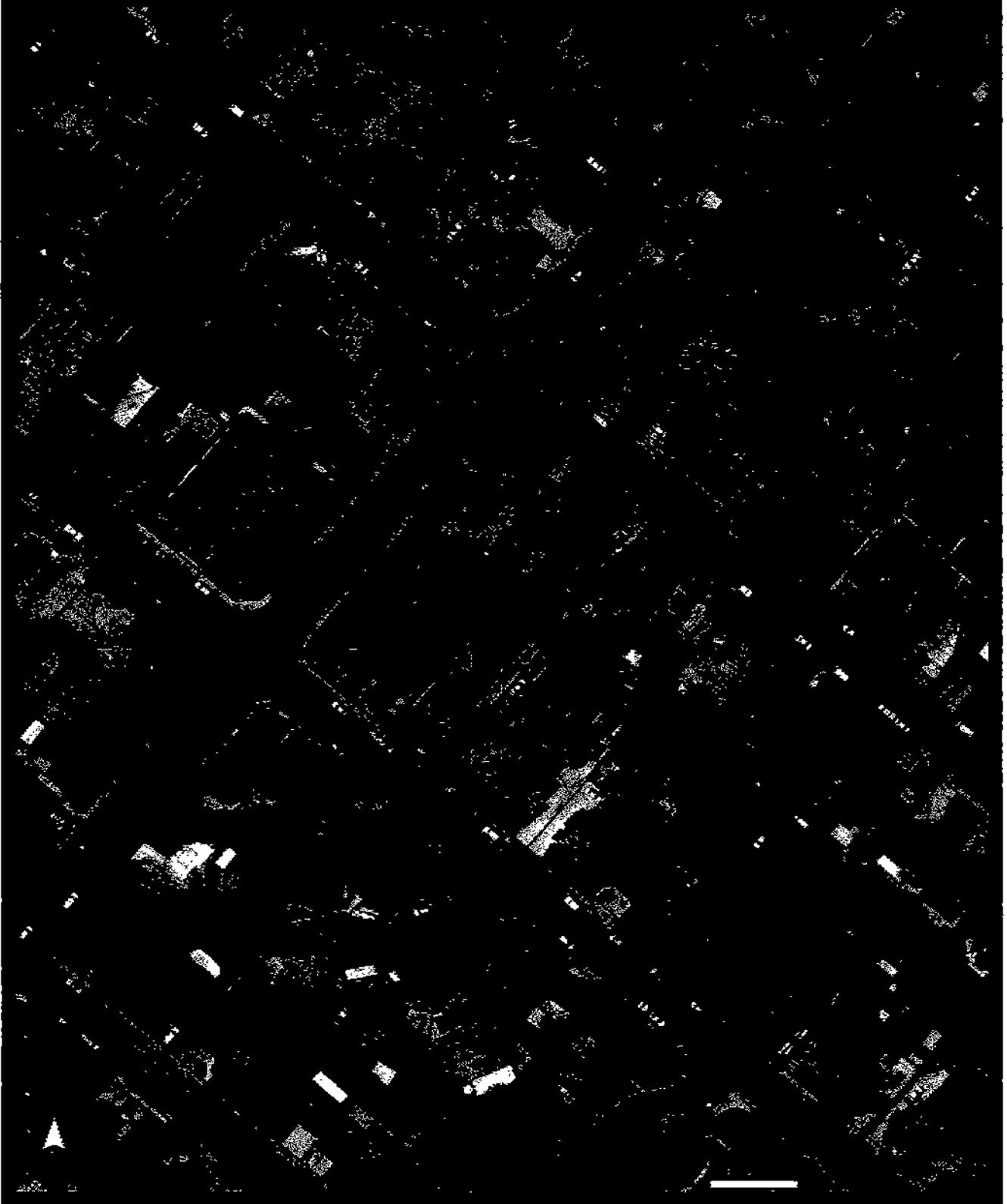
1. Vicinity Map
2. Site Photos
3. 2007 construction schedule
4. Draft City Council Resolution

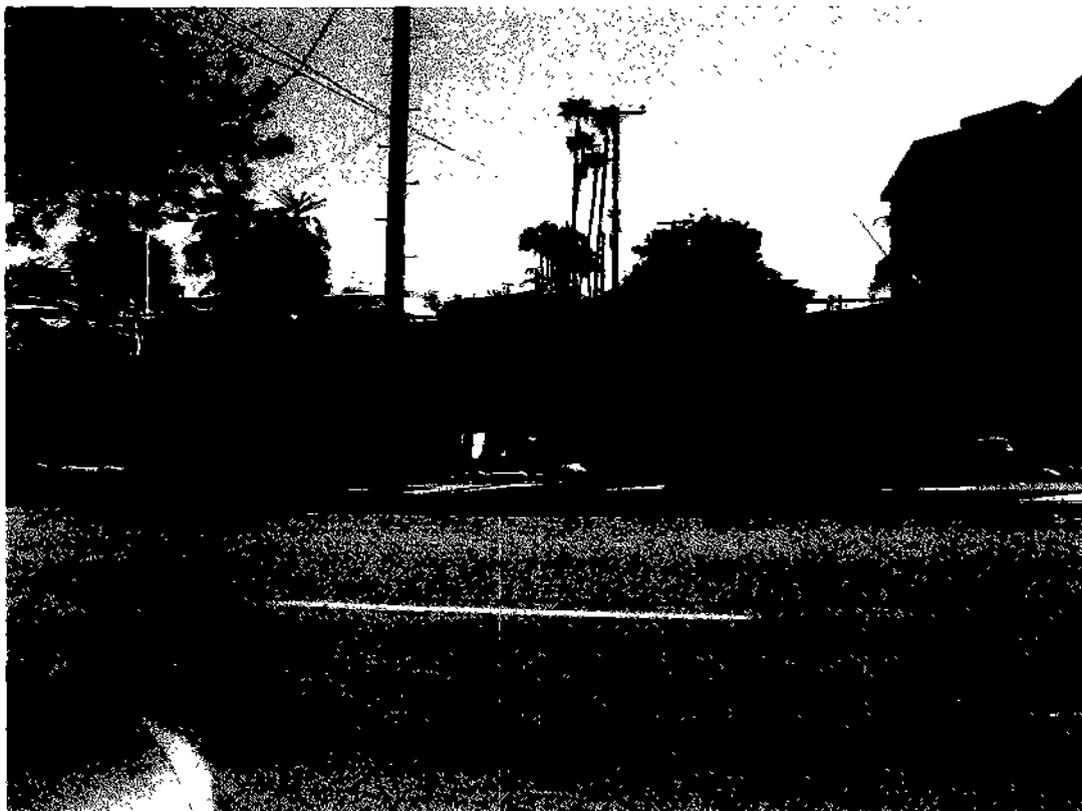
Distribution: City Manager  
Assistant City Manager  
City Attorney  
Deputy City Mgr.-Development Svs. Dir.  
Assistant Development Svs. Dir.  
Finance Director  
Police Chief  
Chief of Code Enforcement  
Chief of Inspection  
City Clerk (2)  
Staff (4)  
File (2)

Mr. Michael P. Keeler  
2260 Orange Avenue  
Costa Mesa CA 92627

File: 0106092258OrangeAve	Date: 122408	Time: 10:00 a.m.
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# VICINITY MAP for 2258 Orange Avenue





**Street View of 2258 Orange Avenue (12/19/08)**



**Site View of 2258 Orange Avenue (12/19/08)**

# ATTACHMENT 3

## 2256 Orange Avenue Project Costa Mesa, CA 92627

### CONSTRUCTION SCHEDULE (August 2007)

#### 1<sup>st</sup> & 2<sup>nd</sup> Week (August 25-September 6)

- Clean work site
- Complete drywall
- Install interior doors
- Closet doors
- Install entry doors
- Install electrical vaults
- Finish plumbing
- Garage doors
- Finish fireplace mantels
- Install fireplaces

#### 3<sup>rd</sup> 4<sup>th</sup> Week (September 8-20)

- Prime and paint interior of house
- Install cabinets (kitchen, upstairs hall bathroom, bonus room bathroom, and master bathroom)
- Template for granite countertops
- Start exterior grading for driveway and walk ways
- Frame and pour exterior concrete
- Frame and pour front entry steps
- Remove scaffolding

#### 5<sup>th</sup> & 6<sup>th</sup> Week (September 22-October 4)

- Install wood flooring
- Install tile in bathrooms/showers
- Install floor tile
- Install wall base

#### 7<sup>th</sup> & 11<sup>th</sup> Week (October 6-November 8)

- Install granite countertops
- Electrical finishes
- Finish electrical panel
- Install door handle and finish trims
- Install A/C registers
- Test A/C & heating
- Touch-up interior paint
- Install shower doors
- Install plumbing finishes
- Install master bedroom balcony wrought iron railing
- Install carpet
- Disconnect temporary power
- Install appliances

**RESOLUTION NO. 09-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA,  
CALIFORNIA, DECLARING CONDITIONS AT THE PROPERTY KNOWN AS 2258  
ORANGE AVENUE, COSTA MESA, TO BE A PUBLIC NUISANCE SUBJECT TO  
ABATEMENT**

The City Council of the City of Costa Mesa does hereby resolve as follows:

WHEREAS, the City Council has considered information submitted by City staff concerning certain conditions extant at the property known as 2258 Orange Avenue (APN 426-073-27), Costa Mesa; and

WHEREAS, the City Council has also afforded both the property owner and nearby neighbors to be heard concerning the conditions extant at this property; and

WHEREAS, since 2005, the owner has negatively impacted the surrounding residential neighborhood with excessive noise after 8 p.m. associated with on-site construction-related activities and light and glare impacts from improperly placed security lighting, despite numerous complaints to the owner and to City staff from neighbors, and despite numerous violation notices and citations from Code Enforcement; and

WHEREAS, the large basement is 9-feet deep by 40-feet wide by 40-feet long, and is an attractive nuisance and hazard even in dry conditions, but all the more so with the recent onset of seasonal rains falling into a large hole in the ground which has no natural or man-made drainage, thus allowing water to accumulate to potentially the nine-foot depth of the basement; and, notwithstanding that it is temporarily secured by fencing, the long-term remedy is to remove the basement walls and floor and fill in the remaining hole with appropriately compacted soil; and,

WHEREAS, the owner has ignored staff's direction to restore this property to a vacant lot, and it has been used as a storage yard since June 2008; and,

WHEREAS, in addition to building materials and equipment, household goods and rubbish have also accumulated on the property, which contributes further to the visual blight impacts to the surrounding neighborhood; and,

WHEREAS, the owner has indicated that he lacks the resources to complete the construction of the house and that he has no intention of performing any more work; including restoration of the site to a vacant lot; and,

WHEREAS, it is, pursuant to Chapter 1, Article 5 of the Costa Mesa Municipal Code, both the duty and the right of the City of Costa Mesa, through its City Council, to take action where appropriate to cause and authorize the abatement of nuisance conditions which endanger the peace and safety of the citizens of Costa Mesa;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Costa Mesa, does hereby declares as follows:

1. Conditions at the property known as 2258 Orange Avenue, Costa Mesa, and in particular the open basement structure and the related storage and accumulation of materials, implements and vehicles on this property, constitute a nuisance within the meaning of §§ 20-3 and 20-4 of the City of Costa Mesa Municipal Code.
2. City staff is hereby directed to take all steps lawful and necessary to abate said nuisance conditions, and to restore this property to a safe, quiet and orderly condition.
3. City staff is hereby further directed to report back to the City Council within thirty (30) days of this resolution concerning the completion of such abatement or the progress toward completion of abatement, and to continue such reports each thirty (30) days thereafter until such time as the abatement of this nuisance has been completed.
4. City staff is hereby furthermore directed to provide written notice of this Resolution to the property owner, together with written notice of his/her/their right under § 20-14(e) and Title 2, Chapter IX (Appeal, Rehearing and Review Procedure) of the City of Costa Mesa Municipal Code to appeal this determination.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\_\_\_\_\_  
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
City Clerk of the City of  
Costa Mesa

\_\_\_\_\_  
City Attorney

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.  
CITY OF COSTA MESA )

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa mesa, hereby certify that the above and foregoing Resolution No. 08-\_\_\_ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the \_\_\_ day of January, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Costa Mesa this \_\_\_ day of January, 2009.

\_\_\_\_\_  
City Clerk and ex-officio Clerk of the City  
Council of the City of Costa Mesa