



CITY COUNCIL AGENDA REPORT

MEETING DATE: AUGUST 18, 2009

ITEM NUMBER:

SUBJECT: CONTEST OF THE AMOUNT AND/OR VALIDITY OF SPECIAL ASSESSMENT FOR DELINQUENT CIVIL FINES FOR CIVIL CITATION ISSUED TO TERRI KURZEN FOR MUNICIPAL CODE VIOLATIONS

DATE: AUGUST 6, 2009

FROM: FINANCE DEPARTMENT, ADMINISTRATION DIVISION

PRESENTATION BY: MARC R. PUCKETT, DIRECTOR OF FINANCE

**FOR FURTHER INFORMATION CONTACT: MARC R. PUCKETT, DIRECTOR OF FINANCE,
(714)754-5243**

RECOMMENDED ACTION:

- 1) Hear contest of the amount and/or validity of Special Assessment for delinquent civil fines for Civil Citation issued to Terri Kurzen, 1970 Federal Avenue, for Municipal Code Violations.
- 2) Provide direction.

BACKGROUND:

Pursuant to State law, certain delinquent fines, interest, and penalties may be collected as part of nuisance abatement procedures authorized by Government Code section 38773.5. These procedures authorize municipalities to levy and collect delinquent Civil Citation fines plus interest and penalties as a Special Assessment lien against the real property of those so assessed.

Staff has made repeated attempts to collect the Civil Citation fines due without success. At the August 4, City Council meeting, City Council conducted a public hearing to consider a resolution to certify the Special Assessments and authorize recording such assessments against the respective properties as liens. There were a total of 36 delinquent civil citations that were recommended to be assessed against 22 properties and the total amount delinquent equaled \$60,051.70.

Those property owners who so choose may appear before City Council and contest the special assessment lien pursuant to Section 1-48(e)(4) of the Municipal Code. However, since the citee's opportunities to pursue an administrative appeal of the citations have long since past, pursuant to Municipal Code Section 1-48(e)(4), the citee is only able to contest the amount (whether the amount was calculated correctly on the proposed Special Assessment Roll) and/or validity (whether the civil citation can legally be added to the tax roll as a special assessment) of the lien or assessment.

At the August 4, 2009, City Council meeting, Council considered the resolution, took public comment, requested additional information from staff and approved all Special Assessments with exception of the delinquent civil citation lien proposed for 1970 Federal Way. Council then took action to postpone for two weeks action on the delinquent civil citation lien proposed for 1970 Federal Way to the meeting of August 18, 2009.

ANALYSIS:

Per State law, the City may choose to collect delinquent fines, interest, and penalties as special assessments against the real property involved. The assessments are limited to property related violations, wherein the fines exceed \$100 cumulatively and are at least sixty days past due. In addition, all hearing or appeal rights of the cited persons have been exhausted.

These fine amounts will be levied against the properties as liens, non-payment of which will incur additional penalties and will appear as an exception to the title on a title report at time of transfer of the property. Once certified, the fines will be reported to the Orange County Tax Assessor for inclusion on the property tax bills as Special Assessment liens.

A Public Hearing is required prior to adoption of the resolution certifying the Special Assessments to the Orange County Assessor for inclusion on the Tax Roll. This Public Hearing was held on August 4, 2009.

Each of the property owners on the Special Assessment listing provided to City Council have received certified letters notifying them of the proposed Special Assessment against their property for delinquent Civil Citations and the date and time of the public hearing. Also, the legal notice advertising the public hearing which is required pursuant to the State Code was published in the Daily Pilot five days prior to the date of the public hearing.

At the August 4 City Council Meeting, one of the citees included on the Special Assessment listing, Terry Kurzen, 1970 Federal Way, appeared before City Council during the public hearing and stated that she had not received the notice for which the civil citation was issued. Council requested that Ms. Kurzen's proposed Special Assessment lien be extracted from the proposed Special Assessment listing and postponed action in Ms. Kurzen's proposed Special Assessment lien for two weeks.

Copies of the citations, notifications of rights of appeal, and other correspondence to all citees listed in the proposed Special Assessment roll acted on at the August 4, 2009, City Council meeting (Attachment 1) are available for inspection in the Finance department for City Council, the citees or any member of the public.

Copies of the original citations showing that the citee, Ms. Kurzen, was notified of her rights of appeal and other correspondence to her is attached (Attachment 2).

Ms. Kurzen indicated that she had not received notice of the citation, or her right of appeal of the civil citation. Per the summary below of correspondence sent to Ms. Kurzen and Mr. Jerry Andreas by the City, she received the following citations, notifications of her rights of appeal, invoices stating the amounts due and dunning letters:

1. July 2, 2008. Warning letter issued by Code Enforcement Officer.
2. July 21, 2008. "Final Notice" Warning letter issued by Code Enforcement Officer.
3. July 30, 2008, Citation number 005934 issued to Jerry Andreas, 1970 Federal Way. Under "officer's observations" it is noted that the citation was issued for "Illegal storage of trash, debris, rubbish, inoperable vehicle, deteriorated wall/fence, landscape required, yard and parkway." Further, on the bottom of the citation, it states that the citee has 30 days to contest the citation and if contested the administrative hearing would be held on October 7, 2008.
4. July 30, 2008, Citation number 005935 issued to Terri Kurzen, 1970 Federal Way. Under "officer's observations" it is noted that the citation was issued for "Illegal storage of trash, debris, rubbish, inoperable vehicle, deteriorated wall/fence, landscape required, yard and parkway." Further, on the bottom of the citation, it states that the citee has 30 days to contest the citation and if contested the administrative hearing would be held on October 7, 2008.
5. October 7, 2008. The 30 day period to contest the citation and request an administrative hearing lapsed. Neither citation was contested.
6. October 21, 2008. Invoice number 15332 issued for unpaid Civil Citations - \$400. Due date – November 20, 2008. Citation number 005934.
7. October 21, 2008. Invoice number 25933 issued for unpaid Civil Citations - \$400. Due date – November 20, 2008. Citation number 005935.
8. November 26, 2008. Overdue notice issued for invoice number 15332.
9. November 26, 2008. Overdue notice issued for invoice number 25933.
10. December 31, 2008. Past due invoice notice issued for invoice number 15332.
11. December 31, 2008. Past due invoice notice issued for invoice number 25933.
12. January 30, 2009. Demand for payment notice issued for invoice number 15332.
13. January 30, 2009. Demand for payment notice issued for invoice number 25933.
14. June 29, 2009. Invoice number 15332 written off.
15. June 30, 2009. Certified notice of Special Assessment Hearing sent to Jerry Andreas or Ms. Terri Kurzen to 1970 Federal Way (signed for by Terri Kurzen on July 1).
16. July 16, 2009. Revised Certified notice of Special Assessment Hearing sent to Jerry Andreas or Ms. Terri Kurzen revising the hearing date to August 4, 2009 (Terri Kurzen attended this Public Hearing).

Prior to the August 4, 2009 City Council meeting, Ms. Kurzen had not contacted staff or made any attempt to pay the amounts due. This listing is not intended to be an exhaustive list of all written and oral communications between Ms. Kurzen and City staff.

As noted, the front of the civil citations states the rights of the citee to an administrative hearing on the citation issued. The reverse side of the citation outlines in greater detail the citee's rights to an administrative hearing, hearing procedures, and right to judicial review as codified in Chapter II of the Municipal Code.

Chapter II - Civil Citations, of the Municipal Code (Attachment 3), delineates the process by which delinquent Civil Citations may be attached as a lien or assessment against the citees property. Section 1-48(e)(4) states that the citee may contest the amount and/or validity of any lien or assessment for a civil fine at the public hearing to certify the amount of the lien or assessment by City Council. This section further states, in pertinent part, that "such contests shall be limited to the issue of the amount and/or the validity of the lien or assessment and may not consider whether the underlying code violation occurred."

As referenced above, staff has made several efforts to collect the delinquent Civil Citation issued to Ms. Terri Kurzen, 1970 Federal Way without success. Further, the citee's opportunities to pursue an administrative appeal of the citations have long since past.

ALTERNATIVES CONSIDERED

Council may choose to waive all or in portion of the \$400 amount due for the delinquent Civil Citation and/or direct staff to proceed to collect the delinquent civil citation through the collection agency currently used by the City. No further alternatives were considered.

FISCAL REVIEW

If the total \$400 amount of the delinquent Civil Citation fee due is waived, this action will result in a \$400 decrease in Civil Citation fine revenue. If Council directs staff to proceed to collect the delinquent Civil Citation amount due through the City's collection agency, the City would receive only 50% of the fine revenue or about \$200. If the delinquent Civil Citation remains outstanding as of next August, it can be added to the 2010 Property Tax Roll as a Special Assessment.

LEGAL REVIEW

No legal review is required.

CONCLUSION:

Staff requests that City Council hear the contest of the amount and/or validity of the Special Assessment for delinquent civil fines for a Civil Citation issued to Terri Kurzen, 1970 Federal Avenue, for Municipal Code Violations and provide direction to staff.

MARC R. PUCKETT
Director of Finance

- Attachment 1: [Civil Citation Special Assessment List](#)
- Attachment 2: [Schedule of Civil Fines and Penalties](#)
- Attachment 3: [Chapter II Civil Citations of the Municipal Code](#)

Copy to: Terri Kurzen