

MEMORANDUM
Office of the City Attorney



Date: September 8, 2009
To: Mayor Livengood and Members of the City Council
From: Michael J. Ogaz, City Attorney *M.J.O.*
Copy: Tom Williams, City Manager; File
Subject: **Lien Process for Debt Recovery**

Background

During the Council Meeting of August 18, 2009, the City Attorney was asked about the potential to have debts owed to the City placed as liens against the property. This Memorandum addresses this issue in the various situations in which it arises.

As the Council will recall, the debts that the Finance Department was recommending for "write-off" came from a variety of sources. They included:

1. Animal-related violations
2. Police false alarms
3. Fire false alarms
4. NBO (Neighborhood Beautification Ordinance) violations
5. Fire Annual Permits
6. Project Account nonpayment
7. Returned checks
8. Utility nonpayment

In addition to those above, the City also has collection issues relating to Business License Tax, DUI reimbursement, Public Works cost recovery, shopping cart retrieval, mosquito abatement and various other programs. These programs are each governed by different ordinance schemes. As one might predict, the ordinance schemes provide different collection remedies for the different programs.

Analysis

Initially, it should be noted that in addition to placing a lien against the property, the City has other remedies for collection purposes. It can file a lawsuit or in some cases file criminal charges. These methods are not cost effective for small debts but can be used when necessary. Also, under current ordinances, debts for Neighborhood Beautification Ordinance (NBO) violations and weed and rubbish abatement may already be placed on the tax rolls and collected with the property owner's yearly taxes, except for those debts derived from NBO Administrative Citations. Under the current

NBO, Administrative Citations are “fines” which cannot be collected through the lien and tax roll process.

Placement of a lien against private property means that a Notice of Lien must be filed with the County Recorder’s Office after a hearing before the City Council. Such liens can only be placed against a property if the debt or violation is related to that property. As such, the lien process cannot be used to collect vehicle-related debt or for collection of park use fees, etc.

Filing a Notice of Lien will not result in automatic collection, but will create a cloud on the title of the property until paid when the property is sold or refinanced. Such liens are operative for 10 years, but can be refiled. As noted, such a lien procedure is already in place for NBO violations (not Administrative Citations) and can be utilized by the City without further Code amendment. It also applies to any refuse or rubbish abatement.

Animal violations and Police and Fire false alarms do not currently allow for a lien against the property. Similarly, Fire Annual Permit fee collection, Project Account collection (PJ account), and utility service collection do not provide for liens against the property.

State law allows for collection of utility user fees through a hearing process that allows for placement of the debt on the tax rolls, but not through the less invasive method of placing a lien on the property. Placement on the tax roll means that the amount of the debt is included with the property taxes and is subject to the delinquency and foreclosure process applicable to property taxes. Our current ordinance does not allow for placement on the tax roll, but does allow for termination of utility service for nonpayment. Because of health and safety concerns, this is rarely used.

Project Accounts (PJ) are used to charge staff time on projects that require development approval over and above building permits. Current forms do not require property owner concurrence for payment, but could be changed to make PJ account payment a joint obligation of the developer and property owner, making it possible to place a lien against the property.

While various statutes allow for a lien process, and some allow for collection through placement on the tax roll, there is a need for a single consistent means by which to place all or most of these uncollectable debts either on the tax roll or recorded as a lien. One way this could be accomplished is to characterize all of these debts as public nuisances. If related to particular properties, the City could then either place them on the tax roll or have a lien recorded against the property. This would require a general change to the definition of “public nuisance” in our Municipal Code and, for PJ accounts, a change to the PJ Processing Account Agreement requiring property owner responsibility for the fees.

Options

The Council can choose from a variety of options based on the analysis above. Staff seeks direction as to the following options:

1. **Maintain the status quo-** no changes to ordinances or procedure. No further action regarding collection of “write off” indebtedness.

2. **No ordinance change-** the current NBO allows for liens or tax roll collection after hearing, except for Administrative Citations. In the future, the City could conduct such a hearing in conjunction with the yearly request to “write-off” such accounts. This would allow NBO, rubbish and refuse abatement accounts to be liened or placed on the tax roll, but would not allow this for Administrative Citation debt or the other categories described in the **Background** section of this Memorandum.
3. **Ordinance revision-** current ordinances state that a violation of the Municipal Code is a public nuisance. The NBO allows for a lien or tax roll collection of debt related to public nuisance. With a minor Code amendment, the City can define nonpayment of the “write off” debts as a public nuisance and a violation of the Municipal Code. This way, those “write off” debts that relate to particular parcels of property can be made subject to lien or tax roll collection (except those that are “fines”). In addition, by requiring the property owner to sign off on a development proposal, instead of only the developer, we can make nonpayment of these fees result in a lien against the property for unpaid PJ accounts.
4. **Recorded lien or tax roll collection-** State law, the current NBO, and the proposed ordinance revision discussed above all allow a choice between filing a lien or creating an assessment to be collected with the yearly taxes. Staff seeks direction on which of these options (or both) should be included within any draft ordinance or future practice.

Conclusion

The variety of code schemes, both under State law and within the Municipal Code applicable to the numerous types of indebtedness, creates a complex pattern for collection that would benefit by uniform application of a single process allowing for a lien or tax roll assessment. We can create such a uniform process by amending City ordinances to allow collection matters relating to individual parcels to be characterized as public nuisances.

Comment: Amending the current ordinances, as suggested above, will effectively broaden the City’s debt collection capabilities. However, we will still not be able to collect through the lien and tax roll method: (1) debts that are not property related, or (2) debts, such as for unpaid Administrative Citations, which are considered “fines” or “penalties.”