TO: HONORABLE CITY COUNCIL
FROM: CITY MANAGER DEPARTMENT: ADMINISTRATIVE SERVICES
DATE: APRIL 12, 2004 CMR: 209:04
SUBJECT: PUBLIC HEARING TO CONFIRM THE REPORT OF THE DIRECTOR OF ADMINISTRATIVE SERVICES REGARDING DELINQUENT COSTS AND ADMINISTRATIVE PENALTIES RELATING TO 1042 METRO CIRCLE AND 3376 ROSS ROAD AND TO RECORD LIENS AGAINST THE PROPERTIES WITH THE SANTA CLARA COUNTY RECORDER'S OFFICE.

RECOMMENDATION
Staff recommends adoption of a resolution (Attachment A) confirming delinquent costs and administrative penalties that have remained unpaid as of April 12, 2004 and directing staff to record liens against the properties located at 1042 Metro Circle and 3376 Ross Road with the Santa Clara County Recorder's Office. Staff recommends that Council record property liens of $37,312 against 1042 Metro Circle and $101,939 against 3376 Ross Road, unless evidence received at the public hearing provides good cause to discharge or modify the amounts due and owing.

BACKGROUND
George L. Bradshaw and Karen W. Bradshaw are the owners of residential properties located at 3376 Ross Road and 1042 Metro Circle. In 1995 and 1997, respectively, City code enforcement staff conducted inspections of the properties that revealed substandard housing conditions as well as municipal code violations pertaining to property maintenance. In 2000, City code enforcement staff served George L. Bradshaw with administrative compliance orders providing him with deadlines to comply with the code. The Bradshaws failed to meet the deadlines and the cases were set for administrative compliance hearings.

The administrative compliance hearings took place in 2000 and 2001, respectively. At the conclusion of the hearings, the City hearing officer ruled that the Bradshaws still were not in compliance. He ordered compliance and imposed costs and administrative penalties. The costs imposed by the hearing officer were fixed dollar amounts to compensate the City for the costs of enforcement that already had been incurred. The
administrative penalties that were imposed were incurred on a daily basis based on the Bradshaws’ compliance or non-compliance after the hearing. The hearing officer directed the Bradshaws to contact the code enforcement officer when they had complied with his orders so that daily penalties would not accrue further. These decisions and orders were based on code enforcement actions taken by the Department of Planning and Community Environment.

A brief summary of the cases and administrative costs and fines is provided in Attachment B. Narratives of the actual hearings and case history for each property can be found in Attachments C and D.

Since the hearing officer made his rulings, the Bradshaws have partially complied with the hearing officer’s orders on improvements. As of April 1, 2003, the property at 1042 Metro Circle was determined by City staff to comply with the hearing officer’s orders. City staff calculated the total amount of administrative penalties due as of that date and stopped calculating daily penalties. Costs and penalties due to the City as of April 1, 2003 were $37,312. The Bradshaws have made no payment on this amount.

Ongoing violations of the hearing officer’s orders continue at 3376 Ross Road, and administrative penalties for the ongoing violations continue to accrue. These ongoing violations are: failure to receive final inspection approval for the required repair work on the roof overhang, failure to remove all vehicles to paved ground, and failure to move or move to a permitted structure a red colored metallic artifact and sailboat. As of June 27, 2003, costs and penalties on the property totaled $107,939. Additional, non-invoiced costs and penalties totaling $29,000 have accrued through April 12, 2004. Of this total, only $20,000 can be invoiced and recorded as a lien since the property owner has 90 days from the date of penalty to remit payment before a lien can be recorded. City staff stopped invoicing after June 27, 2003.

As evidenced in the narrative above and in the attachments, City staff has made numerous attempts at collection of the costs and administrative penalties due and owing. For example, George L. Bradshaw and Karen W. Bradshaw were mailed invoices consistently by Revenue Collections/Administrative Services Department (See Attachment F). After exhausting all remedies for payment, the Administrative Services Department sent a Notice of Public Hearing to George L. Bradshaw and Karen W. Bradshaw advising them of the lien hearing (Attachment G). George L. Bradshaw and Karen W. Bradshaw were determined to be the property owners of record as of February 26, 2004 based on Santa Clara County Assessor’s records and preliminary title reports.
DISCUSSION
Since George L. Bradshaw and Karen W. Bradshaw continue to violate compliance orders on the 3376 Ross Road property and have not paid any penalties to date, the proposed liens are being presented to City Council. Consistent with state law, the Palo Alto Municipal Code allows for the imposition of property liens for costs and administrative penalties ordered because of violations of code provisions relating to specific real property.

The purpose of imposing property liens is to secure payment of costs and administrative penalties due and owing to the City and to establish a priority for the payment of those debts over debts of other creditors, including most non-secured debts and future secured debts. After the liens have been recorded, the City will relinquish them after full payment has been received. If full payment is not received, the City may satisfy the amount of the debts by levy and sale of the real property by writ of execution or foreclosure action. In addition, any future purchasers of the properties are subject to the liens. Typically, a purchaser of real property subject to liens will make the satisfaction of the liens a condition of the purchase of the property.

The Palo Alto Municipal Code requires the Council to hold a hearing prior to the imposition of a property lien and then confirm, discharge or modify the amount of the lien. Council’s options are as follows:

1) Confirm the amount of the lien: The amounts currently due and owing are debts that were imposed after full evidentiary hearings and are based on orders of the hearing officer. The Bradshaws did not appeal the orders of the hearing officer and the amounts that are subject of the liens are:

   1042 Metro Circle       $ 37,312
   3376 Ross Road          $107,939 Invoiced through June 27, 2003
   3376 Ross Road          $ 20,000 Collectible Non-Invoiced Penalties

   Total                   $165,251

2) Modify the lien amounts: Based on evidence received at the public hearing, the Council has the authority to modify the lien amounts.

3) Discharge the lien amount: The lien amounts are a debt owed to the City. The Council has the authority to discharge the debtors of the lien amount in full based on evidence presented at the hearing.

4) Defer action on recording property liens: The Council has the authority to defer action on recording real property liens. Because real property liens are only one means of collection of costs and administrative penalties, the Council may defer action should
there be other reasonable alternatives for obtaining compliance and collecting of amounts due and owing. The Council also may defer action to allow City staff to send additional invoices to the Bradshaws to account for unpaid daily penalties due on the Ross Road property of $100 per day since June 27, 2003.

Staff recommends that Council exercise its option to modify the lien amount on 3376 Ross Road to $1,939 in administrative costs and a maximum $100,000 in fines for a total of $101,939. In addition, staff recommends that a lien of $37,312 be placed on the 1042 Metro Circle property.

Staff is cognizant of the magnitude of the recommended lien. The extent of the lien, however, is, in large part, due to the non-responsiveness of the property owners to make improvements as required by City code.

**RESOURCE IMPACT**

If Council approves staff’s recommendations, the City would place liens totaling $139,251 on the properties. If the property owners do not begin payment on the liens, the City’s chief recourse is to receive payments in the event of a property transfer or foreclosure.

**POLICY IMPLICATIONS**

State law and the City’s Municipal Code provide clear direction on the process and procedures for imposing costs and fines related to code violations. It is within Council’s prerogatives, however, to listen to the property owner’s reasons for non-compliance and adjust the penalties based on the evidence provided. To not impose fines would undermine the City’s ability to enforce the codes that foster public safety and the common good.

**ATTACHMENTS**

Attachment A: Resolution
Attachment B: Summary of Cases, Administrative Costs and Fines
Attachment C: Administrative Decision and Order #01-PLN-1 (1042 Metro Circle)
Attachment D: Administrative Decision and Order #977-LM-16/978-BLD-1 (3376 Ross Road)
Attachment E: Memorandum of Paul Camilleri
Attachment F: Invoices
Attachment G: Notice of Public Hearing
PREPARED BY:  
JOSEPH SACCIO  
Deputy Director

DEPARTMENT HEAD:  
CARL YEATS  
Director, Administrative Services

CITY MANAGER APPROVAL:  
EMILY HARRISON  
Assistant City Manager