

Assembly Bill No. 2317

Passed the Assembly August 27, 2010

Chief Clerk of the Assembly

Passed the Senate August 25, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, add, and repeal Sections 25845, 38773.1, and 38773.5 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2317, Saldaña. Local government: nuisance abatement.

Existing law authorizes the legislative body of a city or county to establish a procedure to use a nuisance abatement lien or a special assessment to collect abatement costs and related administrative costs.

This bill would authorize, until January 1, 2014, the legislative body of a city or county to also collect fines related to the nuisance abatement using a nuisance abatement lien or a special assessment.

The people of the State of California do enact as follows:

SECTION 1. Section 25845 of the Government Code is amended to read:

25845. (a) The board of supervisors, by ordinance, may establish a procedure for the abatement of a nuisance. The ordinance shall, at a minimum, provide that the owner of the parcel, and anyone known to the board of supervisors to be in possession of the parcel, be given notice of the abatement proceeding and an opportunity to appear before the board of supervisors and be heard prior to the abatement of the nuisance by the county. However, nothing in this section prohibits the summary abatement of a nuisance upon order of the board of supervisors, or upon order of any other county officer authorized by law to summarily abate nuisances, if the board or officer determines that the nuisance constitutes an immediate threat to public health or safety.

(b) In any action to abate a nuisance, whether by administrative proceedings, judicial proceedings, or summary abatement, the owner of the parcel upon which the nuisance is found to exist shall be liable for all costs of abatement incurred by the county and fines related to the nuisance abatement, including, but not limited to, administrative costs, and any and all costs incurred in the physical abatement of the nuisance. Recovery of costs pursuant to this

section shall be in addition to and shall not limit any prevailing party's right to recover costs pursuant to Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law.

(c) A county may, by ordinance, provide for the recovery of attorney's fees in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorney's fees, it shall provide for recovery of attorney's fees by the prevailing party, rather than limiting recovery of attorney's fees to the county if it prevails. The ordinance may limit recovery of attorney's fees by the prevailing party to those individual actions or proceedings in which the county elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the county in the action or proceeding.

(d) If the owner fails to pay the costs of the abatement upon demand by the county, the board of supervisors may order the cost of the abatement and fines related to the nuisance abatement to be specially assessed against the parcel. The assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to the special assessment.

(e) If the board of supervisors specially assesses the cost of the abatement against the parcel, the board also may cause a notice of abatement lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of property, set forth the last known address of the record owner or possessor, set forth the date upon which abatement of the nuisance was ordered by the board of supervisors and the date the abatement was complete, and include a description of the real property subject to the lien and the amount of the abatement cost.

(f) However, if the board of supervisors does not cause the recordation of a notice of abatement lien pursuant to subdivision (e), and any real property to which the costs of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or a lien on a bona fide encumbrancer for value has been created

and attaches to that property, prior to the date on which the first installment of county taxes would become delinquent, then the cost of abatement shall not result in a lien against that real property but shall be transferred to the unsecured roll for collection.

(g) Recordation of a notice of abatement lien pursuant to subdivision (e) has the same effect as recordation of an abstract of a money judgment recorded pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The lien created has the same priority as a judgment lien on real property and continues in effect until released. Upon order of the board of supervisors, or any county officer authorized by the board of supervisors to act on its behalf, an abatement lien created under this section may be released or subordinated in the same manner as a judgment lien on real property may be released or subordinated.

(h) The board of supervisors may delegate the hearing required by subdivision (a), prior to abatement of a public nuisance, to a hearing board designated by the board of supervisors. The hearing board shall make a written recommendation to the board of supervisors. The board of supervisors may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the board of supervisors.

(i) The board of supervisors may, by ordinance, delegate to a hearing officer appointed pursuant to Section 27720 the powers and duties specified by this section.

(j) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 2. Section 25845 is added to the Government Code, to read:

25845. (a) The board of supervisors, by ordinance, may establish a procedure for the abatement of a nuisance. The ordinance shall, at a minimum, provide that the owner of the parcel, and anyone known to the board of supervisors to be in possession of the parcel, be given notice of the abatement proceeding and an opportunity to appear before the board of supervisors and be heard prior to the abatement of the nuisance by the county. However, nothing in this section prohibits the summary abatement of a nuisance upon order of the board of supervisors, or upon order of any other county officer authorized by law to summarily abate

nuisances, if the board or officer determines that the nuisance constitutes an immediate threat to public health or safety.

(b) In any action to abate a nuisance, whether by administrative proceedings, judicial proceedings, or summary abatement, the owner of the parcel upon which the nuisance is found to exist shall be liable for all costs of abatement incurred by the county, including, but not limited to, administrative costs, and any and all costs incurred in the physical abatement of the nuisance. Recovery of costs pursuant to this section shall be in addition to and shall not limit any prevailing party's right to recover costs pursuant to Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law.

(c) A county may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the county if it prevails. The ordinance may limit recovery of attorneys' fees by the prevailing party to those individual actions or proceedings in which the county elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the county in the action or proceeding.

(d) If the owner fails to pay the costs of the abatement upon demand by the county, the board of supervisors may order the cost of the abatement to be specially assessed against the parcel. The assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county taxes are applicable to the special assessment.

(e) If the board of supervisors specially assesses the cost of the abatement against the parcel, the board also may cause a notice of abatement lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of property, set forth the last known address of the record owner or possessor, set forth the date upon which abatement of the nuisance was ordered by the

board of supervisors and the date the abatement was complete, and include a description of the real property subject to the lien and the amount of the abatement cost.

(f) However, if the board of supervisors does not cause the recordation of a notice of abatement lien pursuant to subdivision (e), and any real property to which the costs of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or a lien on a bona fide encumbrancer for value has been created and attaches to that property, prior to the date on which the first installment of county taxes would become delinquent, then the cost of abatement shall not result in a lien against that real property but shall be transferred to the unsecured roll for collection.

(g) Recordation of a notice of abatement lien pursuant to subdivision (e) has the same effect as recordation of an abstract of a money judgment recorded pursuant to Article 2 (commencing with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure. The lien created has the same priority as a judgment lien on real property and continues in effect until released. Upon order of the board of supervisors, or any county officer authorized by the board of supervisors to act on its behalf, an abatement lien created under this section may be released or subordinated in the same manner as a judgment lien on real property may be released or subordinated.

(h) The board of supervisors may delegate the hearing required by subdivision (a), prior to abatement of a public nuisance, to a hearing board designated by the board of supervisors. The hearing board shall make a written recommendation to the board of supervisors. The board of supervisors may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the board of supervisors.

(i) The board of supervisors may, by ordinance, delegate to a hearing officer appointed pursuant to Section 27720 the powers and duties specified by this section.

(j) This section shall become operative on January 1, 2014.

SEC. 3. Section 38773.1 of the Government Code is amended to read:

38773.1. (a) The legislative body may by ordinance establish a procedure to collect abatement and related administrative costs and fines by a nuisance abatement lien. This ordinance shall require notice prior to the recordation of the lien to the owner of record

of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current.

(b) The notice shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062.

(c) A nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

(1) A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(2) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in paragraph (1) shall be recorded by the governmental agency. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(3) A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment.

(4) Notwithstanding Section 6103, Section 27383, or any other provision of law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the property owner. A city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 4. Section 38773.1 is added to the Government Code, to read:

38773.1. (a) The legislative body may by ordinance establish a procedure to collect abatement and related administrative costs by a nuisance abatement lien. This ordinance shall require notice prior to the recordation of the lien to the owner of record of the parcel of land or which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current.

(b) The notice shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062.

(c) A nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

(1) A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(2) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in paragraph (1) shall be recorded by the governmental agency. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(3) A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment.

(4) Notwithstanding Section 6103, Section 27383, or any other provision of law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the property owner. A city may recover from

the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

(d) This section shall become operative on January 1, 2014.

SEC. 5. Section 38773.5 of the Government Code is amended to read:

38773.5. (a) As an alternative to the procedure authorized by Section 38773.1, the legislative body may, by ordinance, establish a procedure for the abatement of a nuisance and make the cost of abatement, including fines, a special assessment against that parcel of land on which the nuisance is maintained.

(b) A city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails. The ordinance may limit recovery of attorneys' fees by the prevailing party to those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

(c) Any procedure established pursuant to this section shall include notice, by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value,

or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(d) A local agency that has imposed an assessment pursuant to this section may, subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

(e) Notices or instruments relating to the abatement proceeding or special assessment shall be entitled to recordation.

(f) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 6. Section 38773.5 is added to the Government Code, to read:

38773.5. (a) As an alternative to the procedure authorized by Section 38773.1, the legislative body may by ordinance establish a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel.

(b) A city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails. The ordinance may limit recovery of attorneys' fees by the prevailing party to those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

(c) Any procedure established pursuant to this section shall include notice, by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall be given at the time of imposing the assessment and shall specify that the

property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(d) A local agency that has imposed an assessment pursuant to this section may, subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

(e) Notices or instruments relating to the abatement proceeding or special assessment shall be entitled to recordation.

(f) This section shall become operative on January 1, 2014.

Approved _____, 2010

Governor