



Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Lisa Soghor, Assistant City Manager

Reviewed by: Brian Forbath, Special Counsel

Approved by: Reva Feldman, City Manager

Date prepared: February 23, 2021 Meeting date: March 8, 2021

Subject: Authorization of Judicial Foreclosure for Civic Center Wastewater Treatment Facility Phase One Assessment District No. 2015-1

RECOMMENDED ACTION: Adopt Resolution No. 21-09 ordering judicial foreclosure of delinquent special assessments relating to the City of Malibu Civic Center Wastewater Treatment Facility Phase One Assessment District No. 2015-1 (the "District").

FISCAL IMPACT: All costs of the foreclosure proceedings will be included in any pay off or settlement with the delinquent property owners.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2020-2021. This project is part of normal staff operations.

DISCUSSION: On May 10, 2016, the City issued its City of Malibu Civic Center Wastewater Treatment Facility Assessment District No. 2015-1 Limited Obligation Improvement Bonds 2016 Series A (the "Bonds") and entered into a loan agreement with the State Water Resources Control Board (the "State Loan") which are both secured by special assessments levied on property within the District. In connection with the issuance of Bonds and the State Loan, the bond market required that the City covenant in its bond indenture to commence foreclosure proceedings against properties with delinquent assessments. The State Water Resources Control Board required a similar covenant.

Several properties are now delinquent. The City has sent letters to the property owners advising them that failure to pay their assessment will result in the City having to file foreclosure proceedings. The properties remain delinquent.

The foreclosure covenant states the following:

(c) Commence Foreclosure Proceedings. *If the City determines that any single parcel subject to the Assessments is delinquent in the payment of an Assessment Installment, then the City shall, within 60 days of such determination, send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the owner of each parcel delinquent in the payment of said Assessment Installment, and (if the delinquency remains incurred) shall commence foreclosure proceedings within 180 days of such determination against each parcel delinquent.*

Failure to commence foreclosure proceedings would be a covenant default under the indenture for the Bonds and the State Loan. Foreclosure Counsel will send out a final demand letter to each of the properties shown in Exhibit A to the Resolution prior to commencing proceedings.

Staff will also reach out to the delinquent property owners directly to make sure they are aware of the issue. If the property owners make the necessary payments, foreclosure proceedings will not commence.

ATTACHMENTS:

1. Resolution No. 21-09
2. Notice of Intent to Remove Delinquent Assessment Installments from the Tax Roll

RESOLUTION NO. 21-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU ORDERING THE COMMENCEMENT OF JUDICIAL FORECLOSURE PURSUANT TO THE MUNICIPAL IMPROVEMENT ACT OF 1913 AND IMPROVEMENT BOND ACT OF 1915 TO COLLECT DELINQUENT ASSESSMENT INSTALLMENTS LEVIED WITHIN THE CITY OF MALIBU CIVIC CENTER WASTEWATER TREATMENT FACILITY PHASE ONE ASSESSMENT DISTRICT NO. 2015-1 AND DIRECTING THE REMOVAL OF DELINQUENT ASSESSMENT INSTALLMENTS FROM THE COUNTY TAX ROLL

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

- A. The City Council of the City of Malibu (the “City”) has incurred bonded indebtedness to finance certain public infrastructure improvements pursuant to the Improvement Bond Act of 1915 (Division 10 of the Streets and Highways Code of California) (the “Bond Act”) and duly and regularly levied an assessment (the “Assessment”) pursuant to the Municipal Improvement Act of 1913 (Division 12 of the Streets and Highways Code of California) against parcels of real property within the City of Malibu Civic Center Wastewater Treatment Facility Phase One Assessment District No. 2015-1 (the “Assessment District”);
- B. The City has duly recorded notice of the Assessment, thereby imposing a lien securing each installment thereof, and interest and penalties thereon, against those parcels set forth in said notice;
- C. The installments of the Assessment set forth in Exhibit “A” attached hereto and incorporated herein by this reference have not been paid when due and remain delinquent;
- D. The City is authorized by the Bond Act to order, not later than four (4) years subsequent to the last maturity of the principal of bonds secured by the Assessment, any delinquent Assessment installments be collected by actions brought in the Superior Court to foreclose the liens securing those installments;
- E. Pursuant to the Bond Act, the City has covenanted with the owners of the bonded indebtedness secured by the Assessment to institute and prosecute judicial foreclosure action(s) to collect delinquent installments of the Assessment (“Bond Covenant”);
- F. The City has determined that the public interest and necessity, including, but not limited to, the Bond Covenant, requires the commencement of judicial foreclosure action(s) to collect the delinquent installments of the Assessment set forth in Exhibit “A”;

- G. When a foreclosure action is ordered to be commenced pursuant to the Bond Act, the county tax collector ("Tax Collector") shall be credited upon the current tax roll with the amount charged on account of the delinquent Assessment installments to be sued on, including applicable penalties, interest, and costs, and to be relieved of further duty in regard thereto;
- H. The Bond Act requires a Notice of Intent to Remove Delinquent Assessment Installment from the Tax Roll ("NOI") to be recorded prior to the removal of the delinquent Assessment installments from the county tax roll; and
- I. The City previously retained 30 Three Sixty Public Finance Inc. ("Financial Consultant") to administer the Assessment District.

SECTION 2. The delinquent Assessment installments listed in Exhibit "A" attached hereto shall be collected by action(s) brought pursuant to the Bond Act in the applicable Superior Court of the State of California to foreclose the liens securing those installments ("Foreclosure Action(s)").

SECTION 3. The City hereby authorizes and directs that the law firm of Stradling Yocca Carlson & Rauth ("Special Counsel"), 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660, commence and litigate the Foreclosure Action(s) on the behalf of the City. All inquiries regarding payment of the delinquent Assessment installments set forth in Exhibit "A" shall be forwarded to Stradling Yocca Carlson & Rauth, c/o Allison E. Burns, Esq., 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660.

SECTION 4. All costs and attorneys' fees incurred in the collection of the delinquent Assessment installments shall be sought in the Foreclosure Action(s) pursuant to the Bond Act. Special Counsel is authorized to require the payment of costs and attorneys' fees as a condition of any pre-judgment or post-judgment redemption.

SECTION 5. The Financial Consultant, in conjunction with Special Counsel, is authorized and directed to take the actions set forth below pursuant to Section 8833 of the Bond Act. To the extent that any of the following actions have already been completed, such actions are hereby ratified.

- A. Record an NOI with the Los Angeles County Recorder that corresponds to the delinquent parcels listed in Exhibit "A";
- B. Present to the Los Angeles County Tax Collector written proof of the recordation of the NOI together with a request for the Los Angeles County Tax Collector to remove the delinquent Assessment installments from the tax roll for each parcel listed in Exhibit "A";
- C. Credit the Los Angeles County Tax Collector upon the current tax roll with the amount charged on account for the parcels listed in Exhibit "A", including applicable penalties, interest, and costs, and relieve the Los Angeles County Tax Collector of further duty in regard thereto.

SECTION 6. In the event that additional installments of the Assessment levied against parcels listed in Exhibit “A” become delinquent before or during the pendency of the Foreclosure Action(s) and/or prior to the particular delinquent parcel’s sale pursuant to foreclosure judgment, Special Counsel is directed to cause such additional delinquent Assessment installments to be removed from the county tax roll and collected, along with any applicable interest, penalties, costs, fees and other charges, through the corresponding pending Foreclosure Action(s) or modification of the judgment.

SECTION 7. All officers and staff of the City are hereby authorized and directed to take all actions and execute and deliver any and all documents as necessary to implement the terms of this Resolution.

SECTION 8. If any section, subsection, sentence, clause or phrase of this Resolution shall be for any reason held by a court of competent jurisdiction to be unconstitutional, invalid or unenforceable, such holding shall not affect the validity of the remaining portions hereof. The City hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared to be unconstitutional, invalid or unenforceable, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 9. This Resolution shall be liberally construed to the end that its purpose may be effected. No error, irregularity or informality and no neglect or omission herein or in any proceeding had pursuant hereto which does not directly affect the jurisdiction of the City Council shall void or invalidate this Resolution or such proceeding or any part thereof, or any act or determination made pursuant thereto.

SECTION 10. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 8th day of March 2021.

MIKKE PIERSON, Mayor

ATTEST:

HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

BRIAN FORBATH, Special Counsel

EXHIBIT A

List of Delinquent Parcels

EXHIBIT A

**CITY OF MALIBU
CIVIC CENTER WASTEWATER TREATMENT FACILITY
PHASE ONE
ASSESSMENT DISTRICT NO. 2015-01
2016 SERIES A**

SUMMARY OF DELINQUENT PARCELS

Assessor's Parcel Number	Tax Year	Installment	Amount Delinquent
4458-018-027	FY 20-21	First	\$4,876.98
4458-018-027	FY 19-20	Both	\$10,104.12
4458-018-028	FY 20-21	First	\$4,876.98
4458-018-029	FY 20-21	First	\$4,876.98
4458-018-030	FY 20-21	First	\$4,876.98
4458-018-030	FY 19-20	Second	\$5,052.06
4458-022-025	FY 19-20	Second	\$1,063.62

Recording requested by and
when recorded mail to:

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attn: Allison E. Burns, Esq.

IMPORTANT NOTICE

**NOTICE OF INTENT TO REMOVE DELINQUENT ASSESSMENT
INSTALLMENTS FROM THE TAX ROLL**

**CITY OF MALIBU CIVIC CENTER WASTEWATER TREATMENT FACILITY
PHASE ONE ASSESSMENT DISTRICT 2015-1**

The City Council of the City of Malibu (the "City") has duly adopted Resolution No. 21-09, which orders the initiation of judicial foreclosure actions pursuant to the Municipal Improvement Act of 1913, Division 12 of the California Streets and Highways Code and the Improvement Bond Act of 1915, Division 10 of the Code (the "Act") to collect certain delinquent assessment installments levied against the parcels of real property listed in Exhibit "A" attached hereto (the "Delinquent Parcels"). Resolution No. 21-09 orders that the Los Angeles County Tax Collector be (i) credited upon the tax roll with the amount charged against the Delinquent Parcels, (ii) requested to remove the delinquent installments for the Delinquent Parcels from the county tax roll, and (iii) relieved of further duty related thereto.

Recordation of this document constitutes notice that, while they may not appear on the Los Angeles County Tax Roll, the delinquent assessment installments listed in Exhibit "A" continue to be due and owing to the City and remain secured by an assessment lien imposed against the Delinquent Parcels pursuant to the Bond Act. Please be further advised that future assessment installments levied against the Delinquent Parcels that become delinquent during the pendency of the foreclosure action and/or prior to the sale of the particular delinquent parcel pursuant to judgment may also be removed from the Los Angeles County Tax Roll without the recordation of an additional notice.

All inquiries should be directed to the following:

City Manager, City of Malibu
c/o Allison E. Burns, Special Counsel
Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Phone: (949) 725-4000

Dated: March __, 2021

By:
Authorized Agent for the City of Malibu

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2021, before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

SIGNATURE OF NOTARY PUBLIC

EXHIBIT A

**CITY OF MALIBU
CIVIC CENTER WASTEWATER TREATMENT FACILITY PHASE ONE
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4458-018-030	FY 20-21	First	\$4,876.98
4458-018-030	FY 19-20	Second	\$5,052.06
4458-022-025	FY 19-20	Second	\$1,063.62