

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2317

Introduced by Assembly Member Saldaña

February 19, 2010

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, as amended, 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.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 25845 of the Government Code is
- 2 amended to read:
- 3 25845. (a) The board of supervisors, by ordinance, may
- 4 establish a procedure for the abatement of a nuisance. The

1 ordinance shall, at a minimum, provide that the owner of the parcel,
2 and anyone known to the board of supervisors to be in possession
3 of the parcel, be given notice of the abatement proceeding and an
4 opportunity to appear before the board of supervisors and be heard
5 prior to the abatement of the nuisance by the county. However,
6 nothing in this section prohibits the summary abatement of a
7 nuisance upon order of the board of supervisors, or upon order of
8 any other county officer authorized by law to summarily abate
9 nuisances, if the board or officer determines that the nuisance
10 constitutes an immediate threat to public health or safety.

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

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

34 (d) If the owner fails to pay the costs of the abatement upon
35 demand by the county, the board of supervisors may order the cost
36 of the abatement and fines related to the nuisance abatement to be
37 specially assessed against the parcel. The assessment may be
38 collected at the same time and in the same manner as ordinary
39 county taxes are collected, and shall be subject to the same
40 penalties and the same procedure and sale in case of delinquency

1 as are provided for ordinary county taxes. All laws applicable to
2 the levy, collection, and enforcement of county taxes are applicable
3 to the special assessment.

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

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

22 (g) Recordation of a notice of abatement lien pursuant to
23 subdivision (e) has the same effect as recordation of an abstract
24 of a money judgment recorded pursuant to Article 2 (commencing
25 with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part
26 2 of the Code of Civil Procedure. The lien created has the same
27 priority as a judgment lien on real property and continues in effect
28 until released. Upon order of the board of supervisors, or any
29 county officer authorized by the board of supervisors to act on its
30 behalf, an abatement lien created under this section may be released
31 or subordinated in the same manner as a judgment lien on real
32 property may be released or subordinated.

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

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

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

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

9 25845. (a) The board of supervisors, by ordinance, may
10 establish a procedure for the abatement of a nuisance. The
11 ordinance shall, at a minimum, provide that the owner of the
12 parcel, and anyone known to the board of supervisors to be in
13 possession of the parcel, be given notice of the abatement
14 proceeding and an opportunity to appear before the board of
15 supervisors and be heard prior to the abatement of the nuisance
16 by the county. However, nothing in this section prohibits the
17 summary abatement of a nuisance upon order of the board of
18 supervisors, or upon order of any other county officer authorized
19 by law to summarily abate nuisances, if the board or officer
20 determines that the nuisance constitutes an immediate threat to
21 public health or safety.

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

32 (c) A county may, by ordinance, provide for the recovery of
33 attorneys' fees in any action, administrative proceeding, or special
34 proceeding to abate a nuisance. If the ordinance provides for the
35 recovery of attorneys' fees, it shall provide for recovery of
36 attorneys' fees by the prevailing party, rather than limiting
37 recovery of attorneys' fees to the county if it prevails. The
38 ordinance may limit recovery of attorneys' fees by the prevailing
39 party to those individual actions or proceedings in which the county
40 elects, at the initiation of that individual action or proceeding, to

1 seek recovery of its own attorneys' fees. In no action,
2 administrative proceeding, or special proceeding shall an award
3 of attorneys' fees to a prevailing party exceed the amount of
4 reasonable attorneys' fees incurred by the county in the action or
5 proceeding.

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

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

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

34 (g) Recordation of a notice of abatement lien pursuant to
35 subdivision (e) has the same effect as recordation of an abstract
36 of a money judgment recorded pursuant to Article 2 (commencing
37 with Section 697.310) of Chapter 2 of Division 2 of Title 9 of Part
38 2 of the Code of Civil Procedure. The lien created has the same
39 priority as a judgment lien on real property and continues in effect
40 until released. Upon order of the board of supervisors, or any

1 county officer authorized by the board of supervisors to act on its
2 behalf, an abatement lien created under this section may be
3 released or subordinated in the same manner as a judgment lien
4 on real property may be released or subordinated.

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

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

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

16 ~~SEC. 2.~~

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

19 38773.1. (a) The legislative body may by ordinance establish
20 a procedure to collect abatement and related administrative costs
21 and fines by a nuisance abatement lien. This ordinance shall require
22 notice prior to the recordation of the lien to the owner of record
23 of the parcel of land on which the nuisance is maintained, based
24 on the last equalized assessment roll or the supplemental roll,
25 whichever is more current.

26 (b) The notice shall be served in the same manner as summons
27 in a civil action in accordance with Article 3 (commencing with
28 Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of
29 Civil Procedure. If the owner of record, after diligent search cannot
30 be found, the notice may be served by posting a copy thereof in a
31 conspicuous place upon the property for a period of 10 days and
32 publication thereof in a newspaper of general circulation published
33 in the county in which the property is located pursuant to Section
34 6062.

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

39 (1) A nuisance abatement lien authorized by this section shall
40 specify the amount of the lien, the name of the agency on whose

1 behalf the lien is imposed, the date of the abatement order, the
2 street address, legal description and assessor's parcel number of
3 the parcel on which the lien is imposed, and the name and address
4 of the recorded owner of the parcel.

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

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

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

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

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

25 38773.1. (a) *The legislative body may by ordinance establish*
26 *a procedure to collect abatement and related administrative costs*
27 *by a nuisance abatement lien. This ordinance shall require notice*
28 *prior to the recordation of the lien to the owner of record of the*
29 *parcel of land or which the nuisance is maintained, based on the*
30 *last equalized assessment roll or the supplemental roll, whichever*
31 *is more current.*

32 (b) *The notice shall be served in the same manner as summons*
33 *in a civil action in accordance with Article 3 (commencing with*
34 *Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of*
35 *Civil Procedure. If the owner of record, after diligent search cannot*
36 *be found, the notice may be served by posting a copy thereof in a*
37 *conspicuous place upon the property for a period of 10 days and*
38 *publication thereof in a newspaper of general circulation published*
39 *in the county in which the property is located pursuant to Section*
40 *6062.*

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

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

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

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

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

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

27 ~~SEC. 3.~~

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

30 38773.5. (a) As an alternative to the procedure authorized by
31 Section 38773.1, the legislative body may, by ordinance, establish
32 a procedure for the abatement of a nuisance and make the cost of
33 abatement, including fines, a special assessment against that parcel
34 of land on which the nuisance is maintained.

35 (b) A city may, by ordinance, provide for the recovery of
36 attorneys' fees in any action, administrative proceeding, or special
37 proceeding to abate a nuisance. If the ordinance provides for the
38 recovery of attorneys' fees, it shall provide for recovery of
39 attorneys' fees by the prevailing party, rather than limiting recovery
40 of attorneys' fees to the city if it prevails. The ordinance may limit

1 recovery of attorneys' fees by the prevailing party to those
2 individual actions or proceedings in which the city elects, at the
3 initiation of that individual action or proceeding, to seek recovery
4 of its own attorneys' fees. In no action, administrative proceeding,
5 or special proceeding shall an award of attorneys' fees to a
6 prevailing party exceed the amount of reasonable attorneys' fees
7 incurred by the city in the action or proceeding.

8 (c) Any procedure established pursuant to this section shall
9 include notice, by certified mail, to the property owner, if the
10 property owner's identity can be determined from the county
11 assessor's or county recorder's records. The notice shall be given
12 at the time of imposing the assessment and shall specify that the
13 property may be sold after three years by the tax collector for
14 unpaid delinquent assessments. The tax collector's power of sale
15 shall not be affected by the failure of the property owner to receive
16 notice. The assessment may be collected at the same time and in
17 the same manner as ordinary municipal taxes are collected, and
18 shall be subject to the same penalties and the same procedure and
19 sale in case of delinquency as provided for ordinary municipal
20 taxes. All laws applicable to the levy, collection and enforcement
21 of municipal taxes shall be applicable to the special assessment.
22 However, if any real property to which the cost of abatement relates
23 has been transferred or conveyed to a bona fide purchaser for value,
24 or if a lien of a bona fide encumbrancer for value has been created
25 and attaches thereon, prior to the date on which the first installment
26 of the taxes would become delinquent, then the cost of abatement
27 shall not result in a lien against the real property but instead shall
28 be transferred to the unsecured roll for collection.

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

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

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

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

1 38773.5. (a) As an alternative to the procedure authorized by
2 Section 38773.1, the legislative body may by ordinance establish
3 a procedure for the abatement of a nuisance and make the cost of
4 abatement of a nuisance upon a parcel of land a special assessment
5 against that parcel.

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

19 (c) Any procedure established pursuant to this section shall
20 include notice, by certified mail, to the property owner, if the
21 property owner's identity can be determined from the county
22 assessor's or county recorder's records. The notice shall be given
23 at the time of imposing the assessment and shall specify that the
24 property may be sold after three years by the tax collector for
25 unpaid delinquent assessments. The tax collector's power of sale
26 shall not be affected by the failure of the property owner to receive
27 notice. The assessment may be collected at the same time and in
28 the same manner as ordinary municipal taxes are collected, and
29 shall be subject to the same penalties and the same procedure and
30 sale in case of delinquency as provided for ordinary municipal
31 taxes. All laws applicable to the levy, collection and enforcement
32 of municipal taxes shall be applicable to the special assessment.
33 However, if any real property to which the cost of abatement
34 relates has been transferred or conveyed to a bona fide purchaser
35 for value, or if a lien of a bona fide encumbrancer for value has
36 been created and attaches thereon, prior to the date on which the
37 first installment of the taxes would become delinquent, then the
38 cost of abatement shall not result in a lien against the real property
39 but instead shall be transferred to the unsecured roll for collection.

- 1 (d) A local agency that has imposed an assessment pursuant to
- 2 this section may, subject to the requirements applicable to the sale
- 3 of property pursuant to Section 3691 of the Revenue and Taxation
- 4 Code, conduct a sale of vacant residential developed property for
- 5 which the payment of that assessment is delinquent.
- 6 (e) Notices or instruments relating to the abatement proceeding
- 7 or special assessment shall be entitled to recordation.
- 8 (f) This section shall become operative on January 1, 2014.