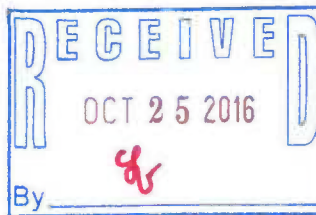


CF 16-01605-678



Item 1X

**ERRORS IN CLAIM FOR LIEN ON 2603 E CESAR E CHAVEZ BLVD
PRECLUDE LIEN AT THIS TIME.**

1. The Claim is STALE: the claim is based on an alleged citation dated 3/23/2005. The claim was closed 10/18/2007.
2. There is no evidence compliance did not occur within 15 days of 3/23/2005: this was a claim requiring graffiti removal.
3. STATUTE OF LIMITATIONS: the time for seek a lien for costs of investigation is limited to 1 year under CCP §340 (attached) or 3 years under CCP §338. The time commences from the date of the citation, in this case, within 1 year or 3 years of 3/23/2005. The time to seek a lien on the 3/23/2005 incident expired on 3/22/2007. This claim is time barred.
4. The report to the Counsel dated 2/10/2016 filed under Council file number 16-0160S678, IS UNSUPPORTED BY FACTUAL INFORMATION. The letter, dated 2/10/2016 is signed by "Cynthia McCloud" for Steve Ongele. It is not signed under penalty of perjury. The inspector in 2005 was named "John Stephens for Henry Ojeda," and neither John Stephens nor Henry Ojeda states that the "owner failed to comply within the time prescribed by ordinance."

NO 30 DAY NOTICE OF VIOLATION GIVEN. REQUIRED BY LAMC §91.8903.1.1

THE LA MUNICIPAL CODE requires that a notice of violation be issued and DOES NOT PROVIDE for issuance of an Order to Comply, regarding graffiti removal, as a first notice from the department. The Order to Comply is mandatory (shall) and provides the landowner 30 days to cure the problem, before an Order to Comply can be issued. See LAMC 91.8903.1.1:

91.8903.1.1. Notification. Whenever the Department determines that any building, structure, or premises is within the scope of this division, the Department shall issue an order to the owner as shown in the last equalized assessment roll.

The order shall specify the conditions which exist which cause the building or premises to be within the scope of this division of this Code; whereupon the owner or owner's agent shall obtain the necessary permits and abate the deficiencies in accordance with Section 91.8903.1.2.

The order shall also require that the owner maintain the vacant buildings or structures vacant until they are repaired or demolished.

The requirements of this section shall also apply to any building, structure, attached or detached appurtenances, or premises as determined by the Department. **(Para. Added by Ord. No. 172,413, Eff. 2/20/99.)**

91.8903.1.2. Time for Compliance. Within 30 days after notice is given, the owner or the owner's agents shall obtain the necessary permits and shall commence work to abate the deficiencies. All necessary work shall be completed within 90 days after such notice is given.

Here no Notice of Violation appears in the file. The Order to Comply cannot be issued for graffiti removal without a prior. Notice of Violation. Because the Inspector failed to follow these requirements, the lien claim is premature and unsupported.

NO LIEN PER GOVERNMENT CODE §38773.5

5. Pursuant to Government Code § 38773.5, service of the notice must be by certified mail. Neither the 3/23/2005 notice nor the 8/5/2016 notice of hearing show certified mail delivery. GC §38773.5 reads in relevant part:

“(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. . . .”

6. Here, the notice to owner does not reflect it was sent by **certified mail**. . Because service was improper, the notice is ineffective to result in a lien.

NO LIEN PER GOVERNMENT CODE §38773.1

7. Pursuant to Government Code § 38773.1, service of the notice must be by delivery in the manner used to deliver a summons (personal delivery or substituted delivery and thereafter mailing). Neither the 3/23/2005 notice nor the 8/5/2016 notice of hearing show personal delivery or substituted delivery and thereafter mailing. GC §38773.1 reads in relevant part:

“(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. . . .**”

8. Here, there is no indication the notice was served by personal delivery, or by substituted delivery and mailing at the residence or usual place of business of the property owner. Because service was improper, the notice is ineffective to result in a lien.

NO LIEN PER LOS ANGELES ADMINISTRATIVE CODE §7.35.3

NO CERTIFIED LETTER RE NOTICE OF HEARING (f) NO APPRAISAL OF VALUE OF PROPERTY (d)

9. LA ADMINISTRATIVE CODE §7.35.3 reads in relevant part:

“(d) **Report Must Include Current Market Value, Encumbrances of Record. Each report submitted shall include a then current market value of any property subject to a proposed lien** under California Government Code Section 38773.1 or 54988 and the descriptions and amounts of any encumbrances of record with

respect to the property.

“(e) Notice of Hearing: Contents of Notice, Persons Entitled to Notice. Upon receipt of a report as provided in this Section, the City Clerk shall fix a time for the City Council to hear the report and to hear any objections of property owners or other interested parties to a proposed lien against that property in the amount specified in the report, and shall cause written notice of the hearing to be given to each person identified in the preliminary title report obtained by the responsible City department and to the owner of record of the parcel of land based on the last equalized assessment roll or the supplemental roll, whichever is more current on the date the notice is prepared and to each person with an interest in the property who was given notice to abate the nuisance. The written notice shall identify the property by location, County Assessor’s map book, page and parcel reference, and shall in plain language:

- “(1) State the amount of the proposed lien;
- “(2) **Describe the basis for the amounts comprising the lien;**
- “(3) Provide a minimum of 45 days after notice to pay the fee, cost, or charge;
- “(4) State that the person(s) notified may appear at a meeting of the City Council at a date, time and location specified in the notice to object to the confirmation of the proposed lien in the amount specified in the notice; and
- “(5) State that failure to appear before the City Council on the date, time and location specified may result in the recordation of the proposed lien against the subject property without further notice.

“(f) Notice of Hearing: Manner of Service. **The notice required by**

Subsection (e) above shall be mailed to the owner of the property by certified mail.

If the property subject to the proposed lien is an owner-occupied residential dwelling unit within the meaning of California Government Code Section 54988(a)(3), the notice shall also be served in the same manner as a summons in a civil action in accordance with California Code of Civil Procedure Section 415.10 et seq. If the owner of record of an owner-occupied residential dwelling unit, after diligent search, cannot be found, then the notice may be served by posting a copy of the notice in a conspicuous place upon the property for a period of ten days and publication in a newspaper of general circulation published in the County of Los Angeles pursuant to California Government Code Section 6062. The failure of any person or entity to receive the notice shall not render any proceedings invalid.

10. Here, the notice to the property owner **did not state the value of the property (although the report to Council dated 2/10/2016 reflects a comparable sale)**, and does not reflect it was **mailed by certified mail**. The notice was dated 8/5/2016, but because not sent by certified mail, there is no way to determine when the notice of actually mailed or delivered. The notice was for a hearing on 9/20/2016. IF mailed on 8/5/2016, notice would have provided 45 days before the hearing to pay the fee, cost or charge. If delayed even one day, notice was not a minimum of 45 days.

11. Further, the notice to the owner only identifies the amount of the proposed lien (\$611.40)

but does not "describe the basis for the amounts comprising the lien." The report to the City Council dated 2/10/2016 identifies the component amounts,

The Council Packet includes the 2/10/2016 Building and Safety packet addressed to the City Council.

The Council Packet includes the 8/5/2016 Notice of Hearing sent by regular mail to Mrs. Gonzalez.

12. A true and correct copy of LA MC §91.8903.1.1. is attached hereto as **Exhibit 1**

For the reasons set forth herein, the hearing on lien penalty of \$611.40 should be taken off calendar and the penalty sought should be exonerated.

Respectfully submitted

October 24, 2016

Law Offices of Stanley H. Kimmel

By _____
Stanley H. Kimmel, Esq., Atty for Yolanda
Gonzalez

[Print](#)

Los Angeles Municipal Code

DIVISION 89
ABATEMENT OF BUILDINGS, STRUCTURES, PREMISES AND
PORTIONS THEREOF WHICH CONSTITUTE A NUISANCE OR ARE
HAZARDOUS, OR SUBSTANDARD

(Division 89 Amended by Ord. No. 171,175, Eff. 7/25/96.)

Section

91.8901 General.

91.8902 Definitions.

91.8903 Abatement Procedures.

91.8904 Special Provisions for Vacant Property Graffiti Removal.

91.8905 Special Provisions for Vacating, Barricading, Removing or Demolishing Buildings or Structures Without Notice.

91.8906 Payment and Recovery of Repair and Demolition Funds.

91.8907 Abatement of Public Nuisance Conditions Related to a Declared Local Emergency.

91.8908 Special Provisions for the Repair of Welded Steel Moment Frame Buildings Located in High Earthquake Damaged Areas.

SEC. 91.8901. GENERAL.**(Amended by Ord. No. 171,175, Eff. 7/25/96.)**

91.8901.1. Purpose of Division. It is the purpose of the provisions of this division to provide a just, equitable and practicable method, to be cumulated with and in addition to any other remedy available by law, whereby buildings, structures, premises and portions thereof which are within the scope of this division may be vacated, secured, cleaned, repaired, demolished or removed.

91.8901.2. Scope. The provisions of this division shall apply to all existing buildings, structures, premises and portions thereof which are a nuisance, a hazard or a substandard residential building.

All sections of Chapter IX of the Los Angeles Municipal Code are applicable to those buildings determined to be "**substandard residential buildings**" as defined herein.

The Department of Building and Safety may approve certain deviations from the requirements of Chapter IX of the Los Angeles Municipal Code concerning substandard residential buildings, provided the items concerned were built in compliance with code or ordinance provisions in effect at the time of construction, and provided, further, that such additional corrections as may be required by the Department are made so as to ensure that the building complies with the intent of the division.

91.8901.3. Interference Prohibited. It shall be unlawful for any person to obstruct, impede or interfere with any representative of the Department, including contractors hired by the Department or with the inspector of any Department of this city, or with any person who owns or holds any estate or interest in any building or structure which has been ordered to be vacated, secured, cleaned, repaired,

facilities as required by this Code except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of their construction and which have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

When an unsafe condition exists through lack of, or improper location of, exit, additional exits may be required to be installed.

91.8902.13. Inadequate Fire-Protection or Fire-Fighting Equipment. All buildings or portions thereof which are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this Code, except those buildings or portions thereof which conformed with all applicable laws at the time of their construction and whose fire-resistive integrity and fire-extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

91.8902.14. Illegal Occupancy. All buildings or portions thereof occupied for living, sleeping, cooking or dining purposes which were not designed or intended to be used for such occupancies.

SEC. 91.8903. ABATEMENT PROCEDURES.
(Amended by Ord. No. 171,175, Eff. 7/25/96.)

91.8903.1. Issuance of Initial Orders.

91.8903.1.1. Notification. Whenever the Department determines that any building, structure, or premises is within the scope of this division, the Department shall issue an order to the owner as shown in the last equalized assessment roll.

The order shall specify the conditions which exist which cause the building or premises to be within the scope of this division of this Code; whereupon the owner or owner's agent shall obtain the necessary permits and abate the deficiencies in accordance with Section 91.8903.1.2.

The order shall also require that the owner maintain the vacant buildings or structures vacant until they are repaired or demolished.

The requirements of this section shall also apply to any building, structure, attached or detached appurtenances, or premises as determined by the Department. **(Para. Added by Ord. No. 172,413, Eff. 2/20/99.)**

91.8903.1.2. Time for Compliance. Within 30 days after notice is given, the owner or the owner's agents shall obtain the necessary permits and shall commence work to abate the deficiencies. All necessary work shall be completed within 90 days after such notice is given.

91.8903.1.3. Order to Vacate. If the necessary permits are not obtained or the required work is not physically commenced within 45 days after notice is given, or the identified deficient conditions are not corrected within 90 days after notice is given, the Department may order the owner to cause the building to be vacated and may also institute enforcement action as provided in this division.

91.8903.1.4. Vacated Buildings. No person shall reoccupy any building within the scope of this division which is found to be vacant or is ordered vacated in accordance with Section 91.8903.1.3, until the deficiencies have been abated and a new Certificate of Occupancy or clearance is obtained from the

Department. Any Certificate of Occupancy previously issued for such building shall be void.

91.8903.1.5 Posting of Buildings. Vacated buildings shall be locked by the owner and otherwise secured against ingress. If the Department has ordered that a building be vacated or that the owner maintain a building vacant, then the Department shall post thereon, in a conspicuous place near the entrance, a warning placard or sign.

A warning placard or sign posted pursuant to this section shall not be defaced, covered, removed or hidden from view in any manner.

The placard or sign posted shall read substantially as follows:

**VACATED BUILDING – DO NOT ENTER
BY ORDER OF THE
DEPARTMENT OF BUILDING AND SAFETY
CITY OF LOS ANGELES**

It is a misdemeanor to enter or occupy or be present in this building. It is a misdemeanor to remove, deface, cover, or hide this placard. SEC. 91.8903 Los Angeles Municipal Code.

91.8903.1.6. Removal of Utilities. (Amended by Ord. No. 181,758, Eff. 8/8/11.) Utility connections of electricity and gas shall be removed from buildings within the scope of Section 91.8903.1.4 by the appropriate utility agency and shall not be reconnected until clearance is obtained from the department.

91.8903.1.7. Recordation. (Amended by Ord. No. 181,758, Eff. 8/8/11.) At the time that the Department serves the order described in Section 91.8903.1 of this Code, the Department shall file with the Office of the County Recorder a certificate stating that the subject building has been determined to be either a hazardous building, a substandard residential building, or a nuisance, that it has been ordered repaired or demolished, and that the owner thereof has been so notified.

After the building has been repaired or demolished, the Department shall file with the Office of the County Recorder a certificate terminating the above recorded status of the subject building.

91.8903.1.8. Manner of Giving Notice. (Added by Ord. No. 181,758, Eff. 8/8/11.) The orders described in this Section shall be given in writing and may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to such person to be notified at the address as shown on the last equalized assessment roll. Service by mail shall be deemed to have been completed at the time of deposit in the post office. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any of the proceedings taken thereunder. Proof of giving any notice may be made by an affidavit of any employee of the City which shows service in conformity with this Section.

91.8903.2. Violations - Penalties for Disregarding Initial Orders.

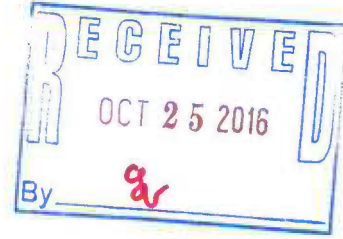
91.8903.2.1. The owner or other person having charge and control over any building or structure determined by the Department to fall within the scope of this division who shall fail to comply with any order to repair, vacate and repair, or demolish said building, structure or premises within the time limits established in this division shall be guilty of a misdemeanor.

91.8903.2.2. The occupant or lessee in possession who fails to comply with any order to vacate said

[Print](#)

Item 1x

Los Angeles Municipal Code

**ARTICLE 8
NUISANCES**

Section

58.01 Nuisances – Summary Abatement.

58.02 Weeds, Rubbish, Etc. – Public Nuisance.

58.03 Nuisances – Summary Abatement of Mosquito Breeding Sources.

SEC. 58.01. NUISANCES – SUMMARY ABATEMENT.**(Amended by Ord. No. 175,596, Eff. 12/7/03.)**

When the Health Officer, acting under any authority vested in him or her, orders the abatement of a nuisance or condition within the City of Los Angeles that endangers the public health, safety and welfare, and the person or persons responsible for the creation or maintenance of the nuisance fail to comply with the order, the Health Officer may request the Department of Public Works or any other department having the necessary workforce and equipment, to perform the work required to abate the nuisance.

All costs incurred pursuant to this section shall be a personal obligation against the person or persons responsible for the creation or maintenance of the nuisance and the owner of the property, recoverable by the City in an action before any court of competent jurisdiction. These costs shall include an amount equal to 40 percent of the cost to perform the actual work, but not less than the sum of \$100.00, to cover the City's costs for administering any contract and supervising the work required. In addition to this personal obligation and all other remedies provided by law, the City may collect any judgment, fee, cost, or charge, including any permit fees, fines, late charges, or interest, incurred in relation to the provisions of this section as provided in Los Angeles Administrative Code Sections 7.35.1 through 7.35.8.

SEC. 58.02. WEEDS, RUBBISH, ETC. – PUBLIC NUISANCE.**(Added by Ord. No. 160,171, Eff. 8/22/85).**

A. The City Council finds that weeds (as defined in Article 2, Chapter 13, Part 2, Division 3 or Title 4, commencing at Section 39560 of the Government Code of the State of California), rubbish and other material dangerous or injurious to neighboring property or to the health or safety of residents of the vicinity constitute a public nuisance.

B. Every owner of any parcel of land or premises who, after receiving notice as provided by Subsection B. of Section 22.325.1 of the Los Angeles Administrative Code, fails to abate a public nuisance thereon consisting of weeds, rubbish or other material dangerous or injurious to neighboring property or to the health or welfare of residents of the vicinity by the date specified in the notice or the date upon which the City is authorized to abate the nuisance pursuant to Section 22.325.1 of the Los Angeles Administrative Code, whichever date is later, is guilty of a misdemeanor.

SEC. 58.03. NUISANCES – SUMMARY ABATEMENT OF MOSQUITO BREEDING SOURCES.**(Added by Ord. No. 176,240, Eff. 10/23/04.)**

A. Any standing water on private property which has become a breeding source for mosquitos is hereby declared to be a public nuisance and an immediate threat to the public health safety and welfare of the citizens of Los Angeles.

B. When the Health Officer or an officer of any Los Angeles County Vector Control District acting under any authority vested in him or her finds any standing water on private property which has become a breeding source for mosquitoes, said officer may issue a written order to abate the standing water or other condition within the City of Los Angeles that endangers the public health, safety and welfare of the citizens of Los Angeles. The owner or other person or persons responsible for the private property where the breeding source was found shall have 72 hours to abate or eliminate the condition which created the breeding source for mosquitos. Upon the issuance of the notice to abate the nuisance created by the breeding source for mosquitos, the owner or other person or persons responsible for the private property may at no cost to the owner or responsible person request that the vector control district abate the standing water as a source of breeding mosquitos. The owner or responsible person may also choose to abate the nuisance within the 72 hours allowed. Any owner or responsible person who fails to comply with a 72 hour nuisance abatement order issued pursuant to this section shall be guilty of a misdemeanor pursuant to L.A.M.C. Section 11.00(m).

C. If any officer as described in this code who is lawfully on private property finds a nuisance as described above and is unable to contact the owner or other person or persons responsible for the private property in question within twenty-four hours, said officer may summarily abate the nuisance at no cost to the owner or responsible person. If a nuisance has been abated without the knowledge or permission of the owner or other responsible person, then the abating officer shall post a notice on the property in a prominent place that explains exactly where and what steps were taken to abate the nuisance.

D. If an owner or responsible person who has been cited to abate a nuisance within 72 hours fails to do so, any officer described herein may then summarily abate the nuisance. All costs incurred to abate the nuisance pursuant to this section shall be a personal obligation against the owner or person or persons responsible for the creation or maintenance of the nuisance, recoverable by the abating organization in an action before any court of competent jurisdiction. These costs shall include an amount equal to 40 percent of the cost to perform the actual work, but not less than the sum of \$100.00, to cover the costs for doing the work, administering any contract to do the work and/or supervising the work required. In addition to this personal obligation and all other remedies provided by law, the abating organization may collect any judgment, fee, cost, or charge, including any permit fees, fines, late charges, or interest, incurred in relation to the provisions of this section as provided in Los Angeles Administrative Code Sections 7.35.1 through 7.35.8.