

**BEFORE THE APPELLATE HEARING EXAMINER PANEL
PURSUANT TO MARYSVILLE MUNICIPAL CODE CHAPTER 9.50**

**IN THE MATTER OF THE APPEAL OF
THE FEATHER RIVER PLAZA, L.L.C.
TO THE NOTICE OF VIOLATION AND
PENALTY ORDER ISSUED BY THE
CITY OF MARYSVILLE REGARDING
420 5TH STREET**

**DECISION OF THE HEARING
EXAMINER PANEL**

Between

THE FEATHER RIVER PLAZA, L.L.C.,

Appellant,

and

CITY OF MARYSVILLE,

Respondent

This Decision of the Hearing Examiner Panel (“Panel”) relates to an appeal filed by The Feather River Plaza, L.L.C. (“Appellant” or “Owner”) to the Notice of Violation and Penalty Order (“Notice and Order”) issued by the City of Marysville (“City”) on August 1, 2024 (“Appeal”).

Chapter 9.50 of the Municipal Code constitutes the Nuisance Abatement Code for the City. On August 1, 2024 the City caused the Notice and Order to be served upon Appellant. This Notice and Order concerned Nuisance Abatement of the Hotel Marysville located in the Southeast corner of E Street and Fifth Street, Marysville, California with a common address of 420 Fifth Street, Marysville, California 95901, Assessor’s Parcel Number 010-176-014 (“Hotel Marysville”).

On August 11, 2024 Appellant timely filed an appeal from the Notice and Order. Thereafter, a panel of Hearing Examiners was constituted to hear this Appeal and a hearing pursuant to

Municipal Code Section 9.50.180 was convened on September 6, 2024. Notice of the hearing was timely provided to Appellant and the City. (Ex. 28.)

Brant J. Bordsen of the firm of Rich, Fuidge, Bordsen and Galyean Inc., City Attorneys for The City of Marysville, appeared on behalf of the City. Carolyn Gill of DJK Counsel, LTD. appeared on behalf of the Appellant. At the hearing, testimony, documentary and other evidence was received and considered by the Panel as discussed below.

As set forth more fully below, the Panel finds that the City established by a preponderance of the evidence that the condition of the Hotel Marysville (1) is a public nuisance in accordance with the Municipal Code, and (2) presents an imminent threat to the public of bodily harm and a danger to adjacent property. As a result, and as set forth more fully below, the Panel hereby orders and requires Appellant to abate the nuisance in the form of demolition of the Hotel Marysville not later than 10 calendar days after the issuance of this decision. If the nuisance is not abated within this timeframe, the City is authorized to abate the nuisance in such manner as may be ordered by the enforcement officer and the expense thereof made a lien upon the property involved.

In addition, the Panel affirms the imposition of an administrative penalty, which shall continue to accrue until the nuisance is abated. Consequently, the Panel orders Appellant to pay the administrative penalty in accordance with, and subject to, the provision of Section 9.50.200 of the Marysville Municipal Code (“Municipal Code”). If the penalty is not paid within the time specified therein, it may be made a personal obligation of the owner of the property and a lien may also be made against the property and collected by special assessment.

In accordance with Section 9.50.180(e)(4), this Decision shall constitute the final administrative decision of the City and shall not be appealable to the city council or any committee or commission of the City.

PLEASE TAKE NOTICE THAT the time within which judicial review of this Decision of the Hearing Examiner Panel dated October 3, 2024 must be sought is governed by California Code of Civil Procedure sections 1094.5 and 1094.6, except that an appeal of the hearing examiner’s decision imposing an administrative penalty as set forth above shall also be subject to California Government Code section 53069.4 and must be filed within twenty (20) days of service of this Decision of the Hearing Examiner Panel dated October 3, 2024, as provided in California Government Code section 53069.4.

I. PRELIMINARY MATTERS

At the outset of the hearing, the Panel offered the parties an opportunity to raise any preliminary matters before the proceedings began. Neither party raised any issues for consideration at that time.

A. Burden of Proof

The City bears the burden of proof on all issues and must prove its case by a preponderance of the evidence. *See Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711, 718-19; Municipal Code § 9.50.180(e)(2). The City must, therefore, prove that the condition of the property at issue

constitutes a public nuisance subject to abatement and that the administrative penalties imposed are appropriate.

B. The Administrative Record

The City presented, and the Panel admitted, Exhibits 1-40 as presented and moved into evidence during the City's case in chief. Appellant did not offer or move any exhibits into evidence at the hearing. After the hearing on September 6, 2024, Appellant submitted to the Panel the following documents: (1) Warrant to Abate Nuisance filed July 26, 2024; (2) Wiss, Janney, Elstner Associates, Inc. Assessment dated July 9, 2024; (3) Jackson Sands Assessment dated August 27, 2024; and (4) Appeal from Notice of Violation and Penalty Order dated August 11, 2024. The City responded to this submission by letter dated September 10, 2024. While it is the Panel's position that Appellant's submission was untimely and not in accordance with Municipal Code Section 9.50.180, the Panel has reviewed the post-hearing submissions by the Appellant and the City and determined that they do not change the conclusions reached by the Panel based on the evidence and arguments presented at the hearing on the Appeal.

As to witnesses presented at the hearing, the City presented testimony from the following witnesses: Paricia Rodney, Community Service Officer, City of Marysville; Wayne Bartlemay, Project Manager, Classic Construction; Adam Jahnsen, Certified Asbestos Consultant, AdamLabs, Inc.; Jason Zumalt, Public Works Manager, City of Marysville; John Mallen, City Engineer, City of Marysville; Joseph Hale, Chief Executive Officer, Habitat for Humanity Yuba/Sutter; Nick Henderson, Building Official, City of Marysville; and Vincenzo Corazza, Public Works Director, City of Marysville. The Panel also inspected the Hotel Marysville during the hearing and, following the hearing, set forth the material facts observed and conclusions drawn therefrom in its written statement to be included in the hearing record pursuant to Municipal Code Section 9.50.180(d)(8)(A)(iii). The Appellant did not call any witnesses. Each party had the opportunity to cross-examine witnesses called by the other party. All witnesses took an oath or affirmation as administered by the court reporter at the hearing. Following the hearing, the parties were sent a copy of the Panel's written statement and provided with the opportunity to file a written statement rebutting or explaining the matters stated in the Panel's written statement for inclusion in the record prior to the issuance of this Decision in accordance with Municipal Code Section 9.50.180(d)(8)(B). Neither party submitted such a responsive written statement for inclusion in the record.

C. Evidentiary Objections and Rulings

While the formal rules of evidence do not apply to administrative hearings of this nature, Government Code section 11513(a)-(c) applies here as set forth in Municipal Code Section 9.50.180(d)(5). Section 11513(a) provides that oral evidence shall be taken only on oath or affirmation. Section 11513(b) provides that each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses, to impeach witnesses, and to rebut evidence against him or her. Section 11513(c) provides that "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions." The Panel

allowed the parties to make objections to evidence and took several items under submission for consideration in the rendering of this Decision.

At the hearing, Mr. Mallen testified that bidders did not respond to requests for proposal as to removal of the asbestos in the building in its current condition and without demolition. Appellant's counsel objected that such testimony constituted hearsay. This objection is overruled. Even if the rules of evidence applied, which they do not, this statement does not constitute hearsay as it was not offered for the truth of the matter asserted. Cal. Evid. Code § 801.

At the hearing, the City offered the testimony of Mr. Hale, CEO of Habitat for Humanity Yuba/Sutter, regarding Habitat's interest in utilizing the property, including the Hotel Marysville building, for low-income housing and its discussions with Appellant regarding a possible donation of the Hotel Marysville property. Appellant objected to such evidence as irrelevant. The Panel sustains this objection and did not consider this testimony in issuing the Decision. *See* Evid. Code § 350 ("No evidence is admissible except relevant evidence") *and* Evid. Code § 210 ("Relevant evidence means evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of consequent to the determination of the action.").

D. Procedural Objections and Rulings

Appellant made several procedural objections during its opening and closing statements. The first objection stated that the Notice and Order is deficient because it is based on notices to correct that were issued before the fire on June 15, 2024 and that describe conditions that no longer exist due to the fire. This objection is overruled for several reasons. First, the evidence in the record established that the Notices to Correct and Notices of Violation and Penalty Orders that had been issued prior to the Fire did not result in adequate correction of the violations contained therein and that the conditions identified in such Notices to Correct and Notices of Violation and Penalty Orders continued to exist and worsened post-Fire (including but not limited to the Hotel Marysville continuing as a vacant, unoccupied and abandoned building in blighted condition that is a detriment to property values in the neighborhood/local businesses with broken and dilapidated windows that need to be boarded up matching the rest of the property as no windows remain and much of the boarding is gone, graffiti needing to be covered up and paint on the building has been decimated entirely, property in such conditions to attract bugs and rodents, and standing water inside the building), which is sufficient to satisfy Municipal Code Section 9.50.160(a)(1). (*See* Exs. 1, 7.) Additionally, the Notice and Order was properly issued pursuant to Municipal Code Section 9.50.160(a)(4) because it addresses the same type *or* character of violation committed on the same premises within the past twelve months based on the continuing violations and worsening condition of the property as discussed herein. (*See* Exs. 1, 7-10). Likewise, the Notice and Order was similarly properly issued pursuant to Municipal Code Section 9.50.160(a)(4) because a notice to correct and/or a notice and order had been served on the same premises within the past twelve months. (*See* Exs. 1, 7-10.)

Appellant further objected that the Notice and Order, including the Notices to Correct and Notices of Violation and Penalty Orders upon which it is based, fails to comply with the Municipal Code and applicable state laws in terms of the content contained therein. As the Notice and Order contains the information set forth in Municipal Code Section 9.50.160(b) and complies with all

applicable laws, including California Government Code section 53069.4, this objection is overruled. Similarly, those notices upon which the Notice and Order are based also comply with Municipal Code Sections 9.50.150(a) and 9.50.160(b), as applicable.

Appellant also objected to the process of the hearing, claiming that due process was not provided because remote appearances by counsel, client representatives, and witnesses were not permitted and thus Appellant did not have an opportunity to be heard. It is the position of the Hearing Officer that the language of the Municipal Code, and specifically Section 9.50.180(d), provides for a due process evidentiary hearing providing for notice and an opportunity to be heard and placed Appellant on notice of the evidentiary nature of the hearing to take place in person. This is further demonstrated by Ms. Gill's appearance at the hearing. "A 'hearing' is '[a] proceeding of relative formality ..., generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and evidence presented.'" *Bollinger v. San Diego Civil Serv. Comm'n* (1999) 71 Cal.App.4th 568, 574 (citations omitted). The subject property is located in Yuba County where the hearing took place. No legal authority was provided by Appellant to support the finding of a due process requirement for the City to make the hearing available remotely to accommodate hearing participants based on their location nor is the Panel aware of one. If Appellant needed additional time to arrange for its representatives, counsel and witnesses to appear at the hearing in person, it could have requested a continuance in accordance with Section 9.50.180(d)(3) for the Panel's consideration. However, Appellant did not make such a request. As a result of the foregoing, this objection is overruled.

II. DISCUSSION

A. Factual Findings

On July 13, 2022, Appellant was served with the first of six "Notices to Correct" pursuant to Municipal Code Section 9.50.150. This Notice requested Appellant to remedy "Vacant, unoccupied and abandoned building in blighted condition that is a detriment to property values in the neighborhood/local businesses." (Ex. 2.) It cited Municipal Code Section 9.50.100(b)(10). (*Id.*)

On October 18, 2022, Appellant was served with the second Notice to Correct referencing the same violations and Municipal Code Section. (Ex. 3.)

On January 4, 2023, Appellant was served with the third Notice to Correct setting forth the same violations. (Ex. 4.) It also included reference to "...broken and dilapated [sic] windows, property is in such conditions to attract bugs and rodents." (*Id.*) This Notice also cited Municipal Code Section 9.50.100(b)(10). (*Id.*)

On February 6, 2023 Appellant was served with the fourth Notice to Correct that included reference to the same conditions and Municipal Code Section as the prior Notice to Correct. (Ex. 5.)

On June 2, 2023, Appellant was served with the fifth Notice to Correct identifying similar violations as the prior notice and citing to Municipal Code Sections 9.50.100(b)(10), (b)(12), (b)(12)(g) and (b)(12)(h). (Ex. 6.)

On August 4, 2023, Appellant was served with the sixth Notice to Correct which alleged violations consisting of “[v]acant, unoccupied, and abandoned building in blighted condition that is a detriment to property values in the neighborhood/local businesses., [sic] broken and dilatated [sic] windows that need to be boarded up matching the rest of the property, graffiti needs to be covered up and paint on the building should be one color, property in such conditions to attract bugs and rodents, standing water inside the building.” (Ex. 7.) This Notice cited to Municipal Code Sections 9.50.100(b)(2), (b)(3), (b)(5), (b)(10), (b)(12), (b)(12)(g), (b)(12)(h).

On November 7, 2023, Appellant was served with a Notice of Violation and Penalty Order pursuant to MMC 9.50.160. (Ex. 8.) This Notice of Violation and Penalty Order identified violations as outlined in the prior “Notice to Correct”, citing to the same Municipal Code Sections referenced therein, and ordered abatement thereof. (*Id.*) The Owner does not dispute that it did not abate these conditions and did not appeal this Order. As such, this Order is now final. *See* MMC 9.50.160(b)(7).

On May 20, 2024, Appellant was served with a second Notice of Violation and Penalty Order (Ex. 9), identifying the same violations and authority as that set forth in the August 4, 2023 Notice to Correct and the November 7, 2023 Notice of Violation and Penalty Order. This second Notice of Violation and Penalty Order also was not appealed and is now final. *See* MMC 9.50.160(b)(7).

On June 15, 2024, a fire occurred at Hotel Marysville and destroyed the roof and much of the interior structures within the building (“Fire”).

On June 24, 2024, Nick Henderson, the City’s Chief Building Official, ordered Appellant to demolish Hotel Marysville as he found the building to be unsafe and determined it posed a clear and imminent danger to, or required immediate action to prevent or mitigate the loss or impairment of, life, health, property or essential public services. (Ex. 13.) This finding was based on Mr. Henderson’s personal observations as well as the report by Sean Jackson, P.E. of Jackson & Sands Engineering, Inc., who was retained by Appellant to provide an assessment of the Hotel Marysville following the Fire. (*See, e.g., id.*) In that report, Mr. Jackson stated, “The building is at risk of failure given normal wind loading and current gravity loads, these failures may be brittle and catastrophic failures with little to no warning time.” (*See* Exs. 12-13.)

After the Fire, Appellant was served with a third Notice of Violation and Penalty Order on July 12, 2024. (Ex. 10.) This Notice of Violation and Penalty Order was not appealed and now has become final. *See* Municipal Code Section 9.50.160.

The Owner has undertaken no corrective work to abate the conditions which are the subject of the Notices to Correct and the three Notice of Violation and Penalty Orders described above. Indeed, the Panel has determined that the Owner has not acted in good faith in its delay in addressing the Notices to Correct and Notices of Violation and Penalty Orders.

On August 1, 2024, the Owner was served with a fourth Notice of Violation and Penalty Order (*i.e.*, the Notice and Order which is the subject of the instant appeal). (Exs. 1-27.) This Notice and Order specifically provides that abatement shall consist of demolition of the structures located at the property, specifically the Hotel Marysville. (Ex. 1, p. 4 at ¶ 5.)

The City also sought its own engineering report from the firm Wiss, Janney, Elstner and Associates, Inc. (Ex. 17.) Kent Sasaki, P.E. issued a report which detailed the lack of maintenance and care to the Hotel Marysville before the Fire and its condition thereafter, noting: “The Hotel Marysville building was in poor condition prior to a fire on June 15, 2024. The Fire destroyed the roof diaphragm and removed the lateral bracing for the top-story exterior walls, which are constructed of unreinforced brick masonry. These top-story walls are very slender and are now susceptible to falling out-of-plane and onto the sidewalks and streets below.” (Ex. 17, p. 36, “Conclusions and Recommendations.”) Mr. Sasaki further concluded that even if the top-story walls are stabilized, the building will continue to deteriorate and may become unstable over time due to this deterioration: “If the building is to remain, weather protection over the open roof and windows is necessary to slow the deterioration of the concrete structure.” (Ex. 17, p. 37.)

In addition to the structural condition of the Hotel Marysville building, a detailed assessment for asbestos, lead and biological contaminants was conducted two years before the Fire. (Exs. 29, 30, 31.) Such assessment was also conducted after the Fire. (Exs. 19, 20.) Based on testimony provided at the hearing, the City was concerned because the building no longer had a roof and upcoming rain would result in contamination entering its storm drain system. On August 15, 2024, the City gave notice to the Owner to correct this situation. (Ex. 32.) The Owner’s response of August 23, 2024 asserted that such notice was inappropriate because an actual violation had yet to occur. (Ex. 33.) The following day, August 24, 2024, a rainstorm resulted in contamination of the City’s storm drain system which the City had sought to avoid. (Exs. 34, 35.)

On multiple occasions prior to the issuance of the Notice and Order, the City asked the Owner (through its legal counsel and others) to provide an Action Plan to abate the condition at the Hotel Marysville, whether by demolition or by other means. Such demands were made on June 21, 2024, June 25, 2024 (twice), June 26, 2024 (twice), June 27, 2024 (twice), June 28, 2024, July 3, 2024, July 9, 2024, July 12, 2024 and July 13, 2024. (Ex. 16.)

The Owner responded to the City’s request for an Action Plan by asserting that it was intending to study and evaluate the situation further. (Ex. 16, Katz correspondence dated July 15, 2024, p. 25.)

On August 24, 2024, based on the video evidence presented along with testimony from Jason Zumalt, storm water left the property and entered into the public drainage system as water that entered the building during the storm carried fire debris from the Hotel Marysville property. (Ex. 35.)

As of the date of the Appeal Hearing on September 6, 2024, the Owner has not obtained any permits from the City nor communicated an Action Plan regarding the condition of the Hotel Marysville.

City Fire Chief, Kyle Hegstrom opines the Hotel Marysville to be unsafe. (Ex. 14.)

James Schaad, the City’s Director of Emergency Services and its City Manager, has declared a State of Emergency with respect to the property and outlined the impacts to the community. (Ex. 11.)

Based on the observations of the Panel, the testimony of witnesses, and the reports of Jackson & Sands Engineering, Inc., Wiss, Janney, Elstner Associates, Inc. and Adam Labs, Inc., the Hotel Marysville is having a negative impact on the City and the public in its current condition. Specifically, it has been found to contain asbestos, lead and other materials that are not contained within the building due to the lack of walls, windows and roof. The risk of failure of the building with little to no warning is also causing traffic delays and detours due to road closures resulting from perimeter fencing around the property.

B. Public Nuisance Shown by a Preponderance of the Evidence

The City has shown by a preponderance of the evidence that the Hotel Marysville property constitutes a public nuisance. California Civil Code section 3480 defines a public nuisance as “one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” Additionally, a nuisance is defined as “[a]nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway.” Cal. Civ. Code § 3479.

“Cities are constitutionally authorized to make and enforce within their limits all local, police and sanitary ordinances and other such regulations not in conflict with the general laws.” *City of Costa Mesa v. Soffer* (1992) 11 Cal. App. 4th 378, 382, *citing* Cal. Const., Art. XI, § 7. Government Code section 38771 provides, “By ordinance the city legislative body may declare what constitutes a nuisance.” “[E]ven without this section cities would have the power to abate public nuisances (Code Civ. Proc., § 731) ... it seems evident that Government Code section 38771 does more than permit cities to adopt as municipal ordinances provisions which have already been enacted as state statutes; such an interpretation would make the section superfluous.” *City of Costa Mesa*, 11 Cal. App. 4th at 382-83, *citing City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 100. Indeed, the City has the authority to abate any condition of the Hotel Marysville determined to be a nuisance. *See, e.g., City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, *certiorari denied* 384 U.S. 988.

The City has specified the conditions that it has declared to constitute a public nuisance in Municipal Code Section 9.50.100(b), including the following: (1) any condition recognized at law or equity is constituting a public nuisance; (2) any dangerous, unsightly, or blighted condition that is detrimental to the health, safety or welfare of the public; (3) any condition is violation of the California Building Code; (8) anything defined as a nuisance pursuant to state and federal law including but not limited to the California Civil Code, Division 4, Part 3, including Civil Code sections 3479 and 3480; (10) any vacant, unoccupied or abandoned building or structure that is not reasonably secured against uninvited entry or that constitutes a fire hazard, or is in a state or unsightly or dangerous condition so as to constitute a blighted condition detrimental to property values in the neighborhood or otherwise detrimental to the health, safety, and welfare of the public; (12) any condition that constitutes a visual blight including broken, defective, damaged, dilapidated, or missing windows, doors, or vents in a building or structure; (17) any condition of a building or structure deemed to be unsafe or that in the discretion of the enforcement officer

would constitute a threat to public safety, health or welfare, or possess a security problem by reason of dilapidation, fire hazard, disaster, damage or similar currents specified in this code or any other applicable law; (18) any condition of a building or a portion thereof which constitutes a substantial building, as defined in Health and Safety Code Section 17920.3. On the question of Health and Safety Code section 17920.3, violations of such statute may include: inadequate sanitation specified under 17920.3(a); structural hazards designated in section 17920.3(b); and other violations in subsections (c) through (o). The Panel finds that the “view” of the Hotel Marysville building amply demonstrates the violations of the above-enumerated provisions and, as a result, constitutes a public nuisance. The Panel further finds and determines that such violations justify the Order to Demolish the Hotel Marysville.

The engineering reports of Sean Jackson, P.E. and Kent Sasaki, P.E., the testimony of the witnesses, the photographic evidence, as well as the view by this Panel support the finding that Hotel Marysville and the property constitute a nuisance and present an imminent threat to the public of bodily harm and a danger to adjacent property.

The Panel does not agree with Appellant that the Hotel Marysville is a qualified Historic Structure subject to the California Historic Building Code such that the City cannot proceed with nuisance abatement and demolition as set forth herein. First, the California Historic Building Code’s standards and regulations are intended to facilitate the rehabilitation or change of occupancy so as to preserve their original or restored elements and features, to encourage energy conservation and a cost effective approach to preservation, and to provide for reasonable safety from fire, seismic forces or other hazards for occupants and users of such buildings, structures and properties and to provide reasonable availability and usability by the physically disabled. Public Resources Code section 5028, referenced by Julianne Polanco from the State Historic Preservation Office (*see* Ex. 22), specifically states that historic property damaged due to a natural disaster, including fire, may be demolished if the structure presents an imminent threat to the public of bodily harm *or* damage to adjacent property. The Panel finds that not only does the Hotel Marysville present an imminent threat to the public of bodily harm but that it also presents an imminent threat of damage to adjacent property. Thus, demolition is appropriate under the circumstances despite the Hotel Marysville’s status as a Historic Property.

Finally, Appellant argued that the property cannot be declared a nuisance until a thorough criminal investigation into the cause of the Fire is completed. The Panel finds that the cause of the Fire is irrelevant to the condition of the building, particularly in light of the Panel’s finding that the property presents an imminent threat to the public of bodily harm and a danger to adjacent property. There is a significant likelihood based on the evidence presented as to the condition of the building that the cause of the Fire may never be known.

In sum, the Panel finds that the City has established that the Hotel Marysville property (1) is a public nuisance in accordance with the Municipal Code, and (2) presents an imminent threat to the public of bodily harm and a danger to adjacent property. As a result of the foregoing, the Panel further finds that abatement in the form of demolition of the Hotel Marysville is justified.

III. NUISANCE ABATEMENT AND PENALTIES ORDERS

The Panel hereby orders the Owner to abate the nuisance by demolition of the Hotel Marysville within ten (10) days from the date of service of this Order, including to obtain appropriate permits to accomplish such action and to provide proof that a competent contractor has been hired to properly complete such demolition (including proof of appropriate financial arrangements for the contractor to complete its work). Such permits and proof of retention of a qualified contractor shall be provided to the City within ten (10) days from the date of service of this Decision pursuant to Municipal Code Section 9.50.180(e)(3). The actual demolition shall be completed within sixty (60) days of the date of this Order. On the issue of alternative action such as renovation, the Panel finds that the Owner has been afforded ample opportunities to take alternate action and has expressed no meaningful intention to proceed with renovation of the Hotel Marysville. It is the finding of this Panel that the Owner has waived the right to seek renovation of the Hotel Marysville and accordingly it is Ordered the structure be demolished.

If the permits and proof of retention of a qualified contractor is not accomplished within ten (10) days after service of this Decision, and the nuisance is not abated by demolition within the time specified above, the City in its discretion may abate the nuisance by demolition and, should the City choose to act in such fashion, the expense of abatement and administrative costs shall be made a lien upon the property and may also be recovered as a personal obligation against those persons who might be responsible.

In addition to the recovery of the City's abatement costs and administrative expenses, the imposition of the administrative penalties is affirmed.

An administrative penalty of One Hundred Dollars (\$100) per day commenced on November 7, 2023 (the date the first Notice of Violation and Penalty Order was served and was not appealed) and shall continue at the rate of One Hundred Dollars (\$100) per day until abatement is complete. In addition, an administrative penalty of Two Hundred Dollars (\$200) per day commenced on August 1, 2024 (when the Notice and Order at issue here was served) and shall continue daily thereafter until the nuisance has been abated. These administrative penalties are cumulative such that effective August 1, 2024 the total administrative penalty for that day shall be Three Hundred Dollars (\$300). For each day thereafter, the administrative penalty shall accrue at the rate of Three Hundred Dollars (\$300) per day. The Appellant shall pay the administrative penalty in accordance with and subject to Municipal Code Section 9.50.200. If the Owner does not pay the penalty within the times specified therein, the City may seek to have the penalties assessed as a personal obligation of responsible persons and may also impose a lien against the property which may be collected by special assessment.

Any appeal of the administrative penalty must be filed within twenty (20) days of service of this decision as provided in Government Code Section 53069.4. The administrative penalties shall continue until all violations have been abated.

IV. THIS DECISION CONSTITUTES THE FINAL DECISION OF THE CITY

The decision of the Panel on this Appeal constitutes the final administrative Decision of the City. Any judicial review of this decision shall be accomplished by filing a Petition for Writ of Mandate pursuant to Sections 1094.5 and 1094.6 of the Code of Civil Procedure, except that any appeal of the hearing examiner's decision regarding the imposition of administrative penalties is subject to 53069.4 of the Government Code, as noted above.

Dated: October 3, 2024

THE HEARING EXAMINER PANEL

Signed by:

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By: Jeremy Strang, Chairperson, Hearing Panel Examiner

Signed by:

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By: Will Foote, Hearing Panel Examiner

Signed by:

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By: Joseph Cuffe, Hearing Panel Examiner