

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE SECTION 1.41.140 TO SPECIFY THAT ATTORNEYS' FEES MAY BE RECOVERED BY THE PREVAILING PARTY IN NUISANCE ABATEMENT PROCEEDINGS WHEN THE CITY, AT THE OUTSET OF AN ACTION OR PROCEEDING, ELECTS TO RECOVER ITS OWN FEES

WHEREAS, California Government Code section 38773.5 authorizes a city to pass an ordinance providing for the recovery of attorneys' fees by the prevailing party in any action, administrative proceeding, or special proceeding to abate a nuisance; and

WHEREAS, California Government Code section 38773.5 also permits that such ordinance may limit recovery of attorneys' fees by the prevailing party to those individual actions or proceedings in which the city elects, at the beginning of that individual action or proceeding, to seek recovery of its own fees; and

WHEREAS, it is in the interest of the City of Chula Vista to amend the Chula Vista Municipal Code to specify that the prevailing party in a nuisance abatement action or proceeding may recover attorneys' fees only when the City has elected to seek recovery of its own attorneys' fees at the initiation of that individual action or proceeding;

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Chapter 1, Section 1.41.140 of the Chula Vista Municipal Code regarding cost recovery in nuisance abatement actions and proceedings is amended to read as follows:

1.41.140 Cost recovery.

A. Pursuant to Government Code Section 38773, costs and penalties that may be recovered and enforced against responsible parties under this chapter include, but are not limited to, the following:

1. City's direct cost for abatement of nuisances, together with applicable overhead;
2. Costs of salary and applicable overhead of those city employees and contract personnel involved in the investigation, enforcement and remediation or abatement of a nuisance;
3. City costs for equipment use or rental;
4. Court costs and witness fees;
5. Costs of geotechnical, engineering and other technical services and studies;
6. Administrative fines and civil penalties imposed pursuant to this chapter;

7. Reinspection fees pursuant to CVMC 1.41.060;
8. Costs of monitoring programs necessary for correcting, monitoring, abating or mitigating nuisances and violations;
9. Any other fee, cost, or expense reasonably and rationally related to the city's enforcement efforts to abate a nuisance or correct a violation of this code or applicable state law;
10. Treble damages recoverable pursuant to Government Code Section 38773.7. (See CVMC 1.41.160(C)). (Ord. 2718 § 3, 1998).

B. Attorneys' fees may be recovered by the prevailing party only in individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. If the City does not elect, at the initiation of an individual action or proceeding, to seek recovery of its own attorneys' fees, no other party shall seek or recover attorneys' fees.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Glen R. Googins
City Attorney

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