



City of Chula Vista

Staff Report

File#: 17-0087, **Item#:** 7.

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 (FIRST READING)

RECOMMENDED ACTION

Council place the ordinance on first reading.

SUMMARY

Staff is recommending that the City Council adopt proposed Ordinance XXX in order to specify that, in accordance with Government Code section 38773.5, attorneys' fees may be recovered by the prevailing party in nuisance abatement actions or proceedings when the City, at the outset, elects to seek recovery of its own attorneys' fees. These amendments will ensure that the City's attorneys' fees provision is consistent with state law and provide a more secure platform for requesting such fees.

ENVIRONMENTAL REVIEW

Environmental Notice

This activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Environmental Determination

The proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA.

BOARD/COMMISSION RECOMMENDATION

Not Applicable

DISCUSSION

California Government Code section 38773.5 creates a statutory basis for cities to enact an ordinance providing for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. In accordance with Government Code section 38773.5, a City's ordinance permitting the recovery of attorneys' fees in nuisance abatement proceedings shall provide for such recovery to the prevailing party. Section 38773.5 also, however, permits a City to

limit recovery of attorneys' fees by the prevailing party to those instances when the City elects, at the outset of the proceeding, to seek recovery of its own fees. In other words, a City ordinance may specify that if the City does not elect to seek recovery of attorneys' fees at the outset of a nuisance abatement action or proceeding, neither party shall have the right to seek attorneys' fees. In this way, recovery of attorneys' fees is either available to both parties in a given nuisance abatement case or to neither party.

Without the amendments outlined in Ordinance XXX, the City's ability to recover attorneys' fees is placed in jeopardy as the current language does not provide for recovery to the prevailing party. Accordingly, staff now recommends that the City amend section 1.41.140 to reflect the full provisions of Government Code section 38773.5 and to remain consistent with California case law on this issue. The proposed amendment would allow for the recovery of attorneys' fees by the prevailing party in nuisance abatement proceedings when the City elects, at the outset of the proceeding, to recover its own fees.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The amendments section 1.41.140 support the City's Operational Excellence and Economic Vitality goals, as they permit the City to recover attorneys' fees in nuisance abatement actions wherein it has elected to recover attorneys' fees and is the prevailing party.

CURRENT YEAR FISCAL IMPACT

The subject amendments to section 1.41.140 increase the City's opportunity to recover attorneys' fees in specified nuisance abatement proceedings. However, it is difficult and speculative to predict when such fees would be recovered and in what amounts.

ONGOING FISCAL IMPACT

The subject amendments to section 1.41.140 increase the City's opportunity to recover attorneys' fees in specified nuisance abatement proceedings. However, it is difficult and speculative to predict when such fees would be recovered and in what amounts.

ATTACHMENTS

1. Proposed amended Section 1.41.140 with strikeout underline text

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