



DEPARTMENT OF
FINANCE

FINANCE ADMINISTRATION

CITY OF SACRAMENTO
CALIFORNIA

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May 6, 2005

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City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: Amend City Code Related to Recovery of Attorneys' Fees and Administrative Penalties

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

Staff recommends that the Mayor and the City Council adopt the attached ordinance amending Title 1 of the City Code related to the recovery of attorneys' fees and administrative penalties in enforcing the provisions of the code.

CONTACT PERSON Tina Lee-Vogt, Legislative Affairs Analyst -- 808-2679

FOR THE COUNCIL MEETING OF May 17, 2005

SUMMARY

This report provides information on the City's ability to recover attorneys' fees associated with the enforcement of the code and collection of unpaid administrative penalties. Staff recommends that the Mayor and the City Council adopt the attached ordinance amending Title 1 of the City Code related to the recovery of attorneys' fees and administrative penalties in enforcing the provisions of the code. The ordinance was passed for publication on May 10, 2005.

COMMITTEE/COMMISSION ACTION

On May 3, 2005, the Law and Legislation voted to approve and forward to the full City Council the attached ordinance amending Title 1 of the City Code related to the recovery of attorneys' fees and administrative penalties in enforcing the provisions of the code.

BACKGROUND

Under state law, attorneys' fees are not collectable as administrative costs unless they are specifically authorized by contract, statute or law. As a result, cities have enacted ordinances that authorize recovery of attorneys' fees incurred in pursuing enforcement actions, including actions to abate a nuisance, collect administrative penalties, or any delinquent amounts owed to the cities.

Currently, the Sacramento City Code only provides for recovery of attorneys' fees in certain areas of the code. Copies of ordinances from other cities were obtained for information on provisions relating to recovery of attorneys' fees. Attachment A is a comparison chart of these attorney fee provisions.

The purposes of these revisions are: 1) to create a general provision that would allow for recovery of attorneys' fees incurred in enforcing any provisions of the code; and 2) to clarify the City's right to foreclose on a lien placed on a property where the code violation occurred as a means to collect unpaid administrative penalties and costs. Below is a summary of the proposed changes:

- **Add a new section to Chapter 1.28 (General Penalty).** The new section would make any person who violates any provisions of the code liable for the City's attorneys' fees and costs incurred in remedying the violation or enforcing the person's compliance with the code, including actions to enforce an administrative order or court order against the person, actions to abate a nuisance, and actions to collect any unpaid or delinquent sums owing to the City.
- **Add subsection (D) to section 1.28.010(D)(4)(g)(iv).** This section already permits the City to collect unpaid administrative penalties by placing a lien on the property where the code violation occurred. The new subsection would clarify the City's right to foreclose on such a lien and collect attorneys' fees associated with the foreclosure action.

Substantial resources are spent each year to enforce the code and state laws, in particular laws enacted to protect the public health, safety and welfare. The responsibility of these costs should be properly placed on those persons responsible for violating the code or state laws. The proposed changes would assist in recovery of these costs.

FINANCIAL CONSIDERATIONS

The proposed changes relating to the recovery of attorneys' fees would result in increased collection of fees and costs.

ENVIRONMENTAL CONSIDERATIONS

Not applicable.

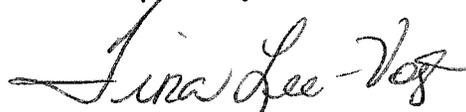
POLICY CONSIDERATIONS

This recommendation is consistent with the City Council's policy of achieving compliance with the code and collecting costs incurred in enforcing the code. Collection of these costs is important in deterring future violations and maintaining the integrity of the City's code enforcement system.

ESBD EFFORTS

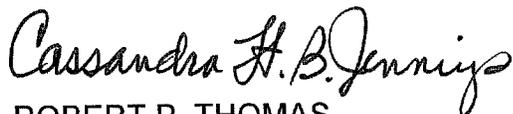
No goods or services are being purchased at this time.

Respectfully submitted,



TINA LEE-VOGT
Legislative Affairs Analyst

RECOMMENDATION APPROVED:



ROBERT P. THOMAS
City Manager

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ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE ADDING SECTION 1.28.040 TO, AND AMENDING SECTION 1.28.010 OF CHAPTER 1.28 OF THE SACRAMENTO CITY CODE RELATING TO RECOVERY OF ATTORNEYS' FEES AND ADMINISTRATIVE PENALTIES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. Section 1.28.040 is added to Chapter 1.28 of the Sacramento City Code to read as follows:

1.28.40 Cost and penalty recovery; attorneys' fees.

- A. In addition to all other remedies and cost recovery authorized or provided by any provision of this code or any other law, any person violating any provision of this code shall be liable to the City for the City's reasonable attorneys' fees and costs incurred to remedy such violation or enforce such person's compliance with this code, including recovery of the City's reasonable attorneys' fees and costs in bringing an action or proceeding to enforce an administrative determination or court order against such person. This section does not apply to public nuisance abatement actions for which attorneys' fees are authorized under subsection B below.
- B. In any action or proceeding brought by the City to abate a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees, provided that, pursuant to Government Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.
- C. The City, in its discretion, may pursue any and all legal and equitable remedies for the collection of unpaid fines, taxes, interest, fees, civil penalties, administrative

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FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

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penalties, and any other sum required to be paid under any provision of this code or any other law. The City shall be entitled to recover reasonable attorneys' fees and costs associated with the collection of the amount owed. As used herein, "costs" include, but are not limited to, City staff time incurred in the collection of the amount owed and those costs set forth in Code of Civil Procedure Section 1033.5. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total amount owed has been collected.

SECTION 2. Section 1.28.010 of Chapter 1.28 of the Sacramento City Code is amended as follows:

A. Subsection (D)(4)(g)(iv) of Section 1.28.010 is amended to read as follows:

iv. Liens.

The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a lien on the real property on which the violation occurred.

(A) Notice shall be given to the responsible party prior to the recordation of the lien, and shall be served in the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(B) The lien shall attach when the city manager or his or her designee records a lien listing delinquent unpaid administrative penalties with the county recorder's office. The lien shall specify the amount of the lien, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel.

(C) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in b. above shall be recorded by the city clerk.

(D) The lien may be foreclosed at any time by an action brought by the City for a money judgment. As part of the foreclosure action, the City may recover reasonable attorneys' fees and costs, including but not limited to costs incurred for processing and recording of the lien and providing notice to the property owner.

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B. Except as specifically amended by the amendments to subsection 1.28.010(D)(4)(g)(iv), all other provisions of section 1.28.010 remain unchanged and in full force and effect.

DATE PASSED FOR PUBLICATION:
DATE ENACTED:
DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

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DATE ADOPTED: _____

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- B. In any action or proceeding brought by the City to abate a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees, provided that, pursuant to Government Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.
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DATE PASSED FOR PUBLICATION:
DATE ENACTED:
DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

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DATE ADOPTED: _____

PROVISIONS ON RECOVERY OF ATTORNEYS' FEES

Comparison with other cities

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CITIES	Provisions on Recovery of Attorneys Fees	Provisions on Lien Foreclosure
Sacramento (current)	Only in enforcement of certain code provisions.	Unpaid administrative penalties and costs may be placed as a lien on the property where the code violation occurred. No express provision regarding foreclosure of the lien.
Sacramento (proposed)	Would allow recovery of attorney fees in enforcement of any provisions of the code.	Would expressly provide for city's right to foreclose on such a lien.
Anaheim	Only in enforcement of certain code provisions.	Unpaid fines from civil citations issued in connection with real property may be placed as a lien on the property. No express provision regarding foreclosure of the lien. Rather, lien may be enforced pursuant to state law.
Fresno	Has a general Cost and Penalty Recovery Ordinance that authorizes recovery of enforcement costs, including attorneys' fees.	Abatement costs, including administrative penalties, may be placed as a lien on the property. Ordinance provides for foreclosure of the lien.
Long Beach	Only in enforcement of certain code provisions.	None
Oakland	Only in enforcement of certain code provisions.	None
Riverside	General provision authorizing recovery of attorney fees in actions to abate a nuisance, enjoin a violation of any code provision, and collect a civil penalty or debt owing to the city.	Abatement costs may be placed as a lien on the property. No express provision regarding foreclosure of the lien. Rather, lien may be enforced pursuant to state law.

PROVISIONS ON RECOVERY OF ATTORNEYS' FEES

Comparison with other cities

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CITIES	Provisions on Recovery of Attorneys Fees	Provisions on Lien Foreclosure
San Diego	Only in enforcement of certain code provisions.	Abatement costs may be placed as a lien on the property. Ordinance provides for foreclosure of the lien.
San Jose	General provision making any person who violates any provision of the code liable to the city for attorney fees and costs incurred in enforcing the code, including actions to enforce an administrative or court order or to secure payment of unpaid sums owed to the city.	Abatement costs, including administrative penalties, may be imposed as a lien on the property. No express provision regarding foreclosure of the lien. Rather, lien may be enforced pursuant to state law.
Santa Ana	Only in enforcement of certain code provisions.	Abatement costs may be imposed as a lien on the property. No express provision regarding foreclosure of the lien. Rather, lien may be enforced pursuant to state law.
Santa Paula	Only in enforcement of certain code provisions.	Administrative costs are assessed when compliance is not achieved within the time specified in the compliance order. Administrative costs, including attorney fees, may be placed as lien on the property. In the case of <u>City of Santa Paula v. Narula</u> (2003) 114 Cal.App.4 th 485, the city was able to recover attorneys' fees when it foreclosed on a lien recorded against an apartment building to collect its costs and penalties.

Board or Commission	Type of Opening	Application Status	Appointment Status
<p>Transportation Programming Guide Community Advisory Committee</p> <p>CURRENTLY OPEN</p> <p>Contact: Saed Hasan – 808-7923</p>	<p>Three (3) positions:</p> <p>Category A – Two (2) members; one representing Council District 6 and one representing Council District 8;</p> <p>Category B - One (1) member recommended by Mayor.</p>	<p>Opened: 03/23/05 Closed: 04/22/05</p> <p>Reopened: 05/11/05</p> <p>Closes: 06/10/05</p> <p>Apps. Received: 0</p>	