



DEPARTMENT OF
FINANCE

FINANCE ADMINISTRATION

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CALIFORNIA

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April 29, 2005

Sacramento City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: PASS FOR PUBLICATION - 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

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

It is recommended that this report be passed for publication of title and continued to May 17, 2005.

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

FOR THE COMMITTEE MEETING OF May 10, 2005

SUMMARY

This ordinance addresses the City's ability to recover attorneys' fees associated with the enforcement of the code and collection of unpaid administrative penalties.

BACKGROUND

Prior to publication of an item in a local newspaper to meet legal requirements, the City Council must first pass the item for publication. The City Clerk then transmits the title of the item to the newspaper for publication and for advertising the meeting.

PF: Amend City Code Related to Recovery
of Attorneys' Fees and Administrative Penalties
May 10, 2005

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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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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ORDINANCE NO. _____

DATE ADOPTED: _____