

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Ron Ahlers, Finance Director 

DATE: April 14, 2010 (CC Meeting of May 5, 2010)

SUBJECT: Consider an Ordinance Adding Chapter 3.48 Payment Required Prior to Commencement of Legal Action to Title 3, Revenue and Finance, of the Municipal Code

SUMMARY

The City of Moorpark does not have an express requirement that the payment of disputed taxes, fees, fines, plus interest and/or penalties, is a precondition to pursuing judicial or other review of any tax, fee or fine assessed by the City. As such, a party may claim that it is entitled to delay payment of assessed taxes, fees, fines and other payments due and owing to the City while litigation related to the City's assessment is pending. The proposed ordinance expressly states that any person wishing to challenge an assessed tax, fee, fine and other payment must comply with the "pay first, litigate later" rule.

BACKGROUND

Article XIII, § 32 of the California Constitution established the long-standing "pay first, litigate later" rule that until recently was extended to local governments.

CALIFORNIA CONSTITUTION, ARTICLE 13 TAXATION, SECTION 32.
No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature.

The purpose of such a rule is to require payment of taxes and fees before a refund or other judicial relief is sought to ensure that governments can predict their revenues and avoid unexpected interference with their ability to fund vital services.

Recent actions over the taxation of cellular phone service and internet re-sale of hotel rooms have tested fundamental rules regarding procedures for tax disputes. In several recent cases, lower courts have failed to implement long-standing rules that promote a rational system of public finance and local governments have had to persuade appellate courts to restore these rules.

The latest example of this is the City of Anaheim's fight with internet resellers of hotel rooms. After the City found a \$21.3 million deficiency in tax payments from Priceline, Priceline sued without first paying the tax. The City sought dismissal of the case citing the "pay first, litigate later" rule established by Article XIII, § 32 of the California Constitution. The Court of Appeal rejected Anaheim's position holding that Article XIII, § 32 does not apply to local governments and that Anaheim had no local "pay first, litigate later" rule. This case is inconsistent with a long line of cases involving local governments and explains the absence of local ordinances of this nature.

The absence of the protection of Article XIII, § 32 of the California Constitution, or a local rule, gives "hold up" leverage to every tax payer who does not want to pay taxes, requiring governments to sue to collect, and rewards even baseless tax refund claims by forcing the tax payers to subsidize the tax challengers.

The proposed ordinance has been reviewed by the City Attorney.

FISCAL IMPACT

The proposed ordinance should lower costs by barring refund suits that do not comply with the "pay first, litigate later" rule. It will further protect City finances by preventing taxpayers from unfairly disputing tax obligations merely to delay payment.

STAFF RECOMMENDATION

Introduce Ordinance No. _____ for first reading, waive full reading, and schedule second reading and adoption for May 19, 2010.

Attachment: Draft Ordinance No. _____

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, ADDING CHAPTER 3.48, PAYMENT REQUIRED PRIOR TO COMMENCEMENT OF LEGAL ACTION, TO TITLE 3, REVENUE AND FINANCE, OF THE MOORPARK MUNICIPAL CODE

WHEREAS, Article XIII, Section 32, of the California Constitution sets forth what is commonly known as a 'pay first, litigate later' requirement; and

WHEREAS, while such requirement has heretofore been assumed to be applicable to actions against cities, in a recent opinion involving the City of Anaheim the Court of Appeal held that such Constitutional protection does not protect a city which does not have its own 'pay first, litigate later' code provision; and

WHEREAS, Chapter 3.48 is proposed to be added to Title 3 to require persons challenging the payment of taxes, fees, fines, and other payments to the city to make such payments prior to commencing any actions to recover such payments.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1 The following new Chapter 3.48 is hereby added to Title 3 of the Moorpark Municipal Code:

“Chapter 3.48

**PAYMENT REQUIRED PRIOR TO
COMMENCEMENT OF LEGAL ACTION**

Sections:

3.48.010 Payment required prior to commencement of legal action.

Except as may otherwise be provided specifically in this code, no person shall commence any action to challenge all or any portion of any tax, fee, fine, or any other type of payment required to be made pursuant to any provision in this code, without first making such full payment to the city.”

SECTION 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining

portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this _____ day of _____, 2010.

Janice S. Parvin, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk