

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director 

DATE: April 3, 2014 (CC Meeting of 4/16/2014)

SUBJECT: Consider an Ordinance Adding Subsection F. to Section 1.12.180, Liability to City for its Costs to Chapter 1.12, Nuisances of Title 1, General Provisions of the Moorpark Municipal Code to allow for Recovery of Attorney's Fees from Abatement of a Public Nuisance

BACKGROUND/DISCUSSION

Civil litigation to abate a nuisance condition on property and City initiated and conducted nuisance abatement proceedings are two of the code compliance tools available to the City for abating public nuisances. These are rarely used, but available when other methods of code compliance have not resulted in nuisance abatement. The present code provides for recovery of costs and expenses. The City must elect in writing to seek recovery of city attorney's fees at the initiation of its civil action. The attached ordinance will give the City Manager or City Attorney the discretion to seek recovery of attorney's fees at the initiation of an administrative, civil, or equitable judicial action to abate a public nuisance. Should the City prevail, it would be entitled to recover attorney's fees. Should the other party prevail, the City would be responsible to pay reasonable attorney's fees. This ordinance has been reviewed and approved as to form by the City Attorney.

STAFF RECOMMENDATION

Introduce Ordinance No. ____ for first reading, waive full reading, and place this ordinance on the agenda for May 7, 2014, for purposes of providing second reading and adoption of the ordinance.

ATTACHMENT: Ordinance No. ____

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, ADDING SUBSECTION F. TO SECTION 1.12.180, LIABILITY TO CITY FOR ITS COSTS TO CHAPTER 1.12, NUISANCES OF TITLE 1, GENERAL PROVISIONS OF THE MOORPARK MUNICIPAL CODE TO ALLOW FOR RECOVERY OF ATTORNEY'S FEES FROM ABATEMENT OF A PUBLIC NUISANCE

WHEREAS, Section 1.12.180, Liability to city for its costs of Chapter 1.12, Nuisances of Title 1, General Provisions of the Moorpark Municipal Code addresses the ability of the City to recover costs in abating a public nuisance on a private property; and

WHEREAS, the City Council wishes to add Subsection F. to allow for the recovery of attorney's fees from the abatement of a public nuisance; and

WHEREAS, the Community Development Director has reviewed this ordinance and determined that it is not a project subject to review under the California Environmental Quality Act (CEQA) in that the adoption of provisions for the recovery of attorney's fees from civil litigation and City-initiated and conducted nuisance abatement proceedings does not have the potential for resulting in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

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

SECTION 1. ENVIRONMENTAL DOCUMENTATION: The City Council, through its own independent analysis and judgment, concurs with the Community Development Director's finding that this ordinance is not a project subject to review under the California Environmental Quality Act (CEQA) in that the adoption of provisions for the recovery of attorney's fees from civil litigation and City-initiated and conducted nuisance abatement proceedings does not have the potential for resulting in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

SECTION 2. Subsection F. is added to Section 1.12.180, Liability to city for its costs of Chapter 1.12, Nuisances of Title 1, General Provisions of the Moorpark Municipal Code as shown in Exhibit A, attached hereto and incorporated herein.

SECTION 3. 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 4. This ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 5. 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 publish notice of adoption in the manner required by law.

PASSED AND ADOPTED this _____ day of _____, 2014.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Exhibit A: Subsection F. of Section 1.12.180

EXHIBIT A

SUBSECTION F. OF SECTION 1.12.180, LIABILITY TO CITY FOR ITS COSTS

F. Notwithstanding any other provisions of this section, a prevailing party in any administrative, civil or equitable judicial action to abate or cause the abatement of a public nuisance, or in any appeal or other judicial action arising therefrom, may recover reasonable attorney's fees in accordance with the following subsections:

1. Attorney's fees are not recoverable by any person as a prevailing party unless the City Manager, or a designee thereof, or an attorney for, and on behalf of, the city, elects in writing to seek recovery of the city's attorney's fees at the initiation of that individual action or proceeding. Failure to make such an election precludes any entitlement to, or award of, attorney's fees in favor of any person or the city.

2. The city is the prevailing party when an administrative or judicial determination is made or affirmed by which a person is found to be responsible for one or more conditions or activities that constitute a public nuisance. A person is the prevailing party only when a final administrative or judicial determination completely absolves that person of responsibility for all conditions or activities that were alleged, in that action or proceeding, to constitute a public nuisance. An administrative or judicial determination that results in findings of responsibility and non-responsibility on the part of a person for conditions or activities that were alleged in that action or proceeding to constitute a public nuisance, shall nevertheless result in the city being the prevailing party.

3. Provided that the city has made an election to seek attorney's fees, an award of attorney's fees to a person shall not exceed the amount of reasonable attorney's fees incurred by the city in that action or proceeding.