

**ORDINANCE NO. 21-2117**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, ADDING SECTIONS 1203.14 (“CIVIL ACTIONS”) AND 1203.15 (“RECOVERY OF ATTORNEYS’ FEES”) TO CHAPTER 2.5 (“ADMINISTRATIVE CITATIONS”) OF ARTICLE I (“GENERAL PROVISIONS”) OF THE CARSON MUNICIPAL CODE PERTAINING TO CIVIL AND ADMINISTRATIVE ENFORCEMENT OF THE CARSON MUNICIPAL CODE, INCLUDING WITH RESPECT TO RECOVERY OF ATTORNEYS’ FEES AND COSTS ASSOCIATED WITH PUBLIC NUISANCE ABATEMENT, AND RENAMING SAID CHAPTER 2.5**

**WHEREAS**, Government Code Section 38773.5(b) authorizes a city to establish, by ordinance, a procedure for the recovery of prevailing party attorneys’ fees and costs in any action, administrative proceeding, or special proceeding to abate a nuisance; and

**WHEREAS**, the current Carson Municipal Code (CMC) provides for abatement of public nuisances and the recovery of abatement costs and other related fees, costs and expenses, but the current CMC provisions regarding cost recovery may create uncertainty about the full extent of the City’s authority, ability, and/or intention to recover attorneys’ fees and costs incurred in some public nuisance abatement proceedings; and

**WHEREAS**, clearly setting forth and implementing the City’s authority pursuant to Government Code Section 38773.5(b) to collect attorneys’ fees and costs incurred by the City in all actions, special proceedings, and administrative proceedings pursued by the City to abate a public nuisance or correct a violation of the CMC where such fees and costs are incurred to obtain abatement or compliance will promote the public and general health, safety and welfare by encouraging voluntary compliance and by making violators responsible for the costs associated with the nuisance conditions they create, cause, or maintain, rather than the public at large, and the City Council now intends to do so; and

**WHEREAS**, this Ordinance is further intended to clearly set forth the City’s authority to obtain court orders for treble the costs of abatement in civil actions pursuant to Gov’t Code Section 38773.7, and to otherwise update and revise the City’s regulations for civil enforcement of the CMC; and

**WHEREAS**, the City Council now desires to amend the CMC to clarify and ensure that the City has the authority to recover its attorneys’ fees and costs associated with all public nuisance abatement actions and proceedings, as allowed by law; and to update, augment and revise the City’s regulations for civil enforcement of Carson Municipal Code, and to rename Chapter 2.5 of Article I of the CMC to better reflect its full scope in light of such amendments.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA DOES ORDAIN AS FOLLOWS:**

**SECTION 1. RECITALS.** The foregoing recitals are true and correct, and the same are

incorporated herein as findings of fact.

**SECTION 2. AMENDMENT.** Chapter 2.5 (“Administrative Citations”) of Article I (“General Provisions”) of the Carson Municipal Code is hereby renamed from “Administrative Citations” to “Administrative Citations; Civil Enforcement.”

**SECTION 3. AMENDMENT.** A new Section 1203.14 (“Civil Actions”) is hereby added to Chapter 2.5 (“Administrative Citations; Civil Enforcement”) of Article I (“General Provisions”) of the Carson Municipal Code, to read in its entirety as follows (added text shown in bold italics):

***“1203.14 Civil Actions.***

***(a) Commencement of Action. If a Code Enforcement Officer has issued a notice of public nuisance and/or an order to abate a public nuisance under any part of the CMC to a responsible person and the corrective or abatement work specified in the notice or order has not been completed within the time stated therein, the City, through its City Attorney or other authorized legal counsel, may commence a civil action against the responsible person in a court of competent jurisdiction to prevent, restrain, correct, and/or abate the Code violation or public nuisance, and to recover its enforcement and abatement costs, including reasonable prevailing party attorneys’ fees and costs, as well as any other damages and relief to which the City may be entitled, as authorized by this section, CMC 1203.15, and applicable state law.***

***(b) Notice of Pendency. Upon the commencement of a civil action, the City may record a notice of pendency of action in each case where the Code violation or public nuisance affects title to, or the right to possession of, specific real property, or use of an easement, against the real property owned, leased, or possessed by a responsible party, as provided in Code of Civil Procedure section 405 et seq.***

***(c) Relief Sought. The City may seek any order or judgment from a court against any responsible person that is reasonably likely to prevent, restrain, correct, or abate the violation or public nuisance or to compensate the City therefor including, but not limited to, any and all of following:***

***(1) Injunctive relief, including temporary restraining orders, preliminary injunctions, and permanent injunctions to restrain and enjoin the responsible person from causing, permitting or continuing a public nuisance, from using or occupying any real property, buildings, dwellings or structures in violation of this Code or in a manner that constitutes a public nuisance, from engaging in specified actions which are reasonably likely to lead to a public nuisance or a violation of the Code, or from any act or omission which threatens or endangers the public health, safety or welfare;***

***(2) Orders requiring the correction of a public nuisance or a violation of this Code by repairing, rehabilitating, razing, demolishing or removing any building or structure, or by grading, clearing, grubbing or cleaning any real property by***

*removing trash and debris, by ceasing any use or activity that is a public nuisance or that is in violation of any provision of this Code, or by other appropriate remedy approved by the court;*

*(3) Judgments for recovery of damages incurred by the City, awards of enforcement costs and any abatement costs, and reasonable attorneys' fees incurred by the City related to the Code violation or public nuisance, and for such other and further relief as the court may grant;*

*(4) Pursuant to California Government Code Section 38773.7, upon entry of a second or subsequent civil order or judgment within a two-year period finding that a responsible person is responsible for a public nuisance under the CMC, the court may order the responsible person to pay treble damages to the City equal to three times amount of the enforcement and abatement costs incurred by the City related to the Code violation or public nuisance.”*

**SECTION 4. AMENDMENT.** A new Section 1203.15 (“Recovery of Attorneys’ Fees”) is hereby added to Chapter 2.5 (“Administrative Citations; Civil Enforcement”) of Article I (“General Provisions”) of the Carson Municipal Code, to read in its entirety as follows (added text shown in bold italics):

*“1203.15 Recovery of Attorneys’ Fees.*

*Pursuant to California Government Code Section 38773.5(b), in any action, special proceeding, or administrative proceeding initiated by the City for the purpose of correcting or abating any Code violation or public nuisance, the prevailing party in said action or proceeding shall be entitled to recovery of that party's attorneys' fees in an amount not to exceed the amount of reasonable attorneys' fees and costs incurred by the City in said action or proceeding. Notwithstanding the foregoing, recovery of prevailing party attorneys' fees pursuant to this section shall be limited to those individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees.”*

**SECTION 5. SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

**SECTION 6. EFFECTIVE DATE.** This ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 7. CERTIFICATION.** The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

**PASSED, APPROVED and ADOPTED** at a regular meeting of the City Council on this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Lula Davis-Holmes, Mayor

ATTEST:

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John W. Carroll, Sr., Chief Deputy City Clerk

APPROVED AS TO FORM:

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Sunny K. Soltani, City Attorney