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Title: CONSIDER INTRODUCTION OF ORDINANCE NO. 21-2117, 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 (CITY COUNCIL)

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Report to Mayor and City Council

Tuesday, July 20, 2021

Discussion

SUBJECT:

CONSIDER INTRODUCTION OF ORDINANCE NO. 21-2117, 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 (CITY COUNCIL)

I. SUMMARY

The Carson Municipal Code (CMC) delineates various procedures whereby the City can effectuate the administrative abatement of public nuisances, including those found in Chapters 3 (Litter and Weed Control) and 7 (Property Maintenance) of Article V (Sanitation and Health) of the CMC. When the City abates a public nuisance pursuant to said administrative procedures, the current CMC provides for the City to recover its costs of abatement via City Council approval of an abatement cost report that may then be

recorded as a nuisance abatement lien or made a special assessment against the subject property (see, e.g., CMC 5329-5331, 5712-5714). However, there is no express provision in the CMC for recovery of City's attorneys' fees incurred in public nuisance abatement proceedings. Attorneys' fees frequently must be incurred to successfully complete such proceedings, as the City may be required to obtain abatement warrants, participate in administrative appeal hearings, or complete other actions or tasks requiring legal expertise when a property owner refuses to voluntarily abate a public nuisance.

Government Code (GC) 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. The primary purpose of the proposed ordinance is to exercise the City's authority pursuant to GC Section 38773.5(b) to ensure that the City has the right to recover prevailing party attorneys' fees in all public nuisance abatement actions and proceedings (including those initiated pursuant to Chapters 3 and 7 of CMC Article V), by adding a new Section 1203.15 to the CMC. However, the ordinance also adds another section (1203.14) to the CMC regarding the City's authority to file a civil lawsuit to abate a public nuisance and the remedies, including injunctive relief, recovery of attorneys' fees and treble damages for repeat violators, that the City may obtain if it prevails. Staff recommends the proposed ordinance to improve the City's ability to enforce the CMC both civilly and administratively.

II. RECOMMENDATION

INTRODUCE and READ by title only, with further reading waived, 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."

III. ALTERNATIVES

TAKE another action that City Council deems appropriate.

IV. BACKGROUND

State law authorizes a city legislative body by ordinance to declare what constitutes a nuisance (GC §38771). The City has done so by declaring that all violations of the CMC constitute public nuisances (CMC 1200). This is in addition to those conditions that

constitute a public nuisance under the definition contained in state law (Civil Code §§3479-3480), which can also be abated by the City via a civil action (Code of Civil Procedure §731).

GC Section 38773.5(b) authorizes a city to establish, by ordinance, a procedure for the recovery of attorneys' fees and costs in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails. The ordinance may limit recovery of attorneys' fees by the prevailing party 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. In no action, administrative proceeding, or special 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.

The current CMC provides for abatement of public nuisances and the recovery of abatement costs, but the current provisions regarding cost recovery may create uncertainty about the full extent of the City's authority, ability, and intention to recover attorneys' fees and costs incurred in public nuisance abatement proceedings. Clearly setting forth the City's authority, ability, and intention to collect attorneys' fees and costs incurred by the City in connection with nuisance abatement will protect and promote the public 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.

Accordingly, the proposed ordinance provides that prevailing party attorneys' fees may be recovered in all public nuisance abatement actions and proceedings initiated by the City, provided the City elects, at the initiation of the individual action or proceeding, to seek recovery of its own attorneys' fees. The City may elect at the outset of the action or proceeding not to pursue recovery of prevailing party attorneys' fees, in which case such fees would not be at stake.

The proposed ordinance pertains to all civil actions (i.e., lawsuits for injunctive relief), special proceedings (e.g., to obtain an inspection or abatement warrant), and administrative proceedings (e.g., proceedings pursuant to Chapters 3 and 7 of CMC Article V, including administrative appeal hearings on notices of violation and orders to abate) pursued by the City to abate a public nuisance or correct a violation of the CMC where attorney's fees and costs are incurred to obtain abatement or compliance.

Further, as noted above, the proposed ordinance would add a new section to the CMC regarding the City's authority to file a civil lawsuit to abate a public nuisance and the remedies that the City may obtain if it prevails in such a lawsuit, to ensure that the City has the full panoply of remedies that can be authorized under state law available to it in the event it opts to pursue public nuisance abatement via civil action as opposed to criminal or administrative proceedings. Among the available remedies specified in the new CMC section are injunctive reliefs (i.e., a court order) compelling a person to cease or refrain from permitting, causing, or continuing a public nuisance, recovery of prevailing party attorneys' fees as noted above, recovery of abatement costs and treble damages against repeat violators. With respect to the latter remedy, state law provides that the legislative

body of a City, by ordinance, may provide that upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property (or certain other specified person(s)) is responsible for a condition that may be abated in accordance with an ordinance enacted pursuant to GC Section 38773.5, except for conditions abated pursuant to Section 17980 of the Health and Safety Code (a part of the State Housing Law), the court may order that person to pay treble (i.e., three times) the costs of the abatement. The proposed ordinance exercises the City's authority pursuant to state law to pursue this remedy when it sees fit to do so.

Collectively, these provisions would help facilitate the City's ability to effectively and expeditiously enforce violations of the CMC via civil and administrative actions and proceedings, and would thereby have a deterrent effect on would-be violators, thus protecting and promoting public health, safety and welfare in a valid exercise of the City's police power.

Lastly, the proposed ordinance would rename Chapter 2.5 of CMC Article I, to which both of the new sections would be added, from "Administrative Citations" to "Administrative Citations; Civil Enforcement" to better reflect the expanded scope of the chapter.

V. FISCAL IMPACT

The proposed ordinance would improve the City's ability to recover its costs of civil and administrative enforcement of the Carson Municipal Code.

VI. EXHIBITS

1. Ordinance No. 21-2117 (pgs. 5-8)

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