



DATE: June 20, 2007

TO: Honorable Mayor and City Councilmembers

FROM: John P. Mullen, City Attorney

SUBJECT: **INTRODUCTION OF AN ORDINANCE AMENDING OCEANSIDE CITY CODE CHAPTER 17 RELATING TO THE RECOVERY OF ATTORNEYS' FEES IN NUISANCE ABATEMENT ACTIONS**

SYNOPSIS

The City Attorney recommends that the City Council introduce an ordinance amending Oceanside City Code sections 17.14 and 7.15, and adding Section 17.16 to provide for recovery of attorneys' fees to the prevailing party in a nuisance abatement action.

BACKGROUND

Oceanside City Code section 17.14 currently provides that the City may recover reasonable attorneys' fees incurred in a successful abatement action. However, Government Code section 38773.5, subsection (b) provides that:

A city may, by ordinance, provide for the recovery of attorneys' fees 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. (Emphasis added.)

Recently, the Sixth District Court of Appeal in *City of Monte Sereno v. Padgett* (2007) 149 Cal.App.4th 1530, held that a city ordinance similar to Oceanside's which only provided for recovery of attorneys' fees by the city (as opposed to the prevailing party) in a nuisance abatement action violated Government Code section 38773.5. In that case, the appellate court reversed an attorneys' fee award of \$153,842.00 in favor of the City of Monte Sereno because the ordinance in question did not provide for recovery of attorneys' fees by the prevailing party.

The language of the proposed amendments to Sections 17.14 and 17.15 provides for recovery of attorneys' fees by the prevailing party consistent with Government Code section 38773.5(b).

ANALYSIS

The proposed amendment to Sections 17.14 and 17.15 is mandated by Government Code section 38773.5 if the City wishes to recover its attorneys' fees in abatement actions. This ordinance will amend Sections 17.14 and 17.15 by removing the attorneys' fee provision from Section 17.14 "Alternative Remedies" and placing it in Section 17.15 re-titled "Attorneys' Fees." Former Section 17.15 relating to criminal violations will be re-numbered as Section 17.16 "Criminal Violations" with no change to the text.

FISCAL IMPACT

The proposed amendment will increase the likelihood of the City recovering its attorneys' fees in successful nuisance abatement actions brought under Chapter 17. However, the City may be required to pay attorneys' fees to the defendant in an unsuccessful abatement action where the City attempted to recover its attorneys' fees. In that situation, the costs to the City would be limited to the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

COMMISSION OR COMMITTEE REPORT

None.

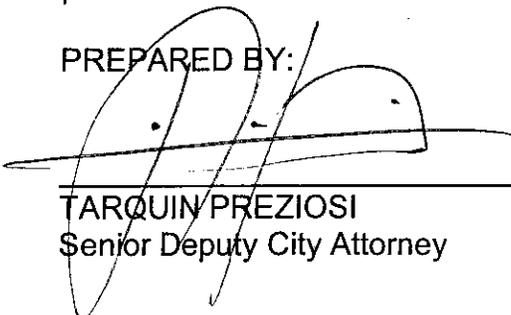
CITY ATTORNEY'S ANALYSIS

The City Attorney's Office is bringing this item forward to the City Council for consideration and as such the analysis contained herein is that of the City Attorney.

RECOMMENDATION

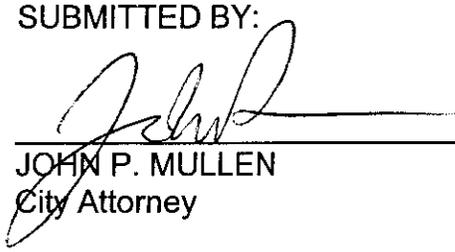
The City Attorney's Office recommends that the City Council introduce an ordinance amending Oceanside City Code sections 17.14 and 17.15, and adding Section 17.16, pursuant to Government Code section 38773.5.

PREPARED BY:



TARQUIN PREZIOSI
Senior Deputy City Attorney

SUBMITTED BY:



JOHN P. MULLEN
City Attorney

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



1 proceedings in which the City elects, at the initiation of that individual action or proceeding, to
2 seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special
3 proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of
4 reasonable attorneys' fees incurred by the City in the action or proceeding.

5 Sec. 17.16. Criminal violations.

6 The owner(s), occupant(s), or other person(s) having possession or control of any
7 buildings or premises which constitute a public nuisance as defined in this chapter, or anyone
8 who violates any order of abatement made pursuant to this article commits a public offense
9 which may be prosecuted as a misdemeanor offense as defined under this Code.

10 SECTION 2. Severability.

11 If any section, sentence, clause or phrase of this ordinance is for any reason held to be
12 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
13 shall not affect the validity of the remaining portions of this ordinance. The City Council
14 hereby declares that it would have passed this ordinance and adopted this ordinance and each
15 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section,
16 subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

17 SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish this
18 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)
19 days after its passage in the North County Times, a newspaper of general circulation published
20 in the City of Oceanside.

21 SECTION 4. This ordinance shall take effect and be in force on the thirtieth (30th) day
22 from and after its final passage.

23 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
24 California held on the _____, day of _____, 2007, and, thereafter,

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1 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
2 Oceanside, California held on the _____ day of _____, 2007, by the following vote:

3 AYES:

4 NAYS:

5 ABSENT:

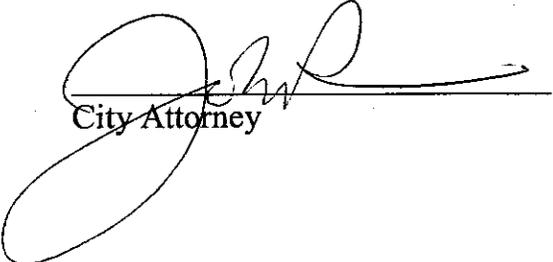
6 ABSTAIN:

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8 MAYOR OF THE CITY OF OCEANSIDE

9
10 ATTEST:

APPROVED AS TO FORM:

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12 _____
13 City Clerk

14 
15 _____
16 City Attorney

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20 AN ORDINANCE OF THE CITY OF OCEANSIDE AMENDING SECTIONS 17.14
21 AND 17.15 AND ADDING SECTION 17.16 OF ARTICLE I OF CHAPTER 17 OF
22 THE OCEANSIDE CITY CODE RELATING TO RECOVERY OF ATTORNEYS'
FEES IN CONNECTION WITH NUISANCE ABATEMENT ACTIONS

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27 G:\Word Documents\RO\CHAPTER 17 NUISANCE\Amendment to OCC Sec 17.14.doc