



Atascadero City Council

Staff Report – City Attorney

Proposed Ordinance to Amend Title 12, Chapter 1 of the Atascadero Municipal Code Pertaining to Attorneys' Fees

(Ordinance, if adopted, would allow the “prevailing party” to recover attorneys’ fees in civil and administrative nuisance abatement actions)

RECOMMENDATION:

Council adopt on second reading, by title only, the Draft Ordinance amending Section 12-1.06 and adding Section 12-1.08 of Title 12, Chapter 1 of the Atascadero Municipal Code pertaining to attorneys' fees.

DISCUSSION:

Municipal Code section 12-1.06 currently allows the City to recover attorneys' fees in a civil action, but does not expressly allow a “prevailing party” to recover attorneys' fees. The Municipal Code is silent regarding the recovery of attorneys' fees in administrative proceedings and special proceedings to abate public nuisances. The purpose of this ordinance is to amend section 12-1.06 and add section 12-1.08 to state that a “prevailing party” can recover attorneys' fees in civil and administrative nuisance abatement actions and to ensure that the Municipal Code is consistent with Government Code section 38773.5 and the *Padgett* holding. The City would likely be unable to recover attorneys' fees in a nuisance abatement action under the Municipal Code's existing provisions.

The City Council introduced this ordinance for first reading on March 25, 2008, and if adopted on second reading on April 22, 2008, will go into effect on May 22, 2008.

FISCAL IMPACT:

The ordinance would allow the City to recover its attorneys' fees if it is the prevailing party in a nuisance abatement action. The exact fiscal impact cannot be determined in advance of a particular nuisance abatement action.

ALTERNATIVES:

1. Submit and introduce an amended version of the proposed ordinance.
2. Take no action.

ATTACHMENT:

Draft Ordinance