

## **DRAFT ORDINANCE**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, AMENDING THE ATASCADERO MUNICIPAL CODE BY ADOPTING SECTION 2-15.06 REQUIRING CITY COUNCIL MEMBERS AND PLANNING COMMISSIONERS TO DIVULGE CERTAIN CONFLICTS OF INTEREST RELATING TO CODE ENFORCEMENT AND PLANNING AND ZONING CODE MATTERS**

The City Council hereby finds and declares as follows:

**WHEREAS**, Title 12 of the Atascadero Municipal Code sets forth the procedures for enforcement of the Municipal Code and specifically for penalties and citations issued in response to violations of the Municipal Code; and,

**WHEREAS**, the City has adopted a policy and a form for citizen complaints regarding Municipal Code compliance and enforcement, which policy and form provide for the confidentiality of a citizen making a Municipal Code compliance complaint; and,

**WHEREAS**, Title 9, Chapter 8 of the Municipal Code sets forth the procedures for enforcement of the sections of the Municipal Code that constitute the Planning and Zoning Code; and,

**WHEREAS**, Title 9, Chapter 8 of the Municipal Code establishes the Planning Commission as the hearing body and the City Council as the appeals body for enforcement of and revocation of Planning and Zoning Code approvals; and,

**WHEREAS**, the City has adopted a policy for citizen complaints regarding Planning and Zoning Code compliance and enforcement, which policy and form provide for the confidentiality of a citizen making a complaint; and,

**WHEREAS**, Title 2, Chapter 1 of the Municipal Code sets forth the principles for the governing of City Council meetings and activities and Title 2, Chapter 15 of the Municipal Code establishes the conflict of interest rules governing the City Council; and,

**WHEREAS**, Title 2, Chapter 15 of the Municipal Code does not contain any provisions relating to conflicts of interests arising from enforcement of the Municipal Code or enforcement of and revocation of Planning and Zoning Code approvals; and

**WHEREAS**, Title 2, Chapter 9 of the Municipal Code establishes the Planning Commission and vests the Commission with certain powers and duties but does not contain any provisions relating to conflicts of interests arising from enforcement of the Municipal Code or enforcement of and revocation of Planning and Zoning Code approvals; and,

WHEREAS, the City Council desires to clarify the conflict of interest provisions of the Municipal Code to ensure that a City Council Member or Planning Commissioner does not participate in hearings or appeals relating to enforcement of the Municipal Code or enforcement of and revocation of Planning and Zoning Code approvals where the Member or Commissioner initiated or took part in the complaint leading to the hearing.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATASCADERO HEREBY ORDAINS AS FOLLOWS**

**SECTION 1. Findings**

The City Council hereby incorporates the foregoing recitals and in addition finds as follows:

1. Amendment of the Municipal Code is necessary to clarify the City's conflict of interest provisions and ensure that no Council Member or Planning Commissioner participates in a hearing or appeal relating to enforcement of the Municipal Code or enforcement of and revocation of Planning and Zoning Code approvals where the Member or Commissioner initiated or took part in the complaint leading to the hearing.
2. The City of Atascadero would benefit from disclosure by City Council Members and Planning Commissioners who initiate or participate in a complaint leading to enforcement of the Municipal Code or enforcement of and revocation of Planning and Zoning Code approvals to maintain the impartiality of the proceedings.
3. The City would further benefit from a prohibition against a City Council Member's or Planning Commissioner's participation in any decision arising out of a complaint that he or she filed. This prohibition, arising from the presumptions that the member's filing of the complaint indicates a prejudgment of the matter and that the member is incapable of providing fair treatment to the matter due to prejudgment, further maintains the impartiality of the proceedings.

**SECTION 2. Adoption.** The City Council of the City of Atascadero, in a regular session assembled on February 26, 2008, resolved to introduce for first reading by title only, an Ordinance that would amend the Municipal Code text with the following:

Section 2-15.06 of the Atascadero Municipal Code is added to read as follows:

**2-15.06 Disclosure and Disqualification for Enforcement Hearings of City Council Members or Planning Commissioners.**

- (1) This section of the conflict of interest code shall be applicable to members of the City Council as well as members of the Planning Commission (as established by Title 2, Chapter 9 of this Municipal Code).

- (2) Any member of the City Council or Planning Commission who files a complaint leading to an enforcement action pursuant to Title 12 of the Municipal Code or an enforcement action pursuant to Title 9, Chapter 8 of the Municipal Code must disclose that he or she initiated or participated in the initiation of the action by filing a complaint. Such disclosure must take place prior to the matter being heard by the body on which the officer sits.
- (3) After the member of the City Council or Planning Commission discloses his or her participation in the action, that member must recuse himself or herself from making, participating in making, or influencing as an officer any decision on the matter. The member may participate in any hearing on the matter as a private citizen or complainant if the member's interest in the matter qualifies as a "personal interest" as defined by the Political Reform Act, California Government Code sections 87100 *et seq.* and applicable regulations.

**SECTION 3:** A summary of this ordinance, approved by the City Attorney, together with the ayes and noes, shall be published twice: at least five days prior to its final passage in the Atascadero News, a newspaper published and circulated in the City of Atascadero, and; before the expiration of fifteen (15) days after its final passage, in the Atascadero News, a newspaper published and circulated in the City of Atascadero. A copy of the full text of this ordinance shall be on file in the City Clerk's Office on and after the date following introduction and passage and shall be available to any interested member of the public.

INTRODUCED at a regular meeting of the City Council held on \_\_\_\_\_, and PASSED and ADOPTED by the City Council of the City of Atascadero, State of California, on \_\_\_\_\_, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

CITY OF ATASCADERO

\_\_\_\_\_  
Marcia McClure Torgerson, C.M.C.,  
City Clerk

\_\_\_\_\_  
Mike Brenner, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Brian Pierik, City Attorney