

**DRAFT ORDINANCE**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, 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**

**WHEREAS**, Article XI, Section 7 of the California Constitution authorizes the City to enact and enforce ordinances that regulate conditions which may be public nuisances or health hazards, or that promote social, economic or aesthetic considerations; and,

**WHEREAS**, California Government Code section 38773.5 authorizes cities to pass ordinances that provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance; and,

**WHEREAS**, California Government Code section 38773.5 requires that any such municipal ordinance provide for the recovery of attorneys' fees by the prevailing party; and,

**WHEREAS**, the Atascadero Municipal Code does not expressly use the term "prevailing party" in providing for attorneys' fees in civil nuisance abatement actions and is silent regarding attorneys' fees in administrative and special proceedings to abate public nuisances.

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

**SECTION ONE. Findings.** The City Council hereby incorporates the foregoing recitals and finds that this amendment and addition to the Municipal Code are necessary to ensure that the Municipal Code complies with Government Code section 38773.5 when providing for the recovery of attorneys' fees in nuisance abatement actions.

**SECTION TWO. Adoption.** The City Council of the City of Atascadero hereby amends Title 12, Chapter 1 of the Municipal Code as follows:

Section 12-1.06 of the Atascadero Municipal Code is amended to read as follows:

**Section 12-1.06 Civil action.**

The City Attorney, by and at the request of the City Council or City staff, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of this Code, as provided by law. In any civil action commenced by the City to abate a public nuisance, to enjoin violation of any provision of this Code, or to collect a civil debt owing to the City, the City shall be entitled to recover from the defendant in any such action all costs incurred therein, including reasonable attorneys' fees and costs of suit, subject to section 12-1.08 of this Code.

Section 12-1.08 of the Atascadero Municipal Code is added to read as follows:

**Section 12-1.08 Attorneys' fees.**

In any action, administrative proceeding, or special proceeding brought to abate a public nuisance, the prevailing party will be entitled to recover attorneys' fees, provided that attorneys' fees will only be available in those actions or proceedings in which the City has provided notice at the commencement of such action or proceeding that it intends to seek and recover its own attorneys' fees. In no action or proceeding will an award of attorneys' fees exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

**SECTION THREE.** A summary of this ordinance, approved by the City Attorney, together with the ayes and noes, must be published twice: at least five (5) 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 copy of the full text of this ordinance must be on file in the City Clerk's Office on and after the date following introduction and passage and must 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 Brennler, Mayor

APPROVED AS TO FORM:

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