



Atascadero City Council

Staff Report - City Attorney's Office

Proposed Urgency Ordinance and a Regular Ordinance Pertaining to Summary Nuisance Abatement Procedures

RECOMMENDATIONS:

Council:

- 1) Adopt the Draft Urgency Ordinance amending Section 9-8.107 of Title 9, Chapter 8 of the Atascadero Municipal code pertaining to summary nuisance abatement procedures.

AND

- 2) Introduce for first reading by title only, the Draft Ordinance amending Section 9-8.107 of title 9, Chapter 8 of the Atascadero Municipal Code pertaining to summary nuisance abatement procedures.

DISCUSSION:

The City Attorney has been requested by City Staff to review the City's codes to determine the best method for the City to recover its expenses associated with nuisance abatement when there is an imminent hazard or danger to public health and safety.

The attached ordinance would amend Section 19-8.107 "Abatement of nuisance" of the Atascadero Municipal Code by adding sub-section (j) to permit recovery of City's costs where the nuisance constitutes an imminent hazard or danger to public health and safety. Further, the City could recover its costs for the actions taken to abate the nuisance as a lien which can be collected with the ordinary county taxes.

There are multiple situations currently existing in the City involving nuisance conditions on private properties that are potential hazards to the public's health, safety, and welfare. Some of these nuisance conditions may require immediate action by the City to eliminate the hazard and protect the public. The Atascadero Municipal Code, however, does not establish any procedure for the summary or emergency abatement

of nuisance conditions that pose an imminent safety threat. The purpose of the proposed urgency ordinance (and the regular ordinance version) is to establish a summary abatement procedure and to ensure that the City can recover its costs in these types of situations.

In the typical nuisance case, the property owner or other responsible party abates the nuisance voluntarily upon request by City staff. In situations in which the property owner does not cooperate or respond, the City must act on its own to abate the nuisance and protect the public. Municipal Code section 9-8.107 currently allows the City to initiate administrative proceedings to abatement public nuisances. Under these procedures, the City must first notify the property owner of the public nuisance conditions and provide the property owner with at least 30 days to abate the nuisance. If the property owner does not comply with this notice, the City may schedule a nuisance abatement hearing before the City Council on at least 15 days notice. Following the hearing, the City Council may order the property owner to abate the nuisance by a certain date (not less than 30 days). If the property owner again fails to comply, the City may abate the nuisance itself and impose a special assessment on the property in the amount of the abatement costs.

This is a standard procedure for most nuisance conditions. However, in situations in which a public nuisance represents an imminent threat to the public's health and safety, it may not be feasible or prudent to go through this process and wait until after the City Council's deadline for nuisance abatement expires. Rather, the City may need to take immediate action and abate the nuisance itself. The Municipal Code does not currently establish a procedure for such circumstances. Therefore, the proposed ordinance adds a subsection (j) to Municipal Code section 9-8.107, which establishes a summary abatement procedure and authorizes the City to collect its reasonable abatement costs as an assessment against the property.

The proposed ordinance also contains a minor amendment to the current cost recovery procedures set forth in subsections (e) through (i) of Section 9-8.107 to ensure consistency with state law. Under the current cost recovery procedures, the City's Enforcement Officer must provide the property owner with notice of a City Council hearing to consider the proposed assessment. At the hearing, the City Council can modify or revise the proposed assessment, but the Municipal Code does not require any further notice of the assessment. Government Code section 38773.5 authorizes the collection of abatement costs as an assessment, but requires cities to give notice at the time of imposing the assessment. The ordinance would amend subsection (f) to include a requirement that the City Manager provide written notice of the final assessment following confirmation by the City Council.

As noted above, the City is currently monitoring multiple situations involving nuisance conditions that may require immediate abatement by the City. Therefore, an urgency ordinance is requested to ensure that the City has the option of pursuing summary abatement if necessary against these properties. In addition to the urgency ordinance, the City Attorney recommends that the City Council introduce the regular ordinance

version to ensure that the summary abatement procedure is added to the Municipal Code.

FISCAL IMPACT:

The ordinance would allow the City to recover its costs in the event summary abatement is necessary to address an imminent threat to public safety. The exact fiscal impact cannot be determined in advance of a particular summary abatement action.

ALTERNATIVES:

1. Adopt the proposed urgency ordinance only.
2. Submit and introduce by first reading the proposed regular ordinance only.
3. Take no action.

ATTACHMENTS:

- Urgency Ordinance
- Regular Ordinance