

## ORDINANCE NO. 661

### AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON AMENDING SECTION 8.20.140 CODE TO PROVIDE FOR RECOVERY OF REASONABLE ATTORNEYS' FEES TO PREVAILING PARTIES OF ACTIONS AND PROCEEDINGS BROUGHT BY THE TOWN OF ATHERTON TO ABATE PUBLIC NUISANCES

#### Section 1. PURPOSE AND AUTHORITY

The purpose of this amendment is to amend Section 8.20.140, in accordance with Government Code section 38773.5.

#### Section 2. AMENDMENT OF SECTION 8.20.140 OF THE ATHERTON MUNICIPAL CODE

Section 8.20.140 is amended to add subsection (D) to read:

##### **8.20.140      Costs of abatement—Assessment—Notice—Protests—Attorneys' Fees.**

A.      Unpaid Costs Forwarded to the City Clerk. When any costs assessed pursuant to this chapter remain unpaid for a period of sixty days or more after the date on which they were billed, the city manager or his/her designee, in the city manager or his/her designee's discretion, may forward the abatement costs and administrative expenses report described in Sections 8.20.130 and 8.20.140 to the city clerk.

B.      Hearing Notice. Upon receipt of the abatement costs and administrative expenses report, the clerk shall fix a time and place for hearing and passing upon the report. The clerk shall cause notice of the amount of the proposed assessment shown in this report to be given in the manner and to the persons specified in Section 8.20.070. Such notice shall contain a description of the property sufficient to enable the persons served to identify it, and shall specify the day, hour and place when the city council will hear and pass upon the report, together with any objections or protests which may be raised by any landowner liable to be assessed for the costs of such abatement. Notice of the hearing shall be given not less than fifteen days prior to the time fixed by the clerk for the hearing, and shall also be published once, at least fifteen days prior to the date of the hearing, in a newspaper of general circulation in the town.

C.      Protests. Any interested person may file a written protest with the city clerk at any time prior to the time set for the hearing on the report of the city manager or his/her designee. Each such protest shall contain a description of the property in which the person signing the protest is interested, and the grounds of such protest. The city clerk shall endorse on every such protest the date and time of filing, and shall present such protest to the city council at the time set for hearing. Any interested person may also register a protest at the time of the hearing. (Ord. 490 § 18 (part), 1996)

D.      Attorneys' Fees. In any individual action or proceeding brought by the city to abate a public nuisance, the prevailing party shall be entitled to the recovery of reasonable attorneys'

fees and costs where the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees and costs. For the purposes of this section, the term "public nuisance" means any violation of the Atherton Municipal Code or other conduct that has been declared to be a public nuisance by any provision of this code.

### **Section 3. SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the Town of Atherton hereby declares that it would have adopted the remainder of this chapter and ordinance, including each section, subsection, sentence, clause, phrase or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase or portion. To the extent that prior Town ordinances governed any portion of this Ordinance held invalid, such prior Town ordinances shall again become effective if any portion of this Ordinance is held invalid.

### **Section 4. EFFECTIVE DATE AND PUBLICATION**

This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption. The City Clerk is hereby directed to publish a summary of this Ordinance in an adjudicated newspaper of general circulation serving the residents of the Town of Atherton within fifteen (15) days after its passage.

Introduced on the \_\_\_\_ day of \_\_\_\_\_, 2023.

Passed and adopted as an ordinance of the City Council of the Town of Atherton at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2023 by the following vote:

Ayes:

Noes:

Abstentions:

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Mayor Bill Widmer

ATTEST:

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Anthony Suber, City Clerk/ACM

