



## **Item No. 5**

### **Town of Atherton**

#### **CITY COUNCIL STAFF REPORT – CONSENT AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL  
GEORGE RODERICKS, CITY MANAGER**

**FROM: ANDREAS BOOHER, ASSISTANT CITY ATTORNEY**

**DATE: JULY 19, 2023**

**SUBJECT: WAIVE THE SECOND READING BY SUBSTITUTION OF TITLE  
AND ADOPT ORDINANCE NO. 661 OF THE CITY COUNCIL OF  
THE TOWN OF ATHERTON, STATE OF CALIFORNIA,  
AMENDING ATHERTON MUNICIPAL CODE SECTION 8.20.140  
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**

#### **RECOMMENDATION**

It is recommended that the Town Council waive the second reading by substitution of title and adopt Ordinance No. 661, amending Section 8.20.140 of the Atherton Municipal Code, to provide for recovery of reasonable attorneys' fees to the prevailing parties of actions and proceedings brought by the Town of Atherton to abate public nuisances.

#### **BACKGROUND**

This is the final reading by substitution of the title and adoption of Ordinance No. 661 of the City Council of the Town of Atherton, State of California, amending Section 8.20.140 of the Atherton Municipal Code, to provide for recovery of reasonable attorneys' fees to the prevailing parties of actions and proceedings brought by the Town of Atherton to abate public nuisances. The City Council waived the first reading of substitution of the title and introduced the ordinance at the Regular City Council Meeting of June 21, 2023. If approved, this ordinance will be effective thirty days following the adoption.

Chapter 8.20 of the AMC provides for recovery of costs associated with nuisance abatement. However, in order to recover attorneys' fees, a City must adopt an ordinance compliant with Gov. Code, § 38773.5, that provides for the recovery of reasonable attorneys' fees to the prevailing party in an action or proceeding brought by the City.

## **ANALYSIS**

This ordinance, "may limit recovery of attorney's fees by the prevailing party to those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney's fees" [Gov. Code, § 38773.5(b)]. Under Gov. Code, § 38773.5, no party is entitled to recover attorneys' fees that exceed the reasonable attorneys' fees incurred by the City in the action or proceeding.

## **ENVIRONMENTAL CONSIDERATION**

The proposed Ordinance is exempt from environmental review under the California Environmental Quality Act, Public Resource's Code section 21000 et seq. ("CEQA") pursuant to CEQA Ordinance Related to Recovery of Attorneys' Fees JUNE 21, 2023 Page 2 of 2 Guidelines Section 15061(b)(3) as it can be seen with certainty that the project has no potential for causing a significant effect on the environment.

## **FISCAL IMPACT**

The proposed Ordinance does not involve or authorize any expenditure by the Town, but would allow the Town to recover some of its attorneys' fees in code enforcement actions.

## **GOAL ALIGNMENT**

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal Area A – Maintain Fiscal Responsibility
- Goal Area F – Be Forward-Thinking, Well-Managed, and Well-Planned

## **POLICY FOCUS**

Through adoption of the ordinance, the Town would be able to recover some of its attorney's fees.

## **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders –to include, but be not limited to, media outlets, school districts, Menlo Park Fire Protection District, service providers (water, power, and sewer), and regional elected officials.

## **COMMISSION/COMMITTEE FEEDBACK/REFERRAL**

This item has not been before a Town Committee or Commission

## **ATTACHMENTS**

1. Ordinance No. 661