

REPORT TO THE CITY COUNCIL



DATE: May 19, 2020

TITLE: An Ordinance Amending the Desert Hot Springs Municipal Code to Clarify and Solidify the Intent of the City Council for Recovery of Attorney's Fees for Nuisance Abatement

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RECOMMENDATION

Introduce and read by title only: "An Ordinance of the City Council of the City of Desert Hot Springs, California, amending Section 4.04.070 of the Desert Hot Springs Municipal Code to clarify and solidify the intent of the City Council for recovery of attorney's fees for nuisance abatement.

BACKGROUND

In essence, this Ordinance will make clear what is already understood to be on the books.

On September 18, 2001, the City adopted Ordinance No. 2001-11 titled, "An Ordinance of the City Council of the City of Desert Hot Springs Amending the Desert Hot Springs Municipal Code to Include Title VIII, to be Titled 'Code Enforcement;'" (2001 Code Enforcement Ordinance). Section 80.07 of the 2001 Code Enforcement Ordinance provided, "Section 80.070 Attorneys' Fees. The Prevailing party in any proceeding conducted pursuant to this **Chapter** and associated with the abatement of a public nuisance shall be entitled to the recovery of attorneys' fees incurred in any such proceeding." (emphasis added). Chapter 80 of the 2001 Code Enforcement Ordinance merely set forth the General Provisions and did not incorporate the actual enumerated nuisances. Chapter 83 (not 80) of the 2001 Code Enforcement Ordinance enumerated the Public Nuisances.

Read literally, because Chapter 83 did not contain an attorneys' fee provision, and because Chapter 80 did not contain the enumerated nuisances, the DHSMC arguably created a situation where a prevailing party in a nuisance abatement action could not have recovered attorney fees. If the 2001 Code Enforcement Ordinance was read to preclude the prevailing party to recover attorneys' fees, such a draconian reading would render the code section meaningless and contrary to the intent of the City Council.

The City recodified the entire DHSMC in or about June 2010. In doing so, much of the DHSMC was merely renumbered, providing different title, chapter, and section numbers to the entire DHSMC. Accordingly, the prior Chapter 80 "General Provisions" was renumbered to Chapter 4.04 "General Provisions." Accordingly, the prior Chapter 83 "Public Nuisances" containing the enumerated public nuisances, was renumbered to Chapter 4.16 "Public Nuisances." Section 4.04.070 mirrors the prior Section 80.07 and provides "4.04.070 Attorneys' fees. The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding. **(Prior code § 80.07)**" (emphasis added).

DISCUSSION

The pertinent parts of Government Code Section 38773.5 provide explicit authority allowing a city to provide for recovery of attorney's fees in an action if it is the prevailing party and provides in part, "(b) A city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails..." In 2001,

it was the intent of the City Council, pursuant to Government Code Section 38773.5, to allow the prevailing party in nuisance abatement actions to recoup their attorneys' fees. If the current DHSMC was read to preclude the prevailing party to recover attorneys' fees, such a draconian reading would render the code section meaningless and contrary to the intent of the City Council

This Ordinance would amend DHSMC Section 4.04.070 in accordance with its spirit and intent, and have it be applied retroactively and prospectively in accordance with that spirit and intent. It would provide that the prevailing party in nuisance abatement actions for the enumerated nuisances would be able to recover attorney fees.

FISCAL IMPACT

None.

EXHIBITS

- 1) Draft Ordinance