

ORDINANCE NO. ____

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 ATTORNEYS' FEES FOR NUISANCE ABATEMENT ACTIONS

WHEREAS, the City of Desert Hot Springs ("City") is a charter city organized pursuant to Article XI of the California Constitution; and

WHEREAS, 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); and

WHEREAS, 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); and

WHEREAS, Chapter 80 of the 2001 Code Enforcement Ordinance merely set forth the General Provisions and did not incorporate the actual enumerated nuisances; and

WHEREAS, Chapter 83 (not 80) of the 2001 Code Enforcement Ordinance enumerated the Public Nuisances; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City recodified the entire DHSMC in or about June 2010; and

WHEREAS, in doing so, much of the DHSMC was merely renumbered, providing different title, chapter, and section numbers to the entire DHSMC; and

WHEREAS, accordingly, the prior Chapter 80 "General Provisions" was renumbered to Chapter 4.04 "General Provisions"; and

WHEREAS, accordingly, the prior Chapter 83 “Public Nuisances” containing the enumerated public nuisances, was renumbered to Chapter 4.16 “Public Nuisances”; and

WHEREAS, 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); and

WHEREAS, 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...”; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the City Council desires to 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; and

WHEREAS, the California Supreme Court specifically provided that statutes can in fact be applied retroactively and stated, “ [S]tatutes do not operate retrospectively unless the Legislature plainly intended them to do so...” *Western Security Bank v. Superior Court* (1997) 15 Cal. 4th 232, 243; and

WHEREAS, the California Appellate Court furthered this and provided that attorney fee statutes in particular have been applied retroactively in *ARA Living Centers - Pacific, Inc. v. Superior Court*, 18 Cal.App.4th 1556, 1562 (1993); and

WHEREAS, to the extent necessary, the City hereby expressly states its intent that this amendment be applied retroactively to any nuisance already in existence or that has been in existence, and to any existing enforcement action seeking to remedy a nuisance; and

WHEREAS, the court in *City of Redlands v. Sorensen* 176 Cal. App. 3d 202 provided, “Where an amendment to a statute is remedial in nature and merely serves to clarify the existing law, the Legislature's intent that it be applied retroactively may be inferred;” and

WHEREAS, the court in the *City of Redlands* case stated, “The rationale of this exception is that in such an instance, in essence, no retroactive effect is given to the statute because the true meaning of the statute [or law] has always been the same” ; and

WHEREAS, the City Council further deems this Ordinance as a clarification of the intent of the City to recover attorneys’ fees under DHSMC; and

WHEREAS, the City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b) (3)); and

WHEREAS, the City Council finds that this Ordinance is for the general benefit of the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. **RECITALS**

That the foregoing recitals are true and correct and are herein adopted by this reference.

Section 2. **RETROACTIVE AND PROSPECTIVE APPLICATION – CLARIFICATION OF CODE.**

That this ordinance is a clarification and declaration of law of the City Council and shall apply both retroactively and prospectively.

Section 3. **RETROACTIVE AND PROSPECTIVE APPLICATION – CITY COUNCIL INTENTION**

That this ordinance clarifies the intent of the City Council and shall apply both retroactively and prospectively.

Section 4. **AMENDMENT OF DHSMC SECTION 4.04.070**

Section 4.04.070 (“Attorneys’ fees”) of Title 4 (“Code Enforcement”) of the Desert Hot Springs Municipal Code is hereby amended to read in its entirety as follows:

The prevailing party in any proceeding conducted pursuant to this Title ~~chapter~~ and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys’ fees incurred in any such proceeding.

Section 5. SEVERABILITY

That, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 6. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 7. AMENDING OF BAIL SCHEDULE

That the City Attorney’s Office is hereby directed to determine whether this ordinance necessitates amendment of the City’s Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 8. EFFECTIVE DATE

That this ordinance shall be effective thirty days after the second reading of the ordinance.

Section 9. CERTIFICATION

That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

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PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the ____ day of _____, 2020 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Scott Matas, Mayor

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

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