

INDIAN WELLS CITY COUNCIL

July 18, 2024



To: City Council
From: City Attorney
Prepared by: Todd Leishman, Best Best & Krieger LLP
Subject: **Ordinance to Amend and Strengthen Code-Enforcement Provisions of the Municipal Code**

RECOMMENDED ACTIONS:

Council **INTRODUCE** and **DISCUSS** an ordinance amending Chapter 8.08 of the Indian Wells Municipal Code relating to nuisance abatement and adding Chapter 1.28 of the Indian Wells Municipal Code relating to nuisance-abatement cost-recovery; and

FIND the action to be exempt from the provisions of the California Environmental Quality Act ("CEQA") under state CEQA Guidelines section 15378(b)(5); and

APPROVE the ordinance to be brought back for second reading and adoption.

DISCUSSION:

The City has authority to enact and enforce ordinances within its jurisdiction. The City code-enforcement and city-attorney prosecution teams have identified changes that the City should make to strengthen and streamline code-enforcement efforts to make them more efficient and to increase the likelihood of the City recovering its costs of enforcement. The proposed ordinance would add a new Chapter 1.28 regarding nuisance-cost recovery, and it would extensively amend Chapter 8.08 regarding nuisance-abatement procedures.

More specifically, these proposed changes include the following:

New Chapter 1.28

- Defines procedure for recovery of costs for code enforcement and abatement efforts.
- Explicitly codifies the recording of liens or special assessments for recovery of costs (not fines, per *Machammil v San Jacinto* (2019) [disallows liens for fines]).

- Outlines the appeal procedure for property owners to dispute charges, protecting due process.
- Explicitly establishes the recovery of attorney's fees as included in the total cost to the City; also allows the City to elect non-recovery of the appellant's attorney's fees if the City chooses not to utilize its own attorney on appeals (this would mainly apply to administrative appeals).

Amended Chapter 8.08

- Removes the City Council hearing requirement before declaring a property a public nuisance. This will allow staff to take expedited action on properties to better protect public health and safety, rather than having to wait for the next council meeting. The chapter declares that any violation of the code is a public nuisance, so the City Council will no longer need to declare a violation to be a nuisance in a particular case, and code-enforcement efforts can proceed more quickly.
- Grants the City the ability to record Notices of Violation on the County Property Index, to give potential buyers constructive notice. This avoids having to start the process over again with a new owner.
- Explicitly defines and outlines procedures for staff to take when dealing with a nuisance property.
- Outlines the requirements for drafted notices, service of notices, and timing for compliance.
- Outlines the authority for City Staff to seek an inspection or abatement warrant.
- Updates and outlines the legal requirements for an Emergency Abatement.

FISCAL IMPACT:

The proposed ordinance will not result in any new cost to the City, but it should increase the likelihood and extent of the City recovering its costs of enforcement.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Adoption of this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance is not a CEQA "project" under State CEQA Guidelines section 15378(b)(5), which provides that organizational and administrative activities of governments that will not result in physical environmental impacts are not CEQA projects, and here the proposed amendments refine and clarify Municipal Code provisions and correct clerical errors. Further, the City Council finds that State CEQA Guidelines section 15061(b)(3) exempts those activities for which it can be seen with certainty that there is

no potential to result in significant environmental effects. The Ordinance has no potential to result in physical change to the environment, directly or indirectly, as the Ordinance only provides for summary abatement procedures for nuisances and does not propose nor authorize any action that would have the potential to cause a physical change in the environment, directly or indirectly. Further, the Ordinance has no potential to result in physical change to the environment, directly or indirectly, as the Ordinance merely removes the current requirement under the Municipal Code that involuntary abatement procedures have an automatic hearing. Accordingly, the City Council directs staff to file a notice of exemption within five days of the adoption of this Ordinance.

ATTACHMENTS:

1. Ordinance