



CITY OF BANNING STAFF REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Adam Rush, Community Development Director

MEETING DATE: January 9, 2024

SUBJECT: Consideration and Introduction of Ordinance 1598, Adding a New Chapter 1.32 to Title 1 of the Banning Municipal Code and Amending Other Sections of the Banning Municipal Code to Create and Implement a Comprehensive Cost Recovery Program for All Nuisance Abatement Actions, and Making a Determination of Exemption under CEQA

RECOMMENDATION:

Waive full reading and introduce, as read by title only, Ordinance 1598. An Ordinance of the City of Banning, California, Adding a New Chapter 1.32 to Title 1 of the Banning Municipal Code and Amending Other Sections of the Banning Municipal Code to Create and Implement a Comprehensive Cost Recovery Program for All Nuisance Abatement Actions.

BACKGROUND:

AB 2495: Cost Recovery in Criminal Code Enforcement Cases (January 1, 2019)

Assembly Bill 2495 puts limitations on [Cities with their] cost recovery in criminal code enforcement cases. Passed in the California Assembly and Senate with almost unanimous support, the bill limits [the] local agencies' ability to recover costs under certain circumstances.

AB 2495 adds Section 688.5 to the California Penal Code, which prohibits a local agency from charging a defendant for the costs of an investigation, prosecution, or appeal in a criminal case, such as criminal violations of a local ordinance.

Various state laws authorize local governments to declare what is a nuisance, and also to approach Code Enforcement either administratively, civilly or criminally. A local entity may also pursue cost recovery options as long as they have adopted a local ordinance specifically allowing for it. Typically, costs are recovered in connection with civil litigation or administrative enforcement actions. Before adoption of AB 2495, some cities also sought recoupment of various enforcement costs in connection with criminal cases. AB 2495 was drafted in response. Before this change in the law, the recovery of attorney's fees in connection with a criminal case was sought by some, but not all local agencies. But numerous local agencies regularly sought recovery of investigation costs and other costs incurred by code enforcement staff. Reimbursement of these enforcement costs was typically transparent — accomplished either by an agreement during the plea bargain process or by a judge's order judge as restitution.

Assembly Bill 2495 may affect how attorneys and courts handle pending cases in which this recovery is sought. Cities and counties should revise their ordinances that purport to authorize cost recovery in a criminal context. Municipalities may still recover costs through administrative processes, but local

agencies will no longer be able to seek costs related to the investigation and prosecution of a criminal case.

(Primary sponsors: Chad Mayes, Eduardo Garcia; Bill number: AB-2495; Status: Enacted)

JUSTIFICATION:

The City Council conducted a workshop on August 22, 2023 that reviewed the functions, resources and staffing associated with the Code Enforcement Division. In addition, the Council regularly receives updates on the Code Enforcement Statistics generated from the previous month. Currently, the Department is fully staffed within the parameters set by the City Council; nevertheless, the amount and complexity of active cases, combined with at least a half-dozen cases referred to the City's Code Enforcement Legal Counsel (Silver & Wright) and regular enforcement of unpermitted Sidewalk Street Vendors, staffing resources are not sufficient to efficiently and effectively manage every element under our charge.

Code Enforcement activities rarely result in 100% cost recovery of all labor and equipment costs (both "hard" and "soft" costs) and with the passage of AB 2495, the ability to recover costs associated with investigations and attorney's fees were further eliminated. These investigation services are required in order to ensure and preserve the Due Process Rights (4th and 14th Amendment protections afforded by the U.S. Constitution). As such, if detailed and timely investigations were not conducted, then the violators could have their cases dismissed based upon a "lack of due process protections", which further contributes to the degradation and blythe of our community. In effect, the City is prohibited from collecting reimbursement from property owners and businesses that continue to operate illegally and perpetuate a public nuisance and threat to public safety.

AB 2495 specifically states, "A local entity may also pursue cost recovery options as long as they have adopted a local ordinance specifically allowing for it." Therefore, Ordinance 1599 has been prepared by the City's Code Enforcement Legal Counsel - Silver & Wright, reviewed by the City Attorney's Office, and forwarded to City Council, by the Community Development Director, for Introduction of the First Reading.

FISCAL IMPACT:

The City's Code Enforcement Legal Counsel - Silver & Wright works on contingency, based upon the recovery of certain costs received through the Receivership Process that is pursued for properties that qualify as a Public Nuisance and constitute a clear threat to the Public Safety and Welfare. As such, no cost was incurred for the preparation of this Ordinance.

The City Attorney's Office has reviewed the Ordinance Draft, and provided suggested changes to staff, in their regular course of business operations and contracted services to the City. While a specific dollar amount is not yet tabulated, this review does not constitute more than a couple hours.

The Community Development Director acted as the primary staff contact with the City's Legal Team and prepared the staff report under his normal duties. As such, no additional costs were incurred that are not already allocated for this position.

Approximate Costs are: \$2,670.00 in staff time and \$750.00 in advertising with the Record Gazette.

ALTERNATIVES:

1. Do Not Conduct the First Reading and Provide Direction to Staff
2. Continue this Item and Provide Direction to Staff
3. Request Additional Input, Research, Justification, etc. from Staff

ATTACHMENTS:

1. [Ordinance 1598, Nuisance Abatement](#)

2. [08-22-23 CC_Code E. Workshop.pdf](#)
3. [AB 2495 \(Penal Code Section 688.5\)_09-05-2018.pdf](#)