
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2495 **Hearing Date:** June 19, 2018
Author: Mayes
Version: June 7, 2018
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Prosecuting Attorneys: Charging Defendants for the Prosecution Costs of Criminal Violations of Local Ordinances*

HISTORY

Source: Author

Prior Legislation: None

Support: California Attorneys for Criminal Justice; California Public Defenders Association; Civil Justice Association of California; Ella Baker Center for Human Rights

Opposition: Association of Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Contract Cities Association; California Narcotic Officers Association; City of Glendora; League of California Cities; Los Angeles County Professional Peace Officers Association

Assembly Floor Vote: 68 - 0

PURPOSE

The purpose of this bill makes it unlawful for a local city or county government to charge a person for the costs of investigation, prosecution, or appeal that that city or county sustains in a criminal case.

Existing law defines a nuisance as anything which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any public right of way. (Civil Code § 3479)

Existing law allows the legislative body of a city to provide for the summary abatement of any nuisance at the expense of the persons causing it and by ordinance may make the expense of abatement of nuisances a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with law. (Government Code § 38773)

Existing law provides that the legislative body of a city may by ordinance establish a procedure to collect abatement costs by a nuisance abatement lien, but the ordinance must require notice to the owner of record of the parcel of land on which the nuisance is maintained. (Government Code § 38773.1 (a).)

Existing law provides that notice of an abatement lien shall be served in the same manner as a summons in a civil action and that if the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located. (Government Code § 38773.1 (b).)

Existing law provides that a nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located. (Government Code § 38773.1 (c).)

Existing law provides that a nuisance abatement lien shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel. (Government Code § 38773.1 (c)(1).)

Existing law provides that in the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information required by law shall be recorded by the governmental agency, and that a nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index. (Government Code § 38773.1 (c)(2).)

Existing law provides that a nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment. (Government Code § 38773.1 (c)(3).)

Existing law provides that notwithstanding any other provision of law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the property owner, and that a city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien. (Government Code § 38773.1 (c)(4).)

Existing law provides that, as an alternative to the procedure authorized by California State law, the legislative body of a city may by ordinance establish a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel. (Government Code § 38773.5 (a).)

Existing law provides that a city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance, so long as:

- 1) If the city 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;
- 2) The ordinance may limit recovery of attorneys' 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 attorneys' fees; and

- 3) In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding. (Government Code § 38773.5 (b).)

Existing law states that the city legislative body, by ordinance, may provide that upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property or a person described by law is responsible for a condition that may be abated in accordance with an ordinance enacted pursuant to specified state law, the court may order that person to pay treble costs of the abatement. (Government Code § 38773.7.)

This bill provides that a city, county or city and county, including an attorney acting on behalf of a city, county or city and county, shall not charge a defendant for the cost of investigation, prosecution, or appeal in a criminal case, including, but not limited to, a criminal violation of a local ordinance.

This bill states that it shall not apply in any civil action or civil proceeding.

This bill states that it shall not apply to specified provisions that specifically allow for recovery of the cost of prosecution.

This bill provides that nothing in this section shall be interpreted to affect the authority of a probation department to assess and collect fees or other charges authorized by statute.

This bill provides that for purposes of this section the term "costs" means the salary, fees, and hourly rate paid to attorneys, law enforcement, and inspectors for hours spent either investigating or enforcing the charged crime.

This bill provides that costs shall not include the cost, including oversight, to remediate, abate, restore, or otherwise clean-up harms caused by criminal conduct.

COMMENTS

1. Need for This Bill

According to the author:

Local governments should help neighborhoods and business owners clean up property to maintain quality of life and reduce blight; they should not be in the business of policing for profit. A lemonade stand, outdoor holiday decoration, backyard chickens or faded address numbers shouldn't cost someone thousands of dollars in fines and fees and a lien against their property to remedy. AB 2495 would right a wrong where local governments can charge defendants for the privilege of being investigated and prosecuted for minor crimes, including criminal violations of a local ordinance such as public nuisance offense.

Current law [Government Code §§ 38772–38773.7] gives broad authority to local government to not only declare what is a nuisance, but also how to approach code enforcement either administratively, civilly, or criminally. A local entity may also

pursue cost recovery options as long as they adopted a local ordinance specifically allowing for it.

In November 2017, the *Desert Sun* uncovered two cities in the Coachella Valley using the same private law firm taking property owners to criminal court over minor violations of a local ordinance—many of which the private law firm specializes in drafting. Residents and businesses faced misdemeanor charges and were billed thousands of dollars for what should have amounted to a small fine. Typical code enforcement crimes include overgrown weeds, junk filled yards, posting illegal signs, failing to get a building permit, operating a lemonade stand without a business license, or having a sun-damaged address number.

These prosecution fees were never disclosed during a plea deal. Instead, unsuspecting property owners received a bill for thousands of dollars months later, and some were threatened with liens against their property if they didn't pay. In total, with the addition of code enforcement fees, administration fees, abatement fees, litigation fees and appeal fees, there were 18 cases with a total cost of more than \$200,000 billed to defendants.

A more appropriate venue to settle code enforcement or nuisance abatement issues is in civil court. While fines are appropriate to punish criminal violations, allowing defendants to be charged for the cost of investigation and prosecution is unjust and skews enforcement priorities. Unlike criminal cases, in civil cases an amount a defendant pays must be approved by a judge, who can deny any bill that seems exorbitant.

2. Public nuisance

A “public nuisance” is a legal term used to describe anything that makes everyday life for members of the community unsafe or inconvenient. A public nuisance could be almost anything that is dangerous, offensive, or obstructive. Some common examples of a nuisance include loud fireworks, strong odors such as those produced by raw sewage, or some kind of physical obstruction that interferes with the public right of way, such as decorations or large bushes that block the view of oncoming traffic.

Existing law affords city and county governments’ broad authority to establish their own procedures for the legal enforcement of public nuisances, which is often referred to as “nuisance abatement.” Cities and counties can go after the person alleged to have caused the nuisance in administrative, civil, and even criminal proceedings. In addition, existing law provides that city and county governments can establish local ordinances which allow for the recovery of all costs associated with the effort to abate the nuisance.

3. Examples of the Problem this Bill Seeks to Rectify

Pursuant to existing law, the city of Indio has enacted a local ordinance which proclaims that “the City is authorized to initiate an administrative or civil action to impose and recover all costs, expenses, and fees (including attorneys’ fees) expended by the City related to any nuisance abatement or code enforcement action.” (*see* City of Indio Code of Ordinances § 10.20 subd. B.) Indio’s ordinance further specifies that administrative costs include “time spent by a city or employee or contractor for nuisance or code enforcement activities related to the violation” and

also “legal services including litigation costs, court costs, and attorneys’ fees.” (*Ibid.*) Likewise, the city of Coachella has an ordinance which states “the person(s) responsible for causing the public nuisance conditions shall be liable for all costs of abatement incurred by the city, including, but not limited to administrative costs.” (City of Coachella Code of Ordinances § 3.36.010 subd. B.)

In addition to establishing procedures for the enforcement of public nuisances and recovery of costs, the cities of Indio and Coachella have taken to the practice of retaining a private law firm in order to criminally prosecute those individuals who are accused with having caused public nuisances. This practice appears to have led to high fines being levied against persons who have caused only minimal nuisances. These cases have been covered in local news and have recently attracted national attention (Westervelt, *Some California Cities Criminalize Nuisance Code Violations*, National Public Radio, “All Things Considered,” Feb. 14, 2018, available at: <<https://www.npr.org/2018/02/14/585122825/some-california-cities-criminalize-nuisance-code-violations>> [as of March 26, 2018].)

A couple of examples of Indio and Coachella’s nuisance abatement that were published in the Palm Springs Desert Sun are particularly striking. In the first example, a 79 year-old landlord was charged with a criminal infraction as a result of the fact that one of her tenants had a few chickens on her property. (Kelman, *She Was Fined \$5,600 for a few Chickens*, The Desert Sun, available at: <https://www.desertsun.com/story/news/crime_courts/2018/02/13/institute-justice-attacks-california-prosecution-fees/331308002/> [as of March 26, 2018].) Although she initially thought she had resolved the matter by pleading guilty to the infraction and paying a small fine, she was later billed thousands of dollars by the private law firm that the city of Indio had retained to prosecute her.

In the second example, a man was criminally charged in Coachella after making a minor expansion to his home without a permit. As a result of the criminal charge, the man pled guilty, brought his house up to code, and paid a \$900 fine. More than a year later, the law firm retained by the City of Coachella – the same that was used in the \$5,600 chicken case – sent him a bill for \$26,000. The man protested the amount and the law firm raised the bill to \$31,000. (Kelman, *They Confessed to Minor Crimes. Then City Hall Billed them \$122k in “Prosecution Fees,”* The Desert Sun, available at: <https://www.desertsun.com/story/news/crime_courts/2017/11/15/he-confessed-minor-crime-then-city-hall-billed-him-31-k-his-own-prosecution/846850001/> [as of March 28, 2018].)

The examples continue, including a \$25,200 bill for an unsightly yard (it had been used for illegal dumping), a \$4,200 bill for a Halloween decoration that stretched across a road, and a \$5,100 bill for selling a parking space without a business license. (*Id.*) These fines seem out of proportion with the inconveniences caused.

This bill would prevent local cities and counties from passing the costs of their investigations and prosecutions of minor crimes off on the same people they elect to prosecute. It would also prevent a law firm, such as the one retained by Indio and Coachella in the examples above, from selling the services of local ordinance drafting and nuisance abatement prosecution as a package designed to generate profit by charging fees to those who have committed the minor legal violations.

4. Argument in Support

The Ella Baker Center for Human Rights in support of this bill states:

This bill would provide a disincentive for overaggressive local governments to pursue code enforcement violations criminally by removing cost recovery options. A more appropriate venue to settle code enforcement or nuisance abatement issues is through services people can access or the civil process. Unlike criminal cases, a judge approves of how much a defendant would paying civil cases and can deny any bill that seems exorbitant.

Local governments should invest in services people can access when they need assistance maintaining their properties and complying with code enforcement; they should not be in the business of policing for profit. Straddling individuals and business owners with significant investigation and court fees that profit private companies is not the answer.

5. Argument in Opposition

The City of Glendora opposes this bill stating:

AB 2495 would negatively impact cities in several ways. It would reduce a city's police powers to enforce its ordinances and directly impede the democratic process by which ordinances are created. The inability to collect restitution incurred by litigation would severely harm a city's financial resources, especially in cases where a defendant has intentionally violated the code and is refusing to correct the condition or abate the nuisance created by the code violation. Many more people will be emboldened to violate city ordinances if they know that such code violators cannot be required to reimburse the city for its costs incurred in abating a nuisance that they created and could have abated on their own. AB 2495 would require cities to divert large amounts of taxpayer funds for such code violation litigation, while reducing funds dedicated to city services, including public safety, senior services, and parks and recreation. By prohibiting a city to recoup its costs expended for criminal code enforcement and nuisance abatement. AB 2495 would indirectly impose these costs onto residents, the great majority of whom approve of and abide by these ordinances that were meant to deter such unlawful activity.

-- END --