5

REPORT TO COUNCIL
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent Report
February 19, 2008

Honorable Mayor and
Members of the City Council

Title: Pass For Publication: Amending City Code Section 1.28.040, relating to Recovery of Attorney's Fees and Costs for Delinquent Debt Collection

Location/Council District: Citywide

Recommendation: 1) Review an **Ordinance** amending section 1.28.040 of the Sacramento City Code relating to Recovery of Attorney's Fees and Costs for Delinquent Debt Collection; 2) pass for publication the **Ordinance** title as required by Sacramento City Charter 32(c) and continue to February 26, 2008 for adoption.

Contact: Brad Wasson, Revenue Manager, 808-5724

Presenters: N/A

Department: Finance

Division: Revenue

Organization No: 1121

Description/Analysis

Issue: Historically, the City has borne the cost of collecting delinquent accounts by paying the cost of contracting with third-party collection agencies or spending staff time pursuing debts owed to the City. Collection agencies typically charge between 20 and 30 percent of the debt amount collected. This results in a reduction of City revenues and/or an increased cost to provide services. Under state law, collection agencies are prohibited from collecting their collection fee from the debtor unless authorized to do so by law or by a contract giving rise to the debt.

Policy Considerations: The proposed ordinance amends City Code section 1.28.040 to authorize collection agency fees to be collected from the debtors. The ordinance also affirms and clarifies the City Council's intention that attorney's fees and costs incurred for collection of unpaid accounts owed to the City shall be borne by the debtor, regardless of whether the City pursues such collections through litigation or by any other means.

This code change is consistent with prior Mayor and City Council direction for full cost recovery when appropriate.

Environmental Considerations: The proposed project is exempt from CEQA because it does not have the potential for causing a significant effect on the environment (CEQA Guidelines-15061 (b) (3).)

Commission/Committee Action: The Law and Legislation Committee unanimously passed this item on January 15, 2008.

Rationale for Recommendation: The State law allows cities to recover collection costs, but collection agencies can only collect their collection fees directly from the debtor if so authorized in the contract giving rise to the debt or by law. This ordinance will provide such legal authority in the City Code.

Financial Considerations: Third-party collection fees alone have been running between $200,000 and $300,000 annually, but this is expected to increase as the Finance Department anticipates sending more uncollected items to collection agencies in the future. The financial impact of passing on the collections costs will be to increase revenues substantially. Additionally, the ability to recoup staff and attorney costs associated with delinquent collections will help offset the cost of providing City services.

Emerging Small Business Development (ESBD): There are no ESBD considerations as no goods or services are being purchased at this time.

Respectfully Submitted by: _____
Brad Wasson, Revenue Manager

Approved by: _____
Russell Fehr, Director of Finance

Recommendation Approved:

_____
for Ray Kerridge
City Manager

Table of Contents:

	Report	pg. 1
Attachments		
1	Redline Ordinance	pg. 3
2	Clean Ordinance	pg. 6

Attachment 1

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE _____

AN ORDINANCE AMENDING SECTION 1.28.040 OF CHAPTER 1.28 OF TITLE 1 OF THE SACRAMENTO CITY CODE, RELATING TO RECOVERY OF ATTORNEYS' FEES AND COSTS.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

The City Council finds and declares:

1. In 2005, the City of Sacramento enacted Ordinance 2005-038, adding section 1.28.240 to the City Code to authorize the City to recover attorneys' fees and costs it incurs to remedy violations of, or to enforce compliance with, the City Code, including reasonable attorneys' fees and costs incurred in bringing an action in administrative proceedings or in court.

2. Ordinance 2005-038 also authorizes the City to recover attorneys' fees and costs it incurs for the collection of unpaid city fines, taxes, interest fees, civil or administrative penalties, and other sums required to be paid under provisions of the City Code.

3. Historically, the City has borne the cost of collecting delinquent accounts by contracting with third-party collection agencies from time to time to collect such delinquent accounts, and generally paying the collection agency between 20 to 30 percent of the amount collected. The City would instead like to have the debtors pay for the cost of collection since they have caused the need to incur such costs in the first place.

4. By the enactment of this Ordinance, the City Council hereby affirms that it intends that attorneys' fees and cost incurred for collection of unpaid accounts owed to the City shall be borne by the debtor regardless of whether the City pursues such collections through litigation or by any other means, and whether those attorneys' fees and costs are generated by city staff or third parties.

SECTION 2

Section 1.28.040 of Chapter 1.28 of the Sacramento City Code is amended to read as follows:

Section 1.28.040 ~~Cost and penalty recovery—~~ Recovery of attorneys' fees and costs.

A. In addition to all other remedies and cost recovery authorized or provided by any provision of this code or any other law, any person violating any provision of this code shall be liable to the city for the city's reasonable attorneys' fees and costs incurred to remedy such violation or enforce such person's compliance with this code, including recovery of the city's reasonable attorneys' fees and costs in bringing an action or proceeding to enforce an administrative determination or court order against such person. This section does not apply to public nuisance abatement actions for which attorneys' fees are authorized under subsection B of this section.

B. In any action or proceeding brought by the city to abate a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees; provided that, pursuant to Government Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the city has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or 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.

C. ~~The~~Nothwithstanding any other provision of this code, the city, in its discretion, may pursue any and all legal and equitable remedies for the collection of unpaid city fines, taxes, interest, fees, service charges, civil penalties, administrative penalties, and any other sum required to be paid under any provision of this code or any other law. ~~The~~ Upon giving advance written notice that the debtor will be subject to collection costs if the debtor does not pay the unpaid amount owed to the city, the city shall be entitled to recover reasonable attorneys' fees and costs associated with the collection of the amount owed regardless of whether the city pursues said collection through litigation or by any other means. As used herein, "costs" include, but are not limited to, city staff time incurred in the collection of the amount owed, third-party costs incurred in the collection action, and those costs set forth in Code of Civil Procedure Section 1033.5. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total amount owed has been collected.

SECTION 3

This Ordinance shall only apply to collection costs and attorneys' fees incurred on and after the effective date of this Ordinance.

Adopted by the City of Sacramento City Council on by the following vote:

Ayes:

Noes:

Abstain:

Absent:

_____
MAYOR

Attest:

_____
City Clerk

Passed for Publication:
Published:
Effective:

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MAYOR

Attest:

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