

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Jonathan Mills, Chief of Police
DATE: May 3, 2011
SUBJECT: Code Enforcement Update.

APPROVAL FOR FORWARDING:


 Richard D. Spitler, City Manager

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ISSUE: To consider an Ordinance repealing and replacing the current Code Enforcement Ordinance; Chapter 1.08 General Penalty, and Chapter 1.12 Nuisance Abatement, of the Calistoga Municipal Code.

RECOMMENDATION: To introduce the attached Ordinance.

BACKGROUND: During a previous Code Enforcement action, which resulted in the abatement of a public nuisance by the City, staff and the City Attorney's Office noted that the Code, as it now exists, was cumbersome to use. Significantly, the Code is limited in our ability to use other processes besides abatements to deal with Code Enforcement issues. Also, the current Code is limited in our ability to recover all costs associated with enforcement actions.

The City Attorney's Office has provided the attached proposed Code Enforcement Ordinance to resolve the previously identified weaknesses in the current Code. This proposed Ordinance would replace Chapter 1.08 – General Penalty, and Chapter 1.12 – Nuisance Abatement. The update is both substantial and substantive, and aims to provide a clear, comprehensive, and step-by step roadmap for prosecuting municipal code violations generally and abating public nuisances specifically. This Ordinance is aimed at significantly reducing the costs associated with Code Enforcement and future abatement actions as well as to help ensure that the City will be able to recover the majority of funds expended on these endeavors.

28 Some key provisions include:

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- Increasing citation fees for repeat violators of local building and safety code provisions. (Section 1.08.020(A)(2).)
- Codifying the City Attorney's authority to charge any misdemeanor as an infraction. (Section 1.08.030.)
- Codifying that a violation of a permit condition is a municipal code violation. (Section 1.08.050.)
- Including a reference to the appropriate time period for judicial review, which is critical for limiting the amount of time a potential litigant can challenge a city action in court. (Section 1.08.070 and 1.12.150.)
- Clarifying what expenditures the City may recover. (Section 1.12.040.)
- Providing staff clear direction on the details needed to be gathered before issuing an order to abate. (Section 1.12.060.) This will ensure that the City protects the due process rights of all property owners, which in turn will protect the City's interest in recovering its costs and avoiding litigation.
- Providing staff clear instructions for ensuring that the privacy and property interests of property owners are protected. Specifically, this draft ordinance provides guidance for when inspection warrants are necessary and requires enforcement officers to obtain signed permission from any property owner when entering the property for inspection or abatement purposes. (Section 1.12.050.)
- Streamlining the notice procedures throughout the abatement process. (Section 1.12.090.)
- Putting the onus on property owners to appeal a decision of an enforcement officer to the Council. Specifically, the property owner must appeal an enforcement officer's abatement order within 15 days, or lose any right to bring a challenge to the enforcement officer's decision. (Section 1.12.070.) This is a significant enhancement from the current ordinance, which requires Council action before a nuisance can be abated.
- Creating a clear procedure for appealing an abatement order that will allow City staff to better understand what issues an aggrieved property owner might raise in an administrative hearing.

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- 71 • Adding the appropriate burden of proof for an abatement hearing. (Section
- 72 1.12.100.) This will reduce the likelihood that the City's decision would be
- 73 reversed should an aggrieved party file a writ proceeding.
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- 75 • Providing for recovery of enforcement costs incurred up to the point when a
- 76 property owner decides to abates the nuisance. (Section 1.12.130.)
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- 78 • Eliminating the need for publishing notice except when otherwise required by
- 79 law. (Sections 1.12.090 and 1.12.160.)
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- 81 • Enhancing the emergency abatement procedures. (Section 1.12.170.)
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83 These changes should expedite the procedural elements of the abatement process and
84 reduce the amount of time the City Attorney's office would need to be involved in future
85 abatements. Taken together, this should decrease the total cost of the abatement
86 process while at the same time ensuring that the City recovers a greater portion of the
87 funds expended in those abatements.

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89 In addition these changes will provide property owners with a clear understanding
90 procedures and their access to due process.

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92 Finally, this update of the Ordinance should improve the City's legal position should a
93 property owner attempt to challenge the City's decision to abate a nuisance in a court of
94 law.

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96 **FISCAL IMPACT:** It is the intent of this ordinance to reduce the City's cost conducting
97 Code Enforcement and the abatement of public nuisances, and ensuring that the City
98 recovers a greater portion of funds expended in Code Enforcement.

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100 **ATTACHMENTS**

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- 102 1. Draft Ordinance