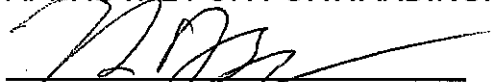


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Jonathan Mills – Chief of Police
DATE: May 17, 2011
SUBJECT: Consideration of an Ordinance, initiated by the City of Calistoga pertaining to Code Enforcement – repealing and amending Chapter 1.08 (General Penalty), and Chapter 1.12 (Code Enforcement).

APPROVAL FOR FORWARDING:



Richard Spittler, City Manager

ISSUE: The adoption of an Ordinance repealing and replacing Chapters 1.08 – General Penalties and 1.12 Nuisance Abatement of Title 1 of the Calistoga Municipal Code.

RECOMMENDATION: Adopt the Ordinance No. 677

BACKGROUND/DISCUSSION: On May 3, the City Council held a public hearing to consider repealing and replacing Chapter 1.08 – General Penalties and Chapter 1.12 – Nuisance Abatement, of Title 1 of the Calistoga Municipal Code. Following staff's presentation, opportunity for public comment and Council discussion, the Council took action to introduce an Ordinance to repeal and replace Chapters 1.08 and 1.12 of the Calistoga Municipal Code. This ordinance has been scheduled for adoption tonight.

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

ATTACHMENT:

1. Ordinance No. 677.

ORDINANCE NO. 677

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, REPEALING AND AMENDING CHAPTERS 1.08 (GENERAL PENALTY), AND 1.12 (NUISANCE ABATEMENT) OF THE CITY OF CALISTOGA MUNICIPAL CODE

1 **WHEREAS**, the City Council of the City of Calistoga at its regular meeting of May
2 3, 2011 considered as one of its items of business, noticed in accordance with
3 Government Code Sections 65090 and 50022.3, this ordinance to be adopted in
4 accordance with Government Code Section 65850;

5
6 **WHEREAS**, , it is the purpose of this Ordinance to repeal and amend the City of
7 Calistoga Municipal Code Chapter 1.08 (General Penalty) and Chapter 1.12 (Nuisance
8 Abatement) of Title 1, General Provisions; and
9

10 **WHEREAS**, the City Council has reviewed and considered this
11 amendment at its regular meetings on May 3, 2011 and May 17, 2011, considered as
12 one of its items of business, this Ordinance to be adopted in accordance with
13 Government Code Section 65090, this Ordinance to be adopted in accordance with
14 Government Code Section 65850, to include the written and oral staff report, proposed
15 findings and comments received from the general public and interested agencies and
16 parties.
17

18 **NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of
19 Calistoga that:
20

21 **SECTION ONE:**
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23 Based on the above findings, the City Council of the City of Calistoga adopts this
24 Ordinance to repealing and amending Chapters 1.08 (General Penalty), and 1.12
25 (Nuisance Abatement) of the Calistoga Municipal Code to clarify, streamline and
26 improve program implementation.
27

28 **SECTION TWO:**
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Chapter 1.08

30 **GENERAL PENALTY**
31

32 **Sections:**

- 33 **1.08.010** **Violations; Code enforcement.**
34 **1.08.020** **Criminal penalties.**
35 **1.08.030** **Prosecutorial discretion.**
36 **1.08.040** **Public nuisance.**
37 **1.08.050** **Violation of permit.**
38 **1.08.060** **Recovery of enforcement costs.**
39 **1.08.070** **Judicial review.**

- 40
41 **1.08.010 Violations; Code Enforcement.**
- 42 A. It is a violation for any person to violate any provision or to fail to comply with any
43 requirement of this code or any City ordinance. Each and every day, or portion
44 thereof, during which a code violation is committed, continued, or permitted by
45 any person shall be a separate violation.
- 46 B. For the purposes of chapters 1.08 and 1.12, a "responsible person" shall mean
47 any of the following:
- 48 1. A person who, by action or inaction (whether acting alone or with one or
49 more other persons), causes, maintains, permits, or allows a code violation.
- 50 2. A person whose agent, employee, or independent contractor, by action or
51 inaction, causes, maintains, permits, or allows a code violation.
- 52 3. An owner of real property on which a code violation occurs.
- 53 4. A lessee or sub-lessee with the current right of possession of real property
54 on which a code violation occurs.
- 55 5. An on-site manager who regularly works on real property on which a code
56 violation occurs and who is responsible for the business or other activities
57 on that real property.
- 58 6. The owners, majority stockholders, corporate officers, trustees, general
59 partners and any other person with the legal authority to act for a legal entity
60 that is a responsible person under subsections (1) through (5) above.
- 61 7. If any of the above persons are minors or incompetent, the parents or
62 guardians of such persons shall be deemed responsible persons.
- 63 C. Each responsible person shall be jointly and severally liable for a code violation.
- 64 D. The City may enforce any code violation by any one or more of the following
65 methods at the City's discretion:
- 66 1. Criminal penalty, under chapter 1.08.020.
- 67 2. Civil injunction.
- 68 3. By the granting or denial of permits or the forfeiture or revocation of permits.
- 69 4. Public nuisance abatement, under chapter 1.12.
- 70 5. Civil penalty.

71 E. The City shall be entitled to recover its costs of enforcing code violations, under
72 section 1.08.060.

73 F. The remedies provided for in this Chapter are cumulative and not exclusive and
74 shall not preclude the City from any other remedy or relief to which it otherwise
75 would be entitled under law or equity.

76 **1.08.020 Criminal penalties.**

77 A. Any person who violates any of the provisions of this code or any ordinance of
78 the City shall be guilty of an infraction, unless the violation is specifically made a
79 misdemeanor by this code or State law.

80 1. An infraction is punishable by:

81 a. a fine not exceeding \$100 for a first violation;

82 b. a fine not exceeding \$200 for a second violation of the same code
83 section within one year; or

84 c. a fine not exceeding \$500 for each additional violation of the same
85 code section within one year.

86 2. Notwithstanding section 1.08.020(A)(1), a violation of local building and
87 safety codes determined to be an infraction are punishable as follows:

88 a. a fine not exceeding one hundred dollars (\$100) for a first violation;

89 b. a fine not exceeding five hundred dollars (\$500) for a second violation
90 of the same code section within one year; or

91 c. a fine not exceeding one thousand dollars (\$1,000) for each
92 additional violation of the same code section within one year.

93 3. A code violation, which would otherwise be an infraction, is a misdemeanor
94 if a person has been convicted of two or more violations of the same code
95 section within a 12-month period.

96 B. Misdemeanor. A misdemeanor is punishable by a fine not exceeding \$1,000, or
97 imprisonment not exceeding six months, or both.

98 C. Each person shall be guilty of a separate offense for each and every day, or
99 portion thereof, during which any violation of this code or any ordinance of the
100 City is committed, continued, or permitted by any such person.

101 **1.08.030 Prosecutorial discretion.**

102 Whenever the code declares a certain violation to be punishable as a misdemeanor, the
103 City Attorney, or prosecuting attorney, in his/her discretion, has the authority to charge
104 the violation as an infraction.

105 **1.08.040 Public nuisance.**

106 In addition to the violations provided herein, any condition caused or permitted to exist
107 in violation of this code or any ordinance of the City is deemed a public nuisance and
108 may be abated as such in accordance with applicable law. A public nuisance also
109 includes, but is not limited to, any unlawful encroachment upon or obstruction in or to
110 any public property, public sidewalk, street, right-of-way, park, or building.

111 **1.08.050 Violation of permit.**

112 A person who is issued or granted a permit of any kind by the City shall comply with
113 each provision and condition of the permit. A person who violates or fails to comply with
114 a provision or condition of the permit, or fails to secure a permit where one is required
115 by this code, is in violation of this section. The City may enforce a violation of this
116 section by any lawful means, including instituting proceedings for revocation of the
117 permit.

118 **1.08.060 Recovery of enforcement costs.**

119 The City shall be entitled to recover all costs relating to enforcing any code violations
120 that are recoverable under Government Code sections 38771 *et seq.* or any other state
121 or federal law. It is intended that persons violating the code, and not the taxpayers,
122 bear the financial costs of the City's code enforcement efforts.

123 **1.08.070 Judicial review.**

124 Any person seeking judicial review of any final decision of the City by writ of mandate
125 under California Code of Civil Procedure section 1094.5 is hereby notified that the
126 timing requirements of California Code of Civil Procedure section 1094.6 shall apply to
127 the filing of any such writ, unless a shorter time period is imposed by state or federal
128 law.

129 **Chapter 1.12**
130 **NUISANCE ABATEMENT**

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133 **Sections:**

- 134 **1.12.010 Purpose.**
135 **1.12.020 Application.**
136 **1.12.030 Definitions.**
137 **1.12.040 Cost recovery.**
138 **1.12.050 Right of entry for inspection.**
139 **1.12.060 Order to abate.**
140 **1.12.070 Appealing the order to abate.**
141 **1.12.080 Notice of Hearing before the Council.**
142 **1.12.090 Service.**
143 **1.12.100 Hearing procedure.**
144 **1.12.110 Council's decision.**
145 **1.12.120 Service of the Council's resolution.**
146 **1.12.130 Abatement by owner or occupant.**
147 **1.12.140 Abatement by City.**
148 **1.12.150 Judicial Review.**
149 **1.12.160 Hearing before Council on cost recovery.**
150 **1.12.170 Emergency abatement.**
151 **1.12.180 Abatement by civil action.**
152 **1.12.190 Public nuisance by judicial decree.**

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155 **1.12.010 Purpose.**

156 The purpose of this chapter is to provide the City with nuisance abatement procedures
157 that may be pursued to prevent, discourage, abate, or otherwise address any code
158 violations pursuant to Government Code sections 38771 *et seq.* and all other
159 enforcement options granted to the City.

160 **1.12.020 Application.**

161 The provisions of this chapter shall be applicable to any nuisance defined as a public
162 nuisance by this code or state law. (See section 1.08.040.)

163 **1.12.030 Definitions.**

164 For the purposes of this chapter:

- 165 A. "Enforcement costs" are defined at section 1.12.040(B).
166 B. "Enforcement officer" means the building official, City code enforcement officer,
167 City department manager (to the extent responsible for enforcing provisions of
168 this code), or any other City employee designated by this code or the City
169 Manager to enforce a provision of this code.
170 C. "Responsible person" is defined at section 1.08.010(B).

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1.12.040 Cost recovery.

A. The enforcement officer and administrative services director shall log all expenses relating to a code enforcement or nuisance abatement proceeding so the City can recoup these costs in accordance with this section and section 1.08.060.

Costs of abatement shall begin to run from the date the notice of violation and order to abate is first issued, except in cases of summary abatement, in which case costs of abatement shall begin to run from the date the enforcement officer became aware of the nuisance requiring emergency abatement.

B. Enforcement costs shall include, but not be limited to, the following:

1. Administrative and regulatory costs, which shall include without limitation:
(a) any time spent by a City employee or contractor for code enforcement activities related to the code violation, such as inspections and re-inspections, compliance re-inspections, abatement actions, police services, administration, bookkeeping and accounting, legal services, supervision, preparing for and attending hearings; and (b) other costs related to the enforcement such as costs of abatement, notices, and court costs. Costs based on time spent by City employees or contractors shall include salary, benefits, and overhead;
2. Late payment charges, which shall include without limitation interest equivalent to the rate permitted by Code of Civil Procedure section 685.010, as amended, computed from the date the responsible person was first notified of the amount due through the date of payment;
3. Collection costs, which shall include without limitation costs incurred in securing payment of any delinquent amount owed to the City, including any costs incurred by the City under section 1.12.160; and
4. Attorneys' fees in administrative or judicial proceedings, which shall include without limitation reasonable attorneys' fees incurred for an abatement action and related proceedings where the City elects, at the initiation of that individual action or proceeding, to seek recovery of its attorneys' fees. If the city elects to seek recovery of its attorneys' fees, attorneys' fees may be recovered by the prevailing party in said action or proceeding.

C. Recovery of costs. If a responsible person fails to make payment to the City of any amount owed in accordance with this section, the City may collect the amount owed in any one or more of the following ways:

1. Referring the matter to a collection agency.
2. Initiating a civil action to collect the debt.

209 3. Where the violation involved real property, making the debt a lien or special
210 assessment against the property in accordance with section 1.12.160.

211 4. Any other manner provided by law for the collection of debts.

212 **1.12.050 Right of entry for inspection.**

213 A. Enforcement officers are authorized to enter upon and inspect any property or
214 premises within the City to ascertain whether the ordinances of the City are being
215 obeyed, including any examinations and surveys as may be necessary in the
216 performance of their enforcement duties. Inspections conducted under this
217 section may include the taking of photographs, samples, or physical evidence.

218 B. Inspections conducted under this section shall be performed reasonably and in
219 accordance with law, including the Fourth Amendment of the United States
220 Constitution and the related protections of the California Constitution.

221 C. The enforcement officer shall present identification, state the purpose of the
222 inspection, and request permission from the owner or responsible person to enter
223 the property or premises. The enforcement officer shall document permission to
224 enter by securing a signed permission from the owner or occupant. If an owner
225 or occupant of property or his/her agent refuses consent to entry and inspection,
226 an enforcement officer may seek any warrant deemed necessary by the City
227 Attorney.

228 **1.12.060 Notice of violation and order to abate.**

229 A. When an enforcement officer charged with the enforcement of any provision of
230 this chapter determines that a nuisance exists, the enforcement officer shall
231 notify the responsible person(s) of the existence of the condition(s) on the
232 premises and order them to abate the nuisance. This notice must be served in
233 conformance with section 1.12.090. If the nuisance to be abated requires
234 demolition of a building, grading to the property, or other substantial alterations to
235 real property, the enforcement officer shall obtain a preliminary or survey title
236 report to identify all owners of record, holders of mortgages, deeds of trust, or
237 other liens and encumbrances of record. If additional responsible persons are
238 identified through the preliminary title report, the enforcement officer shall serve
239 each such person with a copy of the notice of violation and order to abate.

240 B. The notice of violation and order to abate shall contain the following information:

241 1. The names and addresses of the owner and any other responsible person(s)
242 in violation of this chapter and the street address, legal description (including
243 assessor's parcel number) or other description of the premises sufficient to
244 identify the location of the violation;

245 2. A list of the specific code section(s) that have been violated by the
246 responsible person and a statement specifying that the enforcement officer
247 has determined that the violation(s) constitute a nuisance;

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3. A statement of the action required to be taken to cure the violation as determined by the enforcement officer and a definite time frame for taking that action. This time frame shall be determined in the sole discretion of the enforcement officer, but shall not be less than ten calendar days after the date of the notice and order.
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- a. If the enforcement officer determines that a building, structure, or property must be repaired, the notice and order shall require that all required permits be secured and the work physically commenced within 60 days from the date of the notice and order and completed within such time as the enforcement officer determines is reasonable under the circumstances.
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- b. If the enforcement officer determines the building, structure, or property must be vacated, the notice and order shall require the building or structure vacated within a reasonable time as determined by the enforcement officer.
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- c. If the enforcement officer determines the building, structure, or property must be demolished, the notice and order shall require that the building be vacated within such time as the enforcement officer determines is reasonable (not to exceed 60 days from the date of the notice and order), all required permits be secured within 60 days from the date of the notice and order, and the demolition be completed within such time as the enforcement officer determines is reasonable.
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4. A statement explaining the City's power to abate the nuisance should the responsible person fail to do so in the time allotted by the notice and order.
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5. The City's intent to seek recovery of enforcement costs, and if applicable, all attorneys' fees.
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6. The name and phone number of a contact person at the City should the recipient desire to speak with an appropriate City representative.
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7. A statement advising that (a) any person having any record title or legal interest in the property to be abated may appeal the enforcement officer's order to the Council, provided the appeal is made in writing as provided in this code and filed with the enforcement officer within the time specified under subsection 1.12.070(B), and (b) failure to appeal within the time and manner provided will constitute: (i) a waiver of all rights to an administrative hearing for determination of the matter, and (ii) a failure to exhaust administrative remedies.

284 **1.12.070 Appealing the order to abate.**

285 A. Form of Appeal. A person appealing an enforcement officer's notice of violation
286 and order to abate shall do so by filing with the enforcement officer a written
287 appeal containing the following information:

288 1. A caption reading: "Appeal of," giving the names of all responsible
289 persons participating in the appeal.

290 2. A brief statement setting forth the appellant's legal interest in the property
291 involved in the notice and order.

292 3. A brief statement in ordinary and concise language of the specific order or
293 action protested, together with any material facts claimed to support the
294 contentions of the appellant.

295 4. A brief statement in ordinary and concise language of the relief sought and
296 the reasons why it is claimed the protested order or action should be
297 reversed, modified, or otherwise set aside.

298 5. The signatures of all parties named as appellants and their official mailing
299 addresses.

300 6. The verification (by declaration under penalty of perjury) of at least one
301 appellant as to the truth of the matters stated in the appeal.

302 B. Time to appeal. Any appeal of the notice of violation and order to abate issued
303 by the enforcement officer must be filed within 15 days from the date of service of
304 such order.

305 C. Processing of Appeal. Upon receipt of any appeal filed pursuant to this section,
306 the enforcement officer shall present it at the next regular or special meeting of
307 the Council.

308 D. Scheduling and Noticing Appeal for Hearing. As soon as practicable after
309 receiving the written appeal, the Council shall fix a date, time and place for
310 hearing the appeal. Such date shall not be less than 10 days nor more than 60
311 days from the date the appeal is presented to the Council by the enforcement
312 officer. The City Clerk shall notify the appellant of the time and place of the
313 hearing at least 10 days before the date of the hearing by causing a copy of the
314 notice to be served on each appellant in conformance with section 1.12.080.

315 E. Effect of Failure to Appeal. Failure of any person to file a timely appeal in
316 accordance with this section shall constitute a waiver of the right to an
317 administrative hearing and a failure to exhaust administrative remedies.

318 F. Scope of Hearing on Appeal. Only those issues specifically raised by the
319 appellant in the written appeal provided under subsection 1.12.070(A) shall be
320 considered at the hearing.

321 G. Staying of Order Under Appeal. Except for emergency abatement proceedings,
322 enforcement of any abatement order shall be stayed during the pendency of a
323 timely appeal therefrom.

324 **1.12.080 Notice of hearing before the Council.**

325 A. General. In the event a responsible person seeks an appeal of the order to
326 abate, the enforcement officer shall issue the responsible person a written notice
327 to appear at a hearing before the Council for the appeal.

328 B. Form of Notice to Appear.

329 The notice to appear shall be substantially in the following form:

330 TO: _____

331 YOU ARE HEREBY NOTIFIED that a hearing will be held before the Council
332 of the City of Calistoga on the _____ day of _____, 2____, at City
333 Hall, 1232 Washington Street, Calistoga, California, at the hour of _____
334 p.m., or as soon thereafter as the matter can be heard, upon the attached
335 notice and order served upon you on _____ day of _____, 2____.
336 You may be present at the hearing. You may be, but need not be,
337 represented by counsel. You may present any relevant evidence and will be
338 given a full opportunity to cross-examine all witnesses testifying against you.

339 Dated this ____ day of _____, 2____.

340 _____
341 City Clerk

342 C. Additional Contents of Notice to Appear. The notice to appear shall also include
343 the following information:

- 344 1. A copy of the enforcement officer's original order.
- 345 2. A copy of this chapter.
- 346 3. A statement notifying the appellant that upon the failure to appear for the
347 hearing, or the failure to correct and abate a condition which is determined
348 to constitute a violation, the Council may order the violation(s) abated and
349 the responsible person(s) to bear the costs of the abatement, including
350 without limitation, all enforcement costs and attorneys' fees incurred by the
351 City.

352 4. If necessary, a modified enforcement order noticing the responsible person
353 of any additional violations discovered on the property.

354 D. Method of service. Unless otherwise noted, any notice to appear, or any other
355 notices required to be given pursuant to this chapter shall be served and/or
356 posted at the property at least 10 days before the date of the hearing in
357 accordance with section 1.12.090.

358 **1.12.090 Service.**

359 A. Notice shall be served by personal delivery of a copy of the notice to the owner
360 and any other responsible person. If a copy of the notice cannot with reasonable
361 diligence be personally delivered, the notice shall be served by (1) certified first
362 class mail, return receipt requested, and (2) regular mail.

363 B. A copy of the notice shall also be conspicuously posted in front of the property on
364 which the nuisance exists, or if posting on the front of the property is not
365 possible, then the notice may be posted in any other location of the property
366 wherein it will be most likely to give notice to the owner.

367 C. Notices by United States mail may be served on the responsible person(s) at the
368 address as shown on the last equalized assessment roll or the supplemental roll
369 of Napa County, whichever is more current. The enforcement officer may, upon
370 the advice of the City Attorney, also serve notice on a tenant, a mortgagor, or any
371 other person having an interest in the real property. Service shall be effective on
372 the date of mailing.

373 D. The failure of any owner or responsible person to receive the notice shall not
374 affect in any manner the validity of the proceedings taken hereunder.

375 **1.12.100 Hearing procedure.**

376 A. Continuances. The City may continue a hearing from time to time, and may
377 request additional information from the enforcement officer or the cited
378 responsible person before issuing a decision.

379 B. Burden of proof. The enforcement officer shall bear the burden of proving by a
380 preponderance of the evidence that a public nuisance exists.

381 C. Failure to appear. The failure of the cited responsible person to appear at the
382 hearing shall constitute a failure to exhaust his/her administrative remedies.

383 D. At the hearing. At the hearing, the cited responsible person shall be given the
384 opportunity to testify, call witnesses, and to present evidence concerning the
385 abatement order, including any evidence to show cause why the violation should
386 not be abated at the cost of the cited responsible person.

387 1. Oath or Affirmation. All oral evidence or testimony shall be taken under oath
388 or affirmation. The presiding officer may administer the oath. In a given

389 case where many witnesses are expected to testify, the presiding officer has
390 the discretion to have all prospective witnesses rise and be sworn at the
391 same time at the outset of the proceedings.

392 2. Evidence. The hearing need not be conducted according to technical rules
393 relating to evidence and witnesses. Any relevant evidence shall be admitted
394 if it is the sort of evidence on which responsible persons customarily rely in
395 the conduct of serious affairs, regardless of the existence of any common
396 law or statutory rule which might make improper the admission of such
397 evidence over objection in civil actions. Hearsay evidence may be used for
398 the purpose of supplementing or explaining other evidence but shall not be
399 sufficient in and of itself to support a finding unless it would be admissible
400 over objection in civil actions. Irrelevant and unduly repetitious evidence
401 shall be excluded.

402 3. Witnesses. In a contested proceeding each side shall have these rights: to
403 call and examine witnesses; to introduce exhibits; to cross-examine
404 opposing witnesses on any matter relevant to the issues; to impeach any
405 witness and to rebut the evidence against a party. The Council has the
406 discretionary authority to: limit the number of witnesses to testify for each
407 side where their testimony would be cumulative or repetitive in nature;
408 require each side to appoint one spokesperson for purposes of cross-
409 examination; limit or curtail any abusive, argumentative, repetitive, or
410 otherwise irrelevant cross-examination; and place reasonable time limits on
411 the right to cross-examine and present evidence.

412 **1.12.110 Council's decision.**

413 A. Decision. After considering the testimony and evidence presented at the
414 hearing, the Council shall issue a resolution approving, modifying, or rescinding
415 the enforcement officer's order. The Council's decision shall identify the
416 responsible person's obligation to pay all enforcement costs (including any
417 amounts owed through the date that all violations are corrected).

418 B. Finality of Decision. The decision of the Council shall be final. Nothing in this
419 section shall in any way preclude or limit any aggrieved party from seeking
420 judicial review after such person has exhausted the administrative remedies
421 provided by this section. However, it shall be conclusively presumed that a
422 person has not exhausted his/her administrative remedies as to any issue which
423 is not raised in the administrative proceedings authorized herein, or if the person
424 failed to appear before the Council.

425 **1.12.120 Service of the Council's resolution.**

426 The City officer authorized to abate the nuisance shall serve a copy of the resolution
427 upon the responsible person in accordance with the service procedures described in
428 section 1.12.090.

429 Furthermore, if the Council determines that the abatement of the nuisance is likely to
430 cause a significant depreciation in the value of the property, the Council may order that
431 mortgages and/or beneficiaries under any deeds of trust of record on the property be
432 served with a copy of the resolution in the manner prescribed in this chapter.

433 **1.12.130 Abatement by owner or occupant.**

434 The owner or responsible person may, at his/her own expense, abate the nuisance in
435 the time and manner presented in the order to abate issued by the enforcement officer.
436 If an enforcement officer determines that the nuisance has been properly abated, then
437 proceedings pursuant to this chapter shall be terminated, provided, however, that the
438 City may in its discretion proceed with recovery of such abatement costs as it may have
439 incurred before abatement by the owner. Nothing in this chapter shall relieve any owner
440 or other responsible person of the obligation of obtaining any required permits to do any
441 work incidental to such abatement.

442 **1.12.140 Abatement by City.**

443 Where a responsible person fails to abate a nuisance in conformance with an
444 abatement order or a resolution of the Council, the enforcement officer may direct any
445 City employee, contracting agent or other representative to enter upon private property
446 for the purpose of abating the public nuisance. Before entering the property, the
447 enforcement officer shall secure written permission from the responsible person to enter
448 upon the property and abate the nuisance. If the property owner or occupant with right
449 of possession is unwilling to provide such permission, the enforcement officer may
450 pursue any warrant deemed necessary by the City Attorney.

451 Should it be practicable to sell or salvage any material procured from the aforesaid
452 abatement, it may be sold at private or public sale at the best price obtainable and an
453 itemized account of the proceeds shall be maintained by the authorized City officer.
454 Such proceeds, if any, shall be deposited in a general fund of the City and shall be
455 credited against the cost of abatement.

456 **1.12.150 Judicial Review.**

457 General time limits. The time limits for review of any Council decision under this
458 chapter are governed by section 1.08.070.

459 **1.12.160 Hearing before Council on cost recovery.**

460 A. Upon completion of an abatement action, the enforcement officer shall prepare
461 and file with the administrative services director a report stating the costs
462 incurred by the City in abating the nuisance. If a responsible person is an owner
463 of real property, the amount owed by the responsible person under this section
464 may be made a lien or special assessment against the real property on which the
465 violation occurred.

466 B. Lien or special assessment procedure.

467 1. The administrative services director shall fix a date, time, and place for the
468 Council to consider the report and any protests or objections to it. The

469 administrative services director shall provide written notice to the property
470 owner and any other responsible person not less than ten days before the
471 hearing in conformance with section 1.12.090.

472 2. A person whose real property may be subject to a lien or special
473 assessment may file a written protest with the administrative services
474 director and/or may protest orally at the hearing. Each written protest or
475 objection must contain a description of the property at issue and the grounds
476 of the protest or objection.

477 3. At the conclusion of the hearing, the Council shall adopt a resolution
478 confirming, discharging, or modifying the amount of the lien or special
479 assessment.

480 C. Upon a determination of the Council to adopt a lien or special assessment, the
481 administrative services director shall provide notice of the lien or special
482 assessment to the responsible person. For a lien, the notice shall be served as
483 provided in California Government Code section 38773.1. For a special
484 assessment, the notice shall be served as provided in California Government
485 Code section 38773.5. The administrative services shall also record any
486 applicable resolution adopted under section 1.12.160 as a lien or a special
487 assessment in the office of the County Recorder of Napa County.

488 D. Once payment in full is received by the City for the amount of the lien or special
489 assessment set forth in the written order, plus any applicable interest or
490 penalties, the administrative services director shall record a notice of discharge
491 with the office of the County Recorder. The notice of discharge shall cancel the
492 City's lien or special assessment.

493 **1.12.170 Emergency abatement.**

494 A. Emergency abatement authorized. Notwithstanding any other provision of this
495 code, whenever the City Manager reasonably determines there is a nuisance that
496 poses an imminent or immediate danger of significant harm to persons or
497 property, or so endangers the public health or safety, the City may act
498 immediately and without prior notice or hearing to abate the condition. Any
499 emergency abatement under this section shall be authorized in writing by the City
500 Manager or his/her designee and shall be limited to those actions necessary to
501 eliminate the immediate threat. After the immediate threat is eliminated, the
502 enforcement officer may abate any remaining violations through the formal
503 abatement procedures provided for in this chapter.

504 B. Evidence gathering. Before commencing an emergency abatement, the
505 enforcement officer shall gather evidence of the nuisance to be abated by taking
506 pictures or otherwise documenting the nuisance requiring emergency abatement.
507 All such evidence gathering must be done in compliance with section 1.12.050.

508 C. Notice. Before commencing an emergency abatement, the enforcement officer
509 shall make reasonable attempts to contact the owner or other responsible person
510 by phone or in person. Written notice of the emergency abatement shall be
511 provided to the owner or other responsible person within 48 hours of the
512 abatement. The written notice shall include the following:

- 513 1. a statement explaining the City's power to abate the nuisance under this
514 section;
- 515 2. the information provided for in subsections 1.12.060(B)(1, 2, 5, and 6);
- 516 3. a copy of this chapter; and
- 517 4. the time and method for requesting a post-abatement hearing as provided
518 for in section 1.12.170(E).

519 D. Costs. The City may recover the expense or cost resulting from the emergency
520 abatement from the owner or other responsible person in accordance with
521 section 1.12.040.

522 E. Post-abatement hearing. An owner or other responsible person may request a
523 hearing before the Council to determine whether the nuisance should have been
524 summarily abated by filing a written request with the City Manager within 15 days
525 of the service of notice set forth in subsection 1.12.170(C). Such request must
526 be in substantial conformance with section 1.12.070. Failure to request a
527 hearing within the time allotted shall constitute a failure to exhaust administrative
528 remedies.

529 **1.12.180 Abatement by civil action.**

530 A civil action may be brought in the name of the people of the State of California by the
531 City Attorney, the District Attorney, or Napa County Counsel to abate a public nuisance.
532 Each of said officers shall have concurrent right to bring such action to abate a public
533 nuisance within this City. The City Attorney shall bring such action when directed to do
534 so by the Council.

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536 **1.12.190 Public nuisance by judicial decree.**

537 If a public nuisance tax has been declared by judicial decree, after a defendant receives
538 notice of entry of judgment as prescribed by law, and the time within which an appeal
539 may be filed has expired, all procedures of this chapter shall be applicable and shall be
540 followed in the same manner as if a resolution by the Council had been passed
541 declaring a public nuisance to exist.

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SECTION THREE:

THIS ORDINANCE shall take effect thirty (30) days after its passage and before expiration of fifteen (15) days after its passage, shall be published in accordance with law in a newspaper of general circulation published and circulated in the City of Calistoga.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the **3rd day of May, 2011**, and was passed and adopted at a regular meeting of the Calistoga City Council on the _____, **2011**, by the following vote:

AYES:

NOES:

ABSTAIN/ABSENT:

JACK GINGLES, Mayor

ATTEST:

SUSAN SNEDDON, City Clerk