

City of Calistoga
Code Enforcement Manual for
Public Nuisance Abatement



Adopted by the Calistoga City Council
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Purpose of this Manual

This Code Enforcement Manual is intended for use by Calistoga residents, business owners and City staff to help all understand the City's code enforcement process for public nuisances. It provides standardized procedures and methods carried out by City staff to enforce the Municipal Code, particularly Chapter 1.12, Nuisance Abatement.

Code Enforcement Program Goal

The goal of the Calistoga Code Enforcement Program is to obtain voluntary compliance with the regulatory provisions of the Calistoga Municipal Code ("CMC" or "Code"). Complying with the Code assists in maintaining and enhancing the health, safety and welfare of the community. Code enforcement activities are intended to be carried out fairly, with sensitivity and in a timely manner.

It is the City's policy to encourage voluntary Code compliance by providing residents, business operators, property owners and tenants sufficient notice and information.

Regardless of this policy, the City acknowledges that by allowing code violators sufficient time and opportunity to correct violations, occasional abuses of time extensions or failures to correct conditions as ordered may occur. In such cases, the City may find it necessary to impose corrections through involuntary means, such as legal action by the City.

Code Enforcement Process Overview

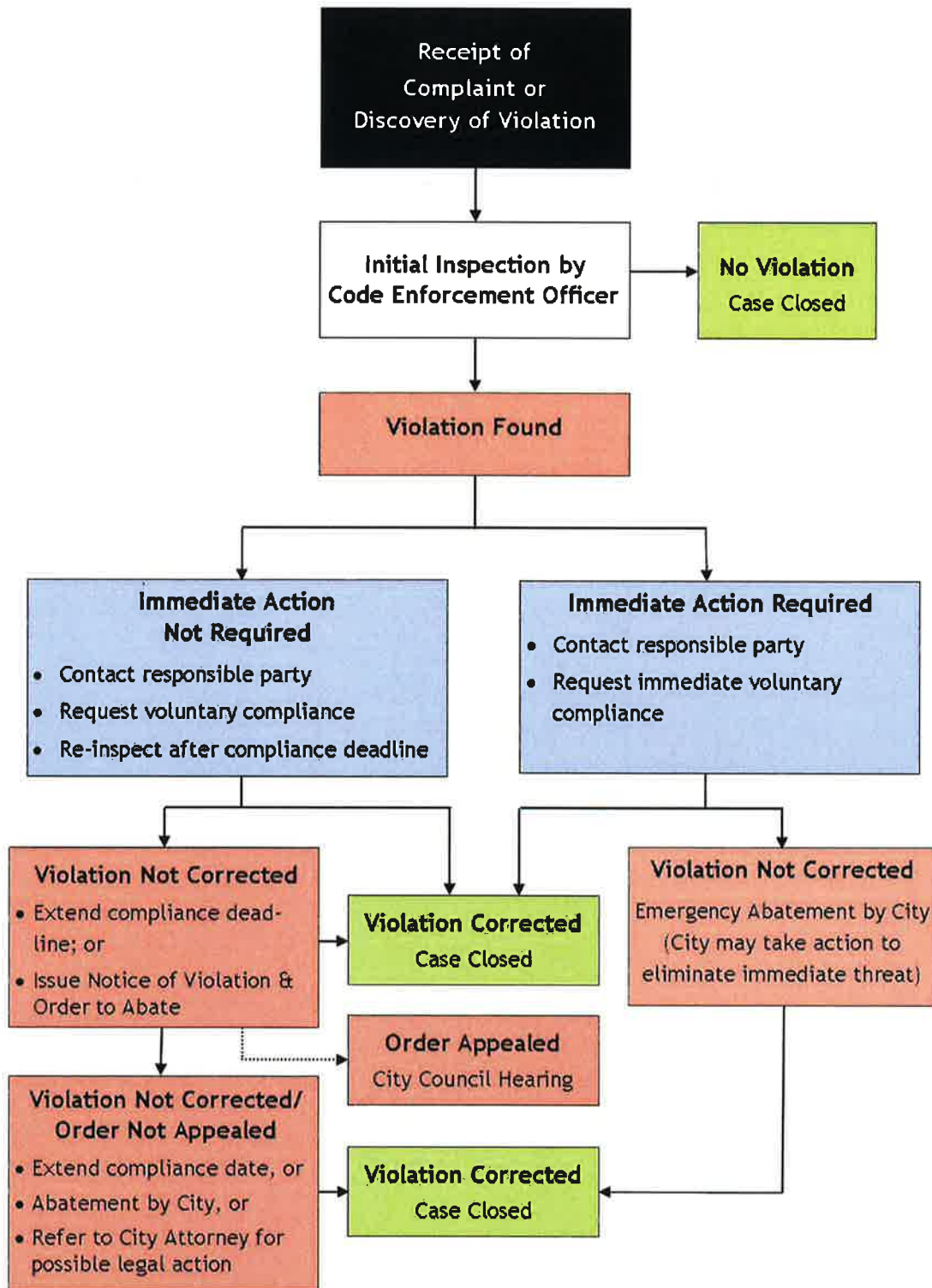
The Code provides that any violation of the Code or any City ordinance is deemed a public nuisance and may be abated in accordance with the applicable law¹. The City has established nuisance abatement procedures to prevent, discourage, abate or otherwise address any code violations.

The following describes the overall code enforcement process for public nuisances, which is illustrated in Figure 1.

- Upon becoming aware of a potential public nuisance, the Enforcement Officer reviews the violation and conducts a field inspection.
- If the violation is verified, the Officer contacts the responsible person and seeks voluntary corrective action.
- If the violation is considered to be an imminent danger to the public health and safety or the environment, and immediate voluntary corrective action is not obtained, the Officer commences the immediate abatement of the violation by the City.
- If immediate action is not required and voluntary compliance is not achieved after the initial contact, the Officer issues a Notice of Violation & Order to Abate to the responsible party, giving a specific and reasonable amount of time to correct the violation.

¹ CMC Section 1.08.040

Figure 1 Overview of Code Enforcement Process



Upon re-inspection, if the violation has not been corrected, the Enforcement Officer has the discretion to extend the compliance date or refer the violation to the City Attorney for legal action.

Refer to CMC Chapters 1.08 and 1.12 for more information on violations and enforcement of the City's codes.

Definitions

The following terms as used in this manual are defined as follows.

“Enforcement Officer” means the building official, City code enforcement officer, City department manager (to the extent responsible for enforcing provisions of this code), or any other City employee designated by this code or the City Manager to enforce a provision of this code. (CMC 1.12.030)

“Responsible person” means any of the following (CMC 1.08.010):

- A person who, by action or inaction (whether acting alone or with one or more other persons), causes, maintains, permits or allows a code violation.
- A person whose agent, employee or independent contractor – by action or inaction – causes, maintains, permits or allows a code violation.
- An owner of real property on which a code violation occurs.
- A lessee or sub-lessee with the current right of possession of real property on which a code violation occurs.
- An on-site manager who regularly works on real property on which a code violation occurs and who is responsible for the business or other activities on that real property.
- The owners, majority stockholders, corporate officers, trustees, general partners and any other person with the legal authority to act for a legal entity that is a responsible person under the above subsections.
- If any of the above persons are minors or incompetent, the parents or guardians of such persons shall be deemed responsible persons.

Receipt of Complaints

Any resident, business, City staff member or public official can file a complaint alleging a violation of the Calistoga Municipal Code.

Complaints of Code violations may be received in any form, such as written, telephone, e-mail or the Activity Inquiry/Complaint Form (see Attachment 1) by any City employee. Additionally, City staff may proactively initiate code enforcement actions based on observations or reports from the community.

Any complaining or reporting person may choose to remain anonymous. The names of persons making a complaint are maintained in confidence by the City, unless there is a compelling reason to disclose the complainant's identity at the instruction of the City Attorney's (see Release of Information section).

Complaint Distribution

The complaint shall be forwarded to the City department that administers the applicable section of the Code that may be violated. The head of the responsible department shall assign the complaint to a staff member for investigation and follow-up.

The following table provides examples of typical code violations and the City department that is generally responsible for addressing the violation.

Table 1 - Examples of Code Violations and Responsible Department

Planning & Building Department
Construction, electrical, plumbing or mechanical work without permit (e.g., re-roofing, re-siding, additions, fences exceeding six feet in height, demolition)
Abandoned or unoccupied buildings causing unsightliness or hazards
Grading or fill work without permit
Construction activities objectionable by reason of noise, odor, dust, mud, smoke and/or vibration
Fences or walls of excessive height or in unauthorized location
Uses not allowed by Zoning Code (e.g., vacation rentals, vendor sales in fixed location)
Illegal signs (e.g., pennants, banners, off-site signs, portable signs in right-of-way)
Cargo containers or other storage in required front or corner side yard of a residential property
Household furnishings or appliances left outside
Vehicles, trailers or other mobile equipment stored in required front or corner side yard of a residential property
Debris or trash not stored in trash receptacles
Activities objectionable by reason of noise, odor, dust, mud, smoke and/or vibration – Shared with Police Department
Keeping of prohibited types or number of animals (e.g., chickens, more than 5 domesticated animals) – Shared with Police Department
Police Department
Unoccupied buildings that are unsecured from intrusion by persons, animals or the elements
Hazardous pools or other bodies of water, abandoned refrigerators, neglected machinery
Keeping of prohibited types or number of animals (e.g., chickens, more than 5 domesticated animals) – Shared with Planning Division
Abandoned, inoperative or disabled vehicles, trailers, bicycles or other mobile equipment in public right-of-way
Activities objectionable by reason of noise, odor, dust, mud, smoke and/or vibration – Shared with Planning Division

Public Works Department
Hazardous trees
Tree removal without permit
Sidewalk cracks and uneven pavement
Drainage (flooding and ponding)
Water leaks
Fire Department
Weeds and vegetation

Enforcement Priorities

Violations that constitute an immediate or readily-apparent threat to health, safety or the environment (e.g., prohibited discharges) shall be classified as *High Priority*. High priority violations shall be attended to immediately or as soon as feasibly possible. High priority violations that cannot be attended to by the Enforcement Officer should immediately be referred to an appropriate agency with authority to handle such violations. It is the policy of the City to maintain a zero tolerance for violations of federal and state environmental laws, including unlawful dumping of hazardous materials within the city limits.

Violations that do not constitute an immediate or readily-apparent threat to health, safety or the environment, but have the potential to do so if left uncorrected (e.g., unlawful encroachments) shall be classified as *Medium Priority*. Medium priority violations normally require action by the Enforcement Officer within three days of receipt of complaint.

All other violations shall be considered *Low Priority*. Low priority violations require action by the Enforcement Officer within five days of receipt of the complaint.

The head of the department responsible for taking action on a code violation, at his or her discretion, may adjust the priority of any particular type of violation or the timeframe for addressing the violation based on various factors, such as staff resources, staff availability, staff experience and workload distribution.

Code Enforcement Committee

The City Manager may establish a Code Enforcement Committee comprised of appropriate department representatives to:

- Review complaints received
- Determine which department or departments are responsible for investigating and responding to complaints
- Determine enforcement priorities
- Coordinate enforcement efforts
- Identify amendments that are needed to the Municipal Code to address code enforcement.

Investigations

Initial Contact

The Enforcement Officer shall attempt to personally contact the responsible person via phone, letter, e-mail or in person when initiating enforcement activities, and achieve voluntary compliance with the Code. The way in which a person is initially approached, informed of the possible violation and notified that corrective action is required is of critical importance. It frequently will determine how the person elects to respond in regards to compliance. Good judgment, tact and objectivity in performing the enforcement duties are essential.

In many instances, the person responsible for causing the violation may not be aware of the City regulations, and once the existence of a violation has been brought to their attention, they will generally make a good-faith voluntary effort to correct the violation.

Field Investigation and Reporting

When appropriate, the Enforcement Officer shall conduct an initial inspection of the location of the alleged violation to identify the existence of any violation(s). It is highly advisable that code enforcement personnel wear a uniform shirt with official City insignia or wear a conspicuously-placed identification badge while performing enforcement duties. The Officer represents the enforcement branch of the City, and the uniform-type of shirt or identification badge will ensure the public knows that they are dealing with an official representative of the City of Calistoga. It is also highly advisable that code enforcement personnel drive a vehicle with an official city sign or logo and possibly other identifying insignia or enforcement-related equipment (e.g., amber light bars) while conducting code enforcement.

When conducting a field investigation, the Enforcement Officer shall present identification, state the purpose of the inspection and request permission from the owner or responsible person to enter the property or premises. The Officer shall document permission to enter by securing a signed permission from the owner or occupant. If an owner or occupant of property or their agent refuses consent to entry and inspection, an Officer may seek an inspection warrant from the City Attorney (see Inspection Warrants section).

When an Enforcement Officer interviews a witness or alleged violator pursuant to a complaint, the information should be reported and documented in the case file (see Records section), including the date and location of the interview. The Officer should make special note of any "admissions" by a potential violator as to the existence or knowledge of a code violation on their property. If an Enforcement Officer experiences a hostile demeanor or a non-cooperative owner or user of property that has been reported in a complaint, such information should be included with the case information. This information could be determinative of the course of action taken in the future should the violations not cease or be remedied voluntarily.

Photographic Evidence

An Enforcement Officer investigating a complaint about a potential violation may take photographs to depict the condition(s) constituting a violation when appropriate. If the Officer maintains an on-going investigation resulting in a series of investigations of the condition(s), it is advisable to take additional photographs of the site, even if it is a repeat of the prior photographs taken. This would tend to show the lack of remedial action by a violator and/or provide a pictorial history of an on-going violation or condition.

The fact that photographs were taken at the site of an alleged code violation shall be noted in the investigative notes portion of the case file, including the full date of the photograph and the identity of the person taking the pictures.

Copies of any photographs taken during an investigation shall be stored in the case file for potential use in any future administrative or criminal actions taken by the City or any other official agency.

Recordings

An Enforcement Officer, while conducting an investigation or engaged in a citizen contact, may use a recording device to record in-person community contacts. When an Officer chooses to record community contacts, the procedures outlined in this section shall be followed. Audio and visual recorders shall not be used without the approval of the concerned supervisor of the Enforcement Officer.

Note: Recordings shall be made in accordance with existing law and procedures for these types of recordings. Officers shall not record telephone conversations.

Whenever recording, Enforcement Officers shall follow the procedures listed below.

- Use only new, blank recording media. The recording media should not be erased and reused.
- When recording, the Officer shall identify themselves, the date and time, and the name of the person or persons and/or objects being recorded.
- Activate the recorder as soon as possible, consistent with prudent field procedures and tactics. Once activated, the recorder should remain on for the remainder of the contact. If the contact is interrupted for some reason and there will be no contact with the person involved for several minutes, the recorder may be stopped and restarted upon continuing.

All recordings shall be retained and maintained for a minimum of two years or as required by state law.

The fact that a recording was made shall be documented in any related reports in the administrative or criminal action or in discovery questionnaires in any civil action whenever an incident is recorded and:

- An administrative or criminal action is contemplated, or
- The recording involves a personnel complaint alleging misconduct, or
- The recording involves a civil suit or similar action against the City, or the Officer,

Inspection Warrants

An Inspection Warrant is appropriate when:

- The facts and circumstances provide reasonable cause to believe that a violation exists or reasonable legislative/administrative standards exist for a routine area inspection; and
- The property owner or occupant has refused to permit a search by the inspector; or
- There has been a prolonged, good faith attempt to contact the owner or occupant for the purpose of inspection. A period of two to four weeks is generally considered a sufficient period of time for such attempts.

Reasonable cause exists when the facts and circumstances within the investigator's personal knowledge and of which he/she has reasonable, trustworthy information, warrants the belief that a code violation

exists. Sufficient reasonable cause for the issuance of an inspection warrant can be developed by the following:

- A complaint is received
- A visual inspection is made from the outside

If the Enforcement Officer believes an Inspection Warrant is necessary and appropriate, the appropriate department head or their designee, with City Manager authorization may request that the City Attorney obtain one. If an Inspection Warrant is obtained, an inspection date and time will be established, and the Attorney will notify the responsible person of the scheduled inspection.

A police officer should escort the Officer during the inspection to reduce the possibility of a hostile encounter when enforcing the Inspection Warrant.

Notices and Orders

If the Enforcement Officer determines a violation is not found to exist, the complaint file shall be closed. If the Officer determines that a violation exists and voluntary compliance is not achieved after the Officer's initial contact with the responsible person, the following procedures apply.

Emergency Abatement

Whenever the City Manager reasonably determines there is a nuisance that poses an imminent or immediate danger of significant harm to persons or property, or so endangers the public health or safety, the City may act immediately and without prior notice or hearing to abate the condition. Any emergency abatement under this section shall be authorized in writing by the City Manager or his or her designee and shall be limited to those actions necessary to eliminate the immediate threat. After the immediate threat is eliminated, the Enforcement Officer may abate any remaining violations through the formal abatement procedures.

Refer to CMC 1.12.170 for noticing, cost recovery and post-abatement hearing provisions for emergency abatement hearings.

Notice of Violation and Order to Abate (CMC 1.12.060)

If voluntary compliance is not achieved after the Enforcement Officer's initial contact with the responsible person, they shall serve the responsible person a Notice of Violation & Order to Abate (hereafter referred to as "Notice of Violation") to comply with the applicable regulation or requirement (see Attachment 2). The Officer will inform the responsible person that the City's goal is voluntary compliance and make it clear to the responsible person that this is their opportunity to correct the violation and avoid the need for further City action.

An official Notice of Violation form shall be completed and served to the responsible person. The time provided to correct the violation will depend on the nature and extent of work required, the nature and circumstances of the violation, and the danger posed to the public. The period is set on a case-by-case basis, but will be reasonable under the circumstances. This time frame shall be determined at the sole discretion of the Enforcement Officer, but shall not be less than 10 calendar days after the date of the notice and order. A compliance period of over 30 days must be approved by the appropriate department head, except as provided below.

- If the 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 completed within such time as the Officer determines is reasonable under the circumstances.
- If the 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 Officer. If the 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 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.

Generally, costs of abatement begin to run from the date the Notice of Violation is first issued. The Officer shall log all expenses relating to the code enforcement or nuisance abatement. Refer to CMC Section 1.12.040 regarding cost recovery.

A Notice of Violation & Order to Abate may be appealed to the City Council in accordance with the provisions of CMC Sections 1.12.070 through 1.12.120.

Stop Work Notice

When the responsible person commences construction work on a property without first obtaining a building permit to so do, or when current construction work is inconsistent with the underlying building permit or zoning approval, the Enforcement Officer may issue a Stop Work Notice, ordering the construction work to cease immediately.

Service of Notices (CMC 1.12.090)

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

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

Notices by mail may be served on the responsible person(s) at the address as shown on the last equalized assessment roll or the supplemental roll of Napa County, whichever is more current. The Code Enforcement officer may, upon the advice of the City Attorney, also serve notice on a tenant, a mortgagor, or any other person having an interest in the real property.

Re-Inspections

Within five working days of the correction date specified in the Notice of Violation, the Officer shall re-inspect the property for compliance. If the violation has been corrected, the file shall be closed; however, the City may in its discretion proceed with recovery of abatement costs that it may have incurred before abatement by the owner (CMC Section 1.12.130).

Compliance Extension

If the responsible person is making a good faith effort to comply and substantial progress has been made to correct the violation at the time of re-inspection, the Enforcement Officer may grant a reasonable extension of the compliance date. Any such extension of time granted may be made verbally, but shall be reported in the file. More than one extension of time may be granted if the Enforcement Officer determines that such extensions are warranted based on the responsible party's effort to correct the violation(s). Any extension of time over 30 days to correct a violation must be approved by the appropriate department head.

Maintenance of Complaint Files

An Enforcement Officer may create a case file for a complaint and assign it a case number. The file may consist of the following items, when appropriate:

- Original or copy of the citizen's complaint form and related information
- A chronological Case Summary Log (see Attachment 3) in which the Officer conducting the investigation makes an entry for each activity and/or contact undertaken during the course of the investigation
- Copies of all reports and documents developed or created during the investigation
- Originals or copies of all correspondence with the alleged violator(s)
- Originals or copies of all correspondence with public agencies
- Statements of any form from alleged violators of City codes, pertinent witnesses, and other parties contacted during the investigation
- Photographs taken during the investigation
- Recordings, with a notation in the Summary Case Log as to the date, time, subject and other pertinent information to that specific investigation.
- Additional information and items of evidentiary value obtained during an investigation as needed.

Release of Information

In order to preserve the effectiveness of the code enforcement process and not jeopardize investigative activities, and in order to protect the right of privacy of the City's residents and business owners, the City shall not disclose to the public or the violator the following information:

- That a complaint about a particular circumstance has been filed; or
- That a particular complaint is under investigation; or
- The name of the person making a complaint, unless otherwise instructed by the City Attorney.

The Enforcement Officer shall advise the complainant that the complaint has been received and is under investigation. Upon the closing of a case, the Officer shall advise the complainant of the result.

Any information developed during the investigation shall be released only to City personnel actively and directly involved in the enforcement action.

It is the policy of the City of Calistoga that, in all code enforcement matters, any contacts with the news media or requests for information by the press or media shall be referred to the appropriate department head. Any release of information to the news media shall be subject to approval by the appropriate department head.

Attachments

The attached forms shall be used by the Enforcement Officer. Modifications to these forms or the introduction of additional forms may be undertaken only with approval from the City Manager.

- Attachment 1 Activity Inquiry/Complaint Form
- Attachment 2 Notice of Violation and Order to Abate
- Attachment 3 Case Summary Log

Attachment 1



City of Calistoga
ACTIVITY INQUIRY / COMPLAINT FORM

Address/location of activity _____ APN _____

Date(s) activity observed _____

Description of activity inquiry or complaint

Five horizontal lines for describing the activity inquiry or complaint.

Complainant Information

Please provide the following information in the event we need to contact you for further information and/or so we can notify you of the City's action. You may choose to remain anonymous, however, if you elect to do so, we may not be able to proceed with any administrative or judicial actions concerning this matter and we will not be able to contact you with the results of our inquiry/investigation. This information will not be released to the public.

Name _____

Address _____

Phone _____ E-mail _____

City use only

Date received _____ Received by _____ person department

Incident No. _____ Case No. _____

Date forwarded: _____ via [] Hand delivery to: [] Interdepartmental delivery to:

Building [] Planning [] Police [] City Manager []

Recreation Services [] Public Works [] Fire [] Admin. Services []

Napa Co. Env. Health [] Employee _____

Continued on additional page(s) []

Attachment 2



OFFICIAL NOTICE

City of Calistoga

NOTICE OF VIOLATION & ORDER TO ABATE

Location of violation _____

Case No. _____ *Address* _____ *Assessor's parcel number* _____
 Date issued _____

Notice was distributed to the following responsible persons (*name, address*)

Property owner	Operator	Other

The City of Calistoga has determined that the following section(s) of the Municipal Code have been violated and constitute a nuisance.

Violation	Code Section Violated	Violation description
1	CMC §	
2	CMC §	
3	CMC §	

The following actions are required to correct these violations within the prescribed time period(s).

Violation	Corrective Action Required	Deadline for Compliance
1		
2		
3		

For further information about this notice, please contact the following person.

Issued by _____ *name* _____ *department* _____
 _____ *phone* _____ *e-mail* _____

The City's goal is voluntary compliance. Failure to abate the above nuisance(s) by the prescribed deadline may result in the City abating the nuisance. The City will seek the recovery of all enforcement costs, including legal fees.

Any person having any record title or legal interest in the property to be abated may appeal this Notice of Violation as provided by CMC Subsection 1.12.070(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.

