

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Dylan Feik, City Manager
DATE: July 17, 2018
SUBJECT: Adoption of an Ordinance Amending Chapter 1.12 Nuisance Abatement of the Calistoga Municipal Code Relating to the time allowed to correct violations

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

1 **ISSUE:** Introduction of an ordinance amending Chapter 1.12 Nuisance
2 Abatement of the Calistoga Municipal Code relating to time allowed to correct
3 violations.
4

5 **RECOMMENDATION:** Introduce ordinance, hold a public hearing and waive the
6 first reading.
7

8 **BACKGROUND:** Working with the City Attorney, staff has requested an
9 important change to the existing municipal code. Currently, Chapter 1.12.060
10 Item 3 provides a mandatory period of 10 days of notice for code violations
11 before the code enforcement officer can pursue further action. This creates an
12 excessive delay for code issues including illegal parking, illegal dumping, and/or
13 outdoor debris storage and/or foul smell. City staff is requesting the changes
14 shown below -
15

16 3. A statement of the action required to be taken to cure the
17 violation as determined by the enforcement officer and a definite time
18 frame for taking that action. This time frame shall be for a reasonable
19 period of time based on the relevant circumstances, which may include
20 the work and time required to correct the violation. The enforcement
21 officer shall have the sole discretion in determining the time frame for
22 taking action to correct the violation. This time frame shall be determined

23 ~~in the sole discretion of the enforcement officer, but shall not be less than~~
24 ~~10 calendar days after the date of the notice and order.~~

25
26 Essentially, the city manager, police chief and code enforcement officer will
27 determine an appropriate schedule of timeframes for the various code
28 enforcement activities routinely undertaken. This will ensure that not only are
29 violations addressed in a responsive manner, but that code violations aren't
30 allowed to continue while mandatory and excessive abatement periods are
31 played out.

32
33 Council discussed this item at its regular meeting on June 19, 2018 and directed
34 staff to prepare the ordinance amendment. Staff has published notices for
35 tonight's hearing and once adopted, will prepare the uniform abatement schedule
36 to include in the City's Code Enforcement Manual.

37
38 **FISCAL IMPACT:** None.

39
40 **ATTACHMENT:**

- 41 1. Draft Ordinance Amendment Chapter 1.12 Nuisance Abatement
42 2. Code Enforcement Manual, City of Calistoga

ORDINANCE NO. _____

1 **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING**
 2 **CHAPTER 1.12, "NUISANCE ABATEMENT" OF THE CALISTOGA MUNICIPAL CODE**
 3 **RELATING TO THE TIME ALLOWED TO CORRECT VIOLATIONS**

4
 5 **SECTION I: RECITALS.**

6
 7 WHEREAS, the City of Calistoga, pursuant to the police powers delegated to it by
 8 Article 11 of the California Constitution, has the authority to enact laws, which promote the
 9 public health, safety and general welfare of its residents; and

10
 11 WHEREAS, the City desires to amend Chapter 1.12 to remove the ten (10) day
 12 minimum period timeframe to correct a violation and the sixty (60) day period to apply for and
 13 obtain permits for repair or demolition of a structure to instead allow the enforcement officer to
 14 determine a reasonable period of time based on the circumstances in each enforcement case;
 15 and

16
 17 WHEREAS, this amendment will allow for more flexibility in enforcing provisions of the
 18 Municipal Code and allow shorter periods of time for correction, when such circumstances
 19 warrant such shorter periods, and more effective enforcement.

20
 21 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALISTOGA DOES
 22 ORDAIN AS FOLLOWS:

23
 24 **SECTION II: AMENDMENT.**

25 Chapter 1.12, "Nuisance Abatement" within Title 1, "General Provisions" shall be amended to
 26 read as follows, with additions denoted by underlined text and deletions denoted by
 27 ~~strikethroughs~~:

28
 29 "1.12.060 Notice of violation and order to abate.

30
 31 A. When an enforcement officer charged with the enforcement of any provision of this
 32 chapter determines that a nuisance exists, the enforcement officer shall notify the responsible
 33 person(s) of the existence of the condition(s) on the premises and order them to abate the
 34 nuisance. This notice must be served in conformance with CMC 1.12.090. If the nuisance to
 35 be abated requires demolition of a building, grading to the property, or other substantial
 36 alterations to real property, the enforcement officer shall obtain a preliminary or survey title
 37 report to identify all owners of record, holders of mortgages, deeds of trust, or other liens and
 38 encumbrances of record. If additional responsible persons are identified through the
 39 preliminary title report, the enforcement officer shall serve each such person with a copy of the
 40 notice of violation and order to abate.

41
 42 B. The notice of violation and order to abate shall contain the following information:
 43

44 1. The names and addresses of the owner and any other responsible person(s) in
45 violation of this chapter and the street address, legal description (including Assessor's parcel
46 number) or other description of the premises sufficient to identify the location of the violation.
47

48 2. A list of the specific code section(s) that have been violated by the responsible
49 person and a statement specifying that the enforcement officer has determined that the
50 violation(s) constitute a nuisance.
51

52 3. A statement of the action required to be taken to cure the violation as
53 determined by the enforcement officer and a definite time frame for taking that action. This
54 time frame shall be for a reasonable period of time based on the relevant circumstances,
55 which may include the work and time required to correct the violation. The enforcement
56 officer shall have the sole discretion in determining the time frame for taking action to correct
57 the violation. This time frame shall be determined in the sole discretion of the enforcement
58 officer, but shall not be less than 10 calendar days after the date of the notice and order.
59

60 a. If the enforcement officer determines that a building, structure, or property
61 must be repaired, the notice and order shall require that all required permits be
62 secured and the work physically commenced ~~within 60 days from the date of the~~
63 ~~notice and order and completed within such time as the enforcement officer~~
64 determines is reasonable under the circumstances.
65

66 b. If the enforcement officer determines the building, structure, or property
67 must be vacated, the notice and order shall require the building or structure
68 vacated within a reasonable time as determined by the enforcement officer.
69

70 c. If the enforcement officer determines the building, structure, or property
71 must be demolished, the notice and order shall require that the building be
72 vacated within such time as the enforcement officer determines is reasonable
73 (not to exceed 60 days from the date of the notice and order), all required
74 permits be secured ~~within 60 days from the date of the notice and order,~~ and the
75 demolition be completed within such time as the enforcement officer determines
76 is reasonable under the circumstances.
77

78 4. A statement explaining the City's power to abate the nuisance should the
79 responsible person fail to do so in the time allotted by the notice and order.
80

81 5. The City's intent to seek recovery of enforcement costs, and if applicable, all
82 attorneys' fees.
83

84 6. The name and phone number of a contact person at the City should the recipient
85 desire to speak with an appropriate City representative.
86

87 7. A statement advising that (a) any person having any record title or legal interest
88 in the property to be abated may appeal the enforcement officer's order to the Council,
89 provided the appeal is made in writing as provided in this code and filed with the enforcement
90 officer within the time specified under CMC 1.12.070(B); and (b) failure to appeal within the

91 time and manner provided will constitute: (i) a waiver of all rights to an administrative hearing
92 for determination of the matter, and (ii) a failure to exhaust administrative remedies.”

93
94 **SECTION III: SEVERABILITY.**

95
96 If any provision of this ordinance or the application thereof to any person or circumstance is
97 held invalid by a court of competent jurisdiction, the remainder of the ordinance and the
98 application of such provision to other persons or circumstances shall not be affected thereby.
99 The City Council finds and declares that it would have adopted each and every provision of
100 this ordinance, even if it had not adopted any other provision.

101
102 **SECTION IV: CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).**

103
104 Adoption of this Ordinance is exempt from environmental review as the adoption of this
105 Ordinance does not qualify as a “project” pursuant to Public Resource Code section 21065,
106 since it can be seen with certainty that there is no possibility that adoption of the Ordinance
107 would cause either a direct physical change in the environment or a reasonably foreseeable
108 indirect physical change in the environment.

109
110 **SECTION V: EFFECTIVE DATE.**

111
112 This Ordinance shall take effect thirty (30) days after adoption as provided by Government
113 Code section 36937.

114
115 **SECTION VI: PUBLICATION.**

116
117 The City Clerk shall attest to the adoption of this Ordinance and shall cause the same to be
118 published in accordance with state law.

119
120 PASSED AND ADOPTED this _____ day of July, 2018, by the following vote:

- 121
122 AYES:
123 NOES:
124 ABSTAIN:
125 ABSENT:

Chris Canning, Mayor

126
127 **ATTEST:**
128
129 _____
130 **Kathy Flamson, City Clerk**

131
132 **APPROVED AS TO FORM:**
133
134 _____
135 **Michelle Kenyon, City Attorney**