

City of Calistoga Staff Report

TO: Honorable Mayor and City Council
FROM: Dylan Feik, City Manager
DATE: August 7, 2018
SUBJECT: Second Reading of Ordinance 737

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

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- 1 **ISSUE:** Text Amendments to the Calistoga Municipal Code, amending Chapter
 - 2 1.12 Nuisance Abatement of the Calistoga Municipal Code relating to time
 - 3 allowed to correct violations. (Second Reading)
 - 4
 - 5 **RECOMMENDATION:** Adopt Ordinance No. 737
 - 6
 - 7 **BACKGROUND:** On July 17, 2018, following a public hearing, the City Council
 - 8 introduced and waived the first reading of the attached ordinance.
 - 9
 - 10 **FISCAL IMPACT:** None.
 - 11
 - 12 **ATTACHMENT:**
 - 13
 - 14 1. Ordinance No. 737

ORDINANCE NO. 737

AN ORDINANCE AMENDING CHAPTER 1.12, "NUISANCE ABATEMENT" OF THE CALISTOGA MUNICIPAL CODE RELATING TO THE TIME ALLOWED TO CORRECT VIOLATIONS

SECTION I: RECITALS.

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

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

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

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

SECTION II: AMENDMENT.

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

"1.12.060 Notice of violation and order to abate.

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

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

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

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

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

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

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

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

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

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

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

88
89 7. A statement advising that (a) any person having any record title or legal interest
90 in the property to be abated may appeal the enforcement officer's order to the Council,
91 provided the appeal is made in writing as provided in this code and filed with the enforcement
92 officer within the time specified under CMC 1.12.070(B); and (b) failure to appeal within the
93 time and manner provided will constitute: (i) a waiver of all rights to an administrative hearing
94 for determination of the matter, and (ii) a failure to exhaust administrative remedies."

96 **SECTION III: SEVERABILITY.**

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98 If any provision of this ordinance or the application thereof to any person or circumstance is
99 held invalid by a court of competent jurisdiction, the remainder of the ordinance and the
100 application of such provision to other persons or circumstances shall not be affected thereby.
101 The City Council finds and declares that it would have adopted each and every provision of
102 this ordinance, even if it had not adopted any other provision.
103

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

105
106 Adoption of this Ordinance is exempt from environmental review as the adoption of this
107 Ordinance does not qualify as a "project" pursuant to Public Resource Code section 21065,
108 since it can be seen with certainty that there is no possibility that adoption of the Ordinance
109 would cause either a direct physical change in the environment or a reasonably foreseeable
110 indirect physical change in the environment.
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112 **SECTION V: EFFECTIVE DATE.**

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114 This Ordinance shall take effect thirty (30) days after adoption as provided by Government
115 Code section 36937.
116

117 **SECTION VI: PUBLICATION.**

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119 The City Clerk shall attest to the adoption of this Ordinance and shall cause the same to be
120 published in accordance with state law.
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122 PASSED AND ADOPTED this 7th day of August, 2018, by the following vote:

- 123
124 **AYES:**
125 **NOES:**
126 **ABSTAIN:**
127 **ABSENT:**
128

129 _____
130 **Chris Canning**
131 **Mayor**

132 **ATTEST:**

133 _____
134 **Kathy Flamson**
135 **City Clerk**
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137 **APPROVED AS TO FORM:**

138 _____
139 **Michelle Kenyon, City Attorney**
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