

RESOLUTION NO. 2007-084

RESOLUTION OF THE CITY OF CALISTOGA CITY COUNCIL DECLARING A PUBLIC NUISANCE AND VIOLATIONS OF THE CALISTOGA MUNICIPAL CODE ON THE LANDS OF JOHN D. BUSK (ASSESSOR'S PARCEL NUMBER 11-310-023) AND DIRECTING AND AUTHORIZING THE ABATEMENT OF SUCH PUBLIC NUISANCE AND RECOVERY OF COSTS ASSOCIATED THEREWITH

WHEREAS, on August 21, 2007 the City Council of the City of Calistoga considered, as one of its items of business, the abatement of a public nuisance occurring on the lands of John D. Busk, commonly referred to as Assessor's Parcel No. 11-310-023.

WHEREAS, the administrative nuisance abatement hearing was duly noticed and conducted in accordance with Chapter 1.12 of the Calistoga Municipal Code;

WHEREAS, the City has provided notice to the property owner in accordance with Section 1.12.060 of the Calistoga Municipal Code and extended opportunities to the property owner to correct the nuisance;

WHEREAS, pursuant to Calistoga Municipal Code Section 1.08.020, any condition caused or permitted to exist in violation of the Calistoga Municipal Code or any ordinance of the City is deemed a public nuisance and may be abated as such.

WHEREAS, the City Council found that the following violations of the Calistoga Municipal Code are occurring on the property:

1. Site grading (Section 17.15.010(B), Section 17.06.020(A)(2), Chapter 15.12 *et seq.* of the CMC and 2001 California Building Code, Sections 3304, 3306.1 and 3309.1);
2. Stockpiling of dirt and rock (Section 17.15.010(B), Section 17.06.020(A)(2), Section 8.24.020 CMC, Chapter 15.12 *et seq.* of the CMC and 2001 California Building Code, Section 3304);
3. Construction and stockpiling of materials within the drip line of protected trees (Section 17.15.010(B), Section 17.06.020(A)(2) and Chapter 19.01.040(C) of the CMC);
4. Storage of construction materials (CMC Section 8.24.020);
5. Alterations to drainage patterns (Section 17.15.010(B), Section 17.06.020(A)(2) and Chapter 15.12 *et seq.* of the CMC and 2001 California Building Code, Sections 3315, 3315.1, 3315.4);
6. The construction of retaining walls (Section 17.15.010(B), Section 17.06.020(A)(2) and Chapter 15.12 *et seq.* of the CMC and 2001 California Building Code, Sections 3304, 106.1);
7. Improperly designed and failing storm drainage junction box (Chapter 15.12 *et seq.* of the CMC and 2001 California Building Code, Sections 3315, 3315.1, 3315.4 and 106.1).

WHEREAS, the City Council further finds that the nuisances described above have been ongoing and represent a hazard to the City's public health, safety and welfare;

WHEREAS, after receiving oral and written reports and hearing public testimony, the City Council determined that a public nuisance exists; and

WHEREAS, the City Council will make available funds to abate the public nuisance as provided for in the City's Municipal Code.

NOW, THEREFORE, BE IT RESOLVED, that City Council finds that the aforementioned violations of the Calistoga Municipal Code constitute a public nuisance as defined in Calistoga Municipal Code Section 1.08.020 as conditions caused or permitted to exist in violation of the Calistoga Municipal Code.

BE IT FURTHER RESOLVED, that the City Council authorizes and directs the City Manager to abate the public nuisance pursuant to the provisions found in Calistoga Municipal Code Chapter 1.12 and in accordance with the following directives:

1. At any time within 30 days after the passage of this Resolution, the City Manager, or his designee, shall serve and post a copy of this Resolution in accordance with Section 1.12.060 of the Calistoga Municipal Code.
2. At any time following a period of five days after the serving and posting a copy of this Resolution as set forth in Section 1.12.060 of the Calistoga Municipal Code, the City Manager, or his designee, will commence the abatement of the nuisance.
3. Within a reasonable period the City will execute a contract with a civil engineer or other qualified representatives to prepare and design a removal and restoration plan for the area that will include the following: remediation of illegal site grading, removal of dirt and rock; removal of materials within the dripline of protected trees; removal of construction materials; remediation of illegal alterations to drainage patterns; removal of illegally constructed retaining walls; and removal and/or rehabilitation of failing storm drainage junction box.
4. Upon City acceptance of the removal and restoration plan, the City will enter into a contract with a licensed contractor to restore the lands affected to a condition that existed prior to the commencement of the unauthorized work.
5. The City Manager will work with the City Attorney to obtain any necessary court orders that may be required for City employees, the contracting agents or other representatives to enter upon the property for the purpose of abating the public nuisance.
6. Pursuant to CMC Section 1.12.100, the City Manager, or his designees, abating this nuisance will keep an account of the cost of abatement and will render an itemized written report to the Council, showing the cost of removing and/or abating the nuisance. The City will include in the costs of abatement all reasonable attorneys' fees incurred by the City in the nuisance abatement administrative proceeding.
7. Before the report is submitted to the Council, a copy will be posted for at least three days on the bulletin board of the City Hall with a notice of the time when the report will be submitted to the Council for confirmation.

8. A copy of the account and notice will also be given to Mr. Busk prior to submission to the Council. The notice shall direct Mr. Busk to appear at the stated time and place if he has any objection to the cost of abatement.
9. At the time fixed for receiving and considering the report, the Council will hear it and any objections by Mr. Busk. Thereupon the Council may make such modifications in the report as it deems necessary except that it may not increase the amount to be assessed without new notice to Mr. Busk.
10. The nuisance abatement lien shall be recorded in the County Recorder's office in the County. From the date of recording, it shall have the force, effect and priority of a judgment lien. The lien shall specify the amount of the lien that is imposed on behalf of the City, the date of the abatement order, the street, address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of Mr. Busk.

BE IT FURTHER RESOLVED, that the City Council authorizes and directs the City Manager to recover all costs incurred in abating the public nuisance as permitted by state law and the Calistoga Municipal Code.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at a regular meeting held this 21st day of August 2007, by the following vote:

AYES: Vice Mayor Dunsford, Councilmembers Slusser,
Garcia, Kraus and Mayor Gingles

NOES: None

ABSTAIN/ABSENT: None


JACK GINGLES, Mayor

ATTEST:

SUSAN SNEDDON, City Clerk