

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Calistoga that:

SECTION ONE:

Based on the above findings, the City Council of the City of Calistoga adopts this Ordinance to repealing and amending Chapters 1.08 (General Penalty), and 1.12 (Nuisance Abatement) of the Calistoga Municipal Code to clarify, streamline and improve program implementation.

SECTION TWO:

Chapter 1.08

GENERAL PENALTY

Sections:

- 1.08.010** **Violations; Code enforcement.**
- 1.08.020** **Criminal penalties.**
- 1.08.030** **Prosecutorial discretion.**
- 1.08.040** **Public nuisance.**
- 1.08.050** **Violation of permit.**
- 1.08.060** **Recovery of enforcement costs.**
- 1.08.070** **Judicial review.**

1.08.010 Violations; Code Enforcement.

- A. It is a violation for any person to violate any provision or to fail to comply with any requirement of this code or any City ordinance. Each and every day, or portion thereof, during which a code violation is committed, continued, or permitted by any person shall be a separate violation.
- B. For the purposes of chapters 1.08 and 1.12, a "responsible person" shall mean any of the following:
 - 1. 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.
 - 2. A person whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits, or allows a code violation.
 - 3. An owner of real property on which a code violation occurs.
 - 4. A lessee or sub-lessee with the current right of possession of real property on which a code violation occurs.
 - 5. 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.
 - 6. 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 subsections (1) through (5) above.
 - 7. If any of the above persons are minors or incompetent, the parents or guardians of such persons shall be deemed responsible persons.
- C. Each responsible person shall be jointly and severally liable for a code violation.
- D. The City may enforce any code violation by any one or more of the following methods at the City's discretion:
 - 1. Criminal penalty, under chapter 1.08.020.
 - 2. Civil injunction.
 - 3. By the granting or denial of permits or the forfeiture or revocation of permits.
 - 4. Public nuisance abatement, under chapter 1.12.
 - 5. Civil penalty.

- E. The City shall be entitled to recover its costs of enforcing code violations, under section 1.08.060.
- F. The remedies provided for in this Chapter are cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

1.08.020 Criminal penalties.

- A. Any person who violates any of the provisions of this code or any ordinance of the City shall be guilty of an infraction, unless the violation is specifically made a misdemeanor by this code or State law.
 - 1. An infraction is punishable by:
 - a. a fine not exceeding \$100 for a first violation;
 - b. a fine not exceeding \$200 for a second violation of the same code section within one year; or
 - c. a fine not exceeding \$500 for each additional violation of the same code section within one year.
 - 2. Notwithstanding section 1.08.020(A)(1), a violation of local building and safety codes determined to be an infraction are punishable as follows:
 - a. a fine not exceeding one hundred dollars (\$100) for a first violation;
 - b. a fine not exceeding five hundred dollars (\$500) for a second violation of the same code section within one year; or
 - c. a fine not exceeding one thousand dollars (\$1,000) for each additional violation of the same code section within one year.
 - 3. A code violation, which would otherwise be an infraction, is a misdemeanor if a person has been convicted of two or more violations of the same code section within a 12-month period.
- B. Misdemeanor. A misdemeanor is punishable by a fine not exceeding \$1,000, or imprisonment not exceeding six months, or both.
- C. Each person shall be guilty of a separate offense for each and every day, or portion thereof, during which any violation of this code or any ordinance of the City is committed, continued, or permitted by any such person.

1.08.030 Prosecutorial discretion.

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

1.08.040 Public nuisance.

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

1.08.050 Violation of permit.

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

1.08.060 Recovery of enforcement costs.

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

1.08.070 Judicial review.

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

Chapter 1.12
NUISANCE ABATEMENT

Sections:

- 1.12.010 Purpose.**
- 1.12.020 Application.**
- 1.12.030 Definitions.**
- 1.12.040 Cost recovery.**
- 1.12.050 Right of entry for inspection.**
- 1.12.060 Order to abate.**
- 1.12.070 Appealing the order to abate.**
- 1.12.080 Notice of Hearing before the Council.**
- 1.12.090 Service.**
- 1.12.100 Hearing procedure.**
- 1.12.110 Council's decision.**
- 1.12.120 Service of the Council's resolution.**
- 1.12.130 Abatement by owner or occupant.**
- 1.12.140 Abatement by City.**
- 1.12.150 Judicial Review.**
- 1.12.160 Hearing before Council on cost recovery.**
- 1.12.170 Emergency abatement.**
- 1.12.180 Abatement by civil action.**
- 1.12.190 Public nuisance by judicial decree.**

1.12.010 Purpose.

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

1.12.020 Application.

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

1.12.030 Definitions.

For the purposes of this chapter:

- A. "Enforcement costs" are defined at section 1.12.040(B).
- B. "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.
- C. "Responsible person" is defined at section 1.08.010(B).

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.

3. Where the violation involved real property, making the debt a lien or special assessment against the property in accordance with section 1.12.160.
4. Any other manner provided by law for the collection of debts.

1.12.050 Right of entry for inspection.

- A. Enforcement officers are authorized to enter upon and inspect any property or premises within the City to ascertain whether the ordinances of the City are being obeyed, including any examinations and surveys as may be necessary in the performance of their enforcement duties. Inspections conducted under this section may include the taking of photographs, samples, or physical evidence.
- B. Inspections conducted under this section shall be performed reasonably and in accordance with law, including the Fourth Amendment of the United States Constitution and the related protections of the California Constitution.
- C. 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 enforcement officer shall document permission to enter by securing a signed permission from the owner or occupant. If an owner or occupant of property or his/her agent refuses consent to entry and inspection, an enforcement officer may seek any warrant deemed necessary by the City Attorney.

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 section 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;

2. A list of the specific code section(s) that have been violated by the responsible person and a statement specifying that the enforcement officer has determined that the violation(s) constitute a nuisance;
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.
 - 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.
 - 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.
 - 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.
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.
5. The City's intent to seek recovery of enforcement costs, and if applicable, all attorneys' fees.
6. The name and phone number of a contact person at the City should the recipient desire to speak with an appropriate City representative.
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.

1.12.070 Appealing the order to abate.

- A. Form of Appeal. A person appealing an enforcement officer's notice of violation and order to abate shall do so by filing with the enforcement officer a written appeal containing the following information:
 - 1. A caption reading: "Appeal of," giving the names of all responsible persons participating in the appeal.
 - 2. A brief statement setting forth the appellant's legal interest in the property involved in the notice and order.
 - 3. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
 - 4. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside.
 - 5. The signatures of all parties named as appellants and their official mailing addresses.
 - 6. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

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

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

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

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

- F. Scope of Hearing on Appeal. Only those issues specifically raised by the appellant in the written appeal provided under subsection 1.12.070(A) shall be considered at the hearing.
- G. Staying of Order Under Appeal. Except for emergency abatement proceedings, enforcement of any abatement order shall be stayed during the pendency of a timely appeal therefrom.

1.12.080 Notice of hearing before the Council.

- A. General. In the event a responsible person seeks an appeal of the order to abate, the enforcement officer shall issue the responsible person a written notice to appear at a hearing before the Council for the appeal.
- B. Form of Notice to Appear.

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

TO: _____

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

Dated this _____ day of _____, 2____.

City Clerk

- C. Additional Contents of Notice to Appear. The notice to appear shall also include the following information:
 - 1. A copy of the enforcement officer's original order.
 - 2. A copy of this chapter.
 - 3. A statement notifying the appellant that upon the failure to appear for the hearing, or the failure to correct and abate a condition which is determined to constitute a violation, the Council may order the violation(s) abated and the responsible person(s) to bear the costs of the abatement, including without limitation, all enforcement costs and attorneys' fees incurred by the City.

4. If necessary, a modified enforcement order noticing the responsible person of any additional violations discovered on the property.
- D. Method of service. Unless otherwise noted, any notice to appear, or any other notices required to be given pursuant to this chapter shall be served and/or posted at the property at least 10 days before the date of the hearing in accordance with section 1.12.090.

1.12.090 Service.

- A. Notice shall be served by personal delivery of a copy of the notice to the 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.
- B. A copy of the notice shall also be conspicuously posted in front of the property on which the nuisance 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 wherein it will be most likely to give notice to the owner.
- C. Notices by United States 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 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. Service shall be effective on the date of mailing.
- D. The failure of any owner or responsible person to receive the notice shall not affect in any manner the validity of the proceedings taken hereunder.

1.12.100 Hearing procedure.

- A. Continuances. The City may continue a hearing from time to time, and may request additional information from the enforcement officer or the cited responsible person before issuing a decision.
- B. Burden of proof. The enforcement officer shall bear the burden of proving by a preponderance of the evidence that a public nuisance exists.
- C. Failure to appear. The failure of the cited responsible person to appear at the hearing shall constitute a failure to exhaust his/her administrative remedies.
- D. At the hearing. At the hearing, the cited responsible person shall be given the opportunity to testify, call witnesses, and to present evidence concerning the abatement order, including any evidence to show cause why the violation should not be abated at the cost of the cited responsible person.
 1. Oath or Affirmation. All oral evidence or testimony shall be taken under oath or affirmation. The presiding officer may administer the oath. In a given

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

2. Evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons customarily rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in and of itself to support a finding unless it would be admissible over objection in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.
3. Witnesses. In a contested proceeding each side shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues; to impeach any witness and to rebut the evidence against a party. The Council has the discretionary authority to: limit the number of witnesses to testify for each side where their testimony would be cumulative or repetitive in nature; require each side to appoint one spokesperson for purposes of cross-examination; limit or curtail any abusive, argumentative, repetitive, or otherwise irrelevant cross-examination; and place reasonable time limits on the right to cross-examine and present evidence.

1.12.110 Council's decision.

- A. Decision. After considering the testimony and evidence presented at the hearing, the Council shall issue a resolution approving, modifying, or rescinding the enforcement officer's order. The Council's decision shall identify the responsible person's obligation to pay all enforcement costs (including any amounts owed through the date that all violations are corrected).
- B. Finality of Decision. The decision of the Council shall be final. Nothing in this section shall in any way preclude or limit any aggrieved party from seeking judicial review after such person has exhausted the administrative remedies provided by this section. However, it shall be conclusively presumed that a person has not exhausted his/her administrative remedies as to any issue which is not raised in the administrative proceedings authorized herein, or if the person failed to appear before the Council.

1.12.120 Service of the Council's resolution.

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

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

1.12.130 Abatement by owner or occupant.

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

1.12.140 Abatement by City.

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

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

1.12.150 Judicial Review.

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

1.12.160 Hearing before Council on cost recovery.

- A. Upon completion of an abatement action, the enforcement officer shall prepare and file with the administrative services director a report stating the costs incurred by the City in abating the nuisance. If a responsible person is an owner of real property, the amount owed by the responsible person under this section may be made a lien or special assessment against the real property on which the violation occurred.
- B. Lien or special assessment procedure.
 - 1. The administrative services director shall fix a date, time, and place for the Council to consider the report and any protests or objections to it. The

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

2. A person whose real property may be subject to a lien or special assessment may file a written protest with the administrative services director and/or may protest orally at the hearing. Each written protest or objection must contain a description of the property at issue and the grounds of the protest or objection.
 3. At the conclusion of the hearing, the Council shall adopt a resolution confirming, discharging, or modifying the amount of the lien or special assessment.
- C. Upon a determination of the Council to adopt a lien or special assessment, the administrative services director shall provide notice of the lien or special assessment to the responsible person. For a lien, the notice shall be served as provided in California Government Code section 38773.1. For a special assessment, the notice shall be served as provided in California Government Code section 38773.5. The administrative services shall also record any applicable resolution adopted under section 1.12.160 as a lien or a special assessment in the office of the County Recorder of Napa County.
- D. Once payment in full is received by the City for the amount of the lien or special assessment set forth in the written order, plus any applicable interest or penalties, the administrative services director shall record a notice of discharge with the office of the County Recorder. The notice of discharge shall cancel the City's lien or special assessment.

1.12.170 Emergency abatement.

- A. Emergency abatement authorized. Notwithstanding any other provision of this code, 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/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 provided for in this chapter.
- B. Evidence gathering. Before commencing an emergency abatement, the enforcement officer shall gather evidence of the nuisance to be abated by taking pictures or otherwise documenting the nuisance requiring emergency abatement. All such evidence gathering must be done in compliance with section 1.12.050.

- C. Notice. Before commencing an emergency abatement, the enforcement officer shall make reasonable attempts to contact the owner or other responsible person by phone or in person. Written notice of the emergency abatement shall be provided to the owner or other responsible person within 48 hours of the abatement. The written notice shall include the following:
1. a statement explaining the City's power to abate the nuisance under this section;
 2. the information provided for in subsections 1.12.060(B)(1, 2, 5, and 6);
 3. a copy of this chapter; and
 4. the time and method for requesting a post-abatement hearing as provided for in section 1.12.170(E).
- D. Costs. The City may recover the expense or cost resulting from the emergency abatement from the owner or other responsible person in accordance with section 1.12.040.
- E. Post-abatement hearing. An owner or other responsible person may request a hearing before the Council to determine whether the nuisance should have been summarily abated by filing a written request with the City Manager within 15 days of the service of notice set forth in subsection 1.12.170(C). Such request must be in substantial conformance with section 1.12.070. Failure to request a hearing within the time allotted shall constitute a failure to exhaust administrative remedies.

1.12.180 Abatement by civil action.

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

1.12.190 Public nuisance by judicial decree.

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

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 **17th day of May 2011**, by the following vote:

AYES: Councilmembers Kraus, Slusser, Canning, Vice Mayor Dunsford,
Mayor Gingles


NOES: None

ABSTAIN/ABSENT: None



JACK GINGLES, Mayor

ATTEST:



AMANDA DAVIS, Deputy City Clerk