




TOWN OF FAIRFAX

STAFF REPORT

March 6, 2019

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 

SUBJECT: Introduce and read by title only an Ordinance entitled "An Ordinance of the Town Council of the Town of Fairfax Amending Fairfax Municipal Code, Chapter 1.12 Regarding the Abatement of Public Nuisances" to update and clarify the Town's nuisance abatement procedures and cost recovery provisions; CEQA Categorical Exemption CEQA Guidelines §§ 15301, 15305, and 15308

RECOMMENDATION

Introduce and read by title only "An Ordinance of the Town Council of the Town of Fairfax Amending Fairfax Municipal Code, Chapter 1.12 Regarding the Abatement of Public Nuisances," to update and clarify the Town's nuisance abatement procedures and cost recovery provisions.

DISCUSSION

It has come to the attention of Town Staff and the Town Attorney's office that certain nuisance abatement procedures should be updated and clarified to ensure it conforms to current state law. In particular, the Town's cost recovery procedures should be updated to better reflect state law requirements to collect such costs either as a lien or a special assessment as specified in California Government Code Section 38771 et seq. Specifically, the ordinance provides additional definitions; identifies which owners and interested parties must be given notice and the manner of giving notice; provides for a hearing upon the request to challenge the Town's determination that a nuisance exists; clarifies the procedures governing the request for, and conduct of, a nuisance abatement hearing; and updates the cost recovery procedures. It should be noted that the existing definitions of what constitutes a public nuisance would remain unchanged.

FISCAL IMPACT

None at this time.

ATTACHMENT

Ordinance

Redline of existing ordinance

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING FAIRFAX MUNICIPAL CODE, CHAPTER 1.12
REGARDING ABATEMENT OF PUBLIC NUISANCES

WHEREAS, the Town Council believes that enforcement of the Fairfax Municipal Code is a matter of local concern and serves important public purposes;

WHEREAS, the Town Council has determined that it is in the best interests of the Town to gain compliance with the Fairfax Municipal Code, its adopted codes, ordinances and regulations in a timely and efficient manner; and

WHEREAS, this Ordinance will update the Town's nuisance abatement tools and procedures to help protect the public health, safety and welfare.

The Town Council of the Town of Fairfax does ordain as follows:

SECTION 1. Section 1.12.005 – Definitions. The Town Council hereby amends and restates Section 1.12.005, entitled “Definitions,” of the Fairfax Municipal Code to read as follows:

“1.12.005 Definitions.

Except as otherwise provided, the following words, terms and phrases used in this chapter are defined as set forth in this section:

- A. “Abate” means, but is not limited to, modifying, repairing, replacing, removing, securing, locking, demolishing, or otherwise remedying the condition in question by such means and to such extent as necessary.
- B. “Building” means any structure, (including but not limited to, any house, garage, duplex, apartment, condominium, stock cooperative, mobile home or other residential buildings or associated accessory structures) and any commercial, industrial or other establishment, warehouse, kiosk, sign or other structure affixed to or upon real property used as a dwelling or for the purpose of conducting a business, storage or any other activity.
- C. “Code” means the Fairfax Municipal Code.
- D. “Day” means calendar day.
- E. “Enforcement Officer” means the town manager, or the building official, fire chief, director of public works or police chief of the Town, or their designees, when such persons have been delegated in writing the authority to enforce and administer the particular provisions of this chapter or of this code at issue in a particular matter.

F. "Hearing Officer" means the hearing officer appointed by the Town Council or, if no officer is appointed, the Town Council. The hearing officer may be a Town employee, but in that event the hearing officer shall not have had any responsibility for the investigation, prosecution or enforcement of this chapter and shall not have had any personal involvement in the proceeding to be heard within the past twelve months or possess any disqualifying interest in the outcome of the proceeding.

G. "Owner" means any person, his/her heirs, executors, administrators or assigns, agent, firm, partnership or corporation having or claiming any legal or equitable interest in the property in question, including all persons listed as owners on the last available equalized tax assessment roll for Marin County.

H. "Property" means all residential, industrial, commercial, agricultural, open space and other real property, including but not limited to, front yards, side yards, driveways, walkways, alleys and sidewalks, and shall include any building or other structure, whether fixed or moveable, located on such property.

I. "Public nuisance" or "nuisance" means anything injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a neighborhood or by a considerable number of persons in the Town. In addition, any condition caused or permitted to exist in violation of any provision of this Code shall be deemed a public nuisance.

J. "Responsible party" means any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of any person under the age of eighteen years, who causes, permits or maintains a violation of this code, its adopted codes or applicable state codes.

K. "Town" means the Town of Fairfax.

L. "Town Council" means the Town Council of the Town of Fairfax."

SECTION 2. **Sections 1.12.055 to 1.12.155 – Abatement Procedures.** Sections 1.12.055 through 1.12.155 are hereby repealed. The Town Council hereby adopts, amends and restates Sections 1.12.055 through 1.12.130 of the Fairfax Municipal Code to read as follows:

"1.12.055 Property owner responsibilities.

It shall be the duty of the owner, and of the responsible party occupying or having charge or control of any parcel of land, improved or unimproved, to maintain such parcel of land free of any nuisance and/or nuisance conditions at all times. The same responsibility extends to the public rights-of-way or public land, related to any vehicle, vessel, structure, machinery, container, refuse, debris or other item found to be or having been under the charge or control of a property owner, responsible party, or last registered or documented owner. Any owner

or responsible party shall be responsible for the removal or correction of any nuisance or nuisance conditions and the costs for such removal or correction.

1.12.060 Attorneys' fees.

Notwithstanding anything in this code to the contrary, the Town may only recover its attorneys' fees in any action, administrative proceeding or special proceeding commenced by the Town to abate a public nuisance, to enjoin violation of any provision of this code, including its adopted codes, or to collect a civil debt owing to the Town, if the Town elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In these cases, the prevailing party shall be entitled to recover all costs incurred therein, including reasonable attorneys' fees and costs of suit. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the Town in the action or proceeding. The Town is the prevailing party if the any portion of the notice to abate is upheld.

1.12.065 Notice to abate nuisance conditions.

- A. When the enforcement officer finds that a nuisance condition exists upon any property in the Town, he or she may, or upon the direction of the Town Council shall, serve a notice to abate upon all owners and all responsible parties, directing them to abate or cause the nuisance condition(s) upon the premises to be abated on or before a specified compliance date. When ordering abatement of a nuisance, the enforcement officer may order a condition to be abated by repair, rehabilitation, demolition, removal or termination. The notice shall also state that any owner or responsible party may file a written request for a hearing with the Town Clerk to dispute the alleged conditions within ten days of service of the notice.
- B. All owners and responsible parties must be served with the notice to abate in the manner required by Section 1.12.070 ("Methods of Service").
- C. The procedure in Subsection A does not apply to public nuisances constituting an imminent hazard. In such instances, the provisions in Section 1.12.115 shall be followed.
- D. An owner or responsible party may appeal a notice to abate by filing a written request for an appeal with the Town Clerk within ten days of service of the notice to abate. The written appeal shall identify the property address, specify the grounds for the appeal, list the date of the notice to abate being appealed from and be signed by the appellant. In the event an owner or responsible party files a timely request for hearing, the Town Clerk and hearing officer shall schedule the hearing. The hearing shall be conducted no later than 60 days of receipt of the request, unless otherwise agreed to in writing by the parties. The Town Clerk shall send written notice of the location, time and date of the hearing at least ten days in advance of the hearing date.
- E. Failure of any owner or responsible party to timely appeal the notice to abate constitutes a waiver of the right to appeal a notice to abate or seek judicial review, and the nuisance

conditions shall be deemed confirmed. Such failure shall also constitute a failure to exhaust available administrative remedies. If the owner or responsible party fails to appeal the notice and if the nuisance condition has not been abated on or before the compliance date, the enforcement officer may, without any administrative hearing, cause the abatement of the nuisance condition upon the premises.

1.12.070 Methods of Service.

A. Any notice or document required to be served under this chapter may be served by certified mail with return receipt requested, by first class mail, or by personal service. Service is deemed effective on the date it is personally delivered or placed in a U.S. Postal Service receptacle.

B. Any notice or document issued to an owner must be sent to the mailing address on the last equalized assessment roll of the Marin County Assessor's Office.

C. If there is no known address for any responsible party, the notice must either be sent to the property address or posted at or upon the main entrance of the building or structure or at another prominent location on the real property.

D. Failure of any owner or responsible party to receive a document properly served pursuant to this chapter does not affect the validity of the notice or document, service, or any action or proceeding pursuant to this chapter.

1.12.075 Manner of conducting abatement hearing.

In the event a hearing is timely requested pursuant to Section 1.12.065, the hearing shall be conducted pursuant to the following procedures:

A. At the time and place designated in the notice of hearing, the hearing officer shall hear and consider all relevant evidence, including but not limited to, applicable staff reports, oral evidence, physical evidence and documentary evidence regarding the alleged nuisance, and proposed method of abatement. The hearing may be continued from time to time.

B. Failure of the owner or responsible party to appear at the hearing shall be deemed a waiver of the right to a hearing and an admission by the owner or responsible party of the existence of the nuisance condition charged. In the event of such failure to appear, the hearing officer may order that the nuisance condition be abated by the enforcement officer. Such failure to appear shall also constitute a failure to exhaust available administrative remedies.

C. The Town shall bear the burden of proof to demonstrate, by a preponderance of the evidence, that a nuisance exists and that the proposed mechanism for abatement is appropriate, if specified in the notice to abate. The issuance of a notice to abate constitutes prima facie evidence of the existence of a violation. The Town need not demonstrate that the proposed mechanism for abatement is either the most appropriate or least expensive.

D. The hearing shall not be conducted according to the formal rules of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to 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 in courts of competent jurisdiction in this state. However, irrelevant or unduly repetitious evidence may be excluded.

E. Prior to conclusion of the hearing, if the owner or responsible party is present, the hearing officer may request the owner or responsible party to sign a consent to enter and perform work. The permission given shall be used only if the nuisance condition is determined to exist and is not abated by the schedule of correction specified in the hearing officer's decision.

F. If the owner or responsible party does not provide written consent, entry onto the property may be made by obtaining verbal permission from the owner or a responsible party, or by means of an inspection or abatement warrant, or by any other lawful manner.

1.12.080 Issuance of decision, findings and order.

A. Within ten days after the conclusion of the hearing, the hearing officer shall issue a written decision. The decision shall set forth the factual findings made by the hearing officer, a conclusion as to whether a nuisance condition exists, the manner of abatement, including an order that such nuisance (if one is found to exist) be abated by the Town and a schedule of correction or the date by which the abatement shall be completed.

B. If the hearing officer determines that a nuisance exists which has not been corrected within the time period specified in the notice to abate nuisance conditions, the hearing officer shall so find in the decision, and may include in the decision any or all of the following:

1. An order to correct, including a schedule of correction where appropriate;

2. An order to pay administrative costs as provided in Section 1.12.095 of this chapter.

C. Failure to issue a decision in ten days shall not affect the validity of such decision.

D. The decision shall be mailed by certified mail with a return receipt requested to the owner and shall be mailed to the enforcement officer. A copy of a summary of the decision and any order it contains shall also be posted on the property by the enforcement officer in a conspicuous location.

1.12.085 Abatement by enforcement officer if nuisance is not abated.

A. If the event that the owner or responsible party fails to appeal the notice to abate, or upon receipt of the hearing officer's decision if: (i) no schedule of correction has been issued; or (ii) upon the failure of the owner and responsible part to comply with such schedule if a

schedule was included, and if the nuisance condition has not been abated the enforcement officer shall forthwith abate, or cause to be abated, the nuisance condition upon the premises. The enforcement officer is authorized to enter upon private property for this purpose, consistent with the provisions of the U.S. Constitution.

B. The cost of abatement shall become a personal obligation of the owner and responsible party and may be collected in any legal manner, expressly including as lien or special assessment pursuant to the procedures set forth in this chapter. The cost of abatement of any public nuisance may include: inspection costs; investigation costs; boundary determination and measurement costs; attorneys' fees and costs; clerical and associated administrative costs; and costs to repair and eliminate all substandard conditions, including costs of consultants and private contractors.

1.12.090 Abatement by owner/responsible party.

A. Any owner or responsible party may, at his/her/its own expense and prior to the scheduled abatement hearing, abate a declared nuisance condition in accordance with the provisions of the notice sent by the enforcement officer; provided that all necessary permits are first obtained. If the enforcement officer determines that the nuisance condition has been abated prior to the hearing, the hearing proceedings shall be terminated. If any abatement referenced in this section takes place after the specified compliance date, but prior to date set for hearing, termination of the hearing shall only take place upon the owner or responsible party's payment of outstanding penalties, administrative and/or abatement costs, including attorneys' fees if applicable.

B. Any owner or responsible party may also request the Town to abate a declared nuisance condition on his/her/its property. However, the owner or responsible party making the request shall be responsible for the payment of all penalties, abatement costs and/or administrative costs, including attorneys' fees if applicable, incurred by the Town. The request for the Town to perform the abatement shall be in writing and include a written consent to enter and perform work. Any such request shall be deemed an agreement to pay for the costs of such abatement, including but not limited to any penalties, administrative costs, and an agreement that such costs may be collected as a lien or special assessment upon the property. The abatement hearing proceedings shall thereafter be terminated.

1.12.095 Liability for abatement costs.

A. In addition to liability for the costs of abatement itself pursuant to Section 1.12.085 and this section of this chapter, the owner and responsible party shall be jointly and severally liable for any expenses and administrative costs incurred by the Town, county or any related agency incurred after the initial inspection and identification of the nuisance.

B. The administrative costs may include any and all fees and costs incurred by the Town in connection with the matter before the hearing officer, including but not limited to, costs of investigation, Town staffing costs incurred in preparation for the hearing and for the

hearing itself, fees and costs of the Town's consultants, and costs for all re-inspections necessary to enforce the notice to abate nuisance conditions.

C. In the event that the Town is entitled to recover its attorneys' fees and costs pursuant to Section 1.12.060, such fees and costs shall be collected at the same time and pursuant to the same procedures as administrative costs pursuant to this section.

D. The enforcement officer or other authorized Town official shall keep an itemized report of the costs incurred by the Town in the abatement of any public nuisance. The owner and responsible party shall be invoiced for the total. If payment is not received, the itemized report shall be submitted in writing to the Town Clerk no sooner than twenty days of the invoice date. In the event the invoice is not paid within thirty days, the Town may collect all such abatement costs and interest through a lien or special assessment under Sections 1.12.100 and 1.12.105.

E. All abatement costs shall bear interest at the rate of ten percent per annum from the date of abatement.

1.12.100 Lien procedure.

In the event the Town decides to collect abatement costs as a lien, it shall impose such lien pursuant to this section:

A. Upon receipt of the itemized report, the Town Clerk, or his or her designee, shall serve notice of the lien upon all owners in the same manner as summons in a civil action in accordance with Code of Civil Procedure section 415.10 et seq. or otherwise as provided by Government Code, section 38773.1, as may be amended from time to time. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation in Marin County. The period of notice commences upon the first day of publication and terminates at the end of the tenth day, including therein the first day. Publication shall be made on each day on which the newspaper is published during the ten-day period.

B. The notice shall inform the owner of the pending lien and inform the property owner of the public hearing where the Town Council will consider imposing the itemized report as a lien against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, including any evidence or objections of the owners as to the itemized report, the Town Council may adopt a resolution confirming the itemized report and directing the Town Clerk to record a lien against the property in the Marin County Recorder's office and, from the date of recording, shall have the force, effect and priority of a judgment lien.

D. The lien shall identify:

1. The amount of the lien;
 2. The Town as the agency on whose behalf the lien is imposed;
 3. The date of the abatement order or citation;
 4. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed; and
 5. The name and address of the recorded owner of the parcel.
- E. In the event that the lien is discharged, released or satisfied, through either payment or foreclosure, notice of the discharge, release, or satisfaction containing the information specified in Subsection D shall be recorded by the Town Clerk.
- F. A lien may be foreclosed by an action brought by the Town for a money judgment.
- G. The Town may recover from the property owner any costs incurred in the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

1.12.105 Special assessment procedure.

In the event the Town decides to collect abatement costs as a special assessment, it shall impose such special assessment pursuant to this section:

- A. Upon receipt of the itemized report, the Town Clerk shall provide written notice of the special assessment to all owners by certified mail if the property owner's identity can be determined from the county assessor's or county recorder's records, or as otherwise provided by Government Code, section 38773.5, as may be amended from time to time. The notice shall inform the owner of the pending special assessment, and the date, time and location of the public hearing where the Town Council will consider imposing the itemized report as a special assessment against the property, and that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The hearing shall be conducted no less than ten days from service of the notice.
- B. At the hearing and after considering the relevant evidence, including any evidence or objections of the owners as to the itemized report, the Town Council may adopt a resolution confirming the itemized report and assessing the report as a special assessment against the property. The Town Clerk shall then provide all documentation necessary to the county to enter such assessment. After entry, the assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. All laws applicable to the levy, collection and

enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead transferred to the unsecured roll for collection.

C. Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the Town may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

D. Notices or instruments relating to the special assessment shall be entitled to recordation with the Marin County Recorder's Office. After recordation, the special assessment may be foreclosed on as a lien in the manner and means provided by law.

1.12.110 Order for treble costs of abatement.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with the provisions of this chapter, except for conditions abated pursuant to section 17980 of the Health and Safety Code, relating to abandoned buildings, the court may order the owner to pay treble the costs of the abatement, as authorized by Government Code section 38773.7. Costs of abatement shall include, without limitation by reason of enumeration, all administrative costs of the Town.

1.12.115 Summary abatement.

A. Notwithstanding any provision of the code to the contrary, the Town Manager, or his or her designee, may cause a public nuisance to be summarily abated in accordance with the procedures set forth in this section if it is determined that the nuisance is immediately or potentially dangerous to the life, health or safety of the occupants of the property or to the public.

B. Actions taken to abate immediately or potentially dangerous nuisances may include, but are not limited to, repair or removal of the condition creating the danger and/or the restriction from use or occupancy of the property on which the condition exists or any other abatement action determined by the enforcement officer to be necessary. Where a residential rental property is involved, this may require the moving and relocation of the occupants by the owner and/or responsible party to other habitable temporary or permanent accommodations. Any temporary accommodations will be maintained by the owner and/or responsible party, at his/her/its expense, until the corrections are done to the vacated residential property so that it is habitable and the occupants are returned.

C. Within 10 days following summary abatement, or as soon thereafter as reasonable possible under the circumstances, notice of the summary abatement must be provided to all owners and responsible parties in the manner required by Section 1.12.070. The notice shall

describe the condition and the reason it was immediately or potentially dangerous, and a brief description of the actions Town personnel took to abate the dangerous condition. Such notice shall include a provision authorizing the owner or responsible party to dispute the existence of the nuisance conditions or the Town's determination that the condition was immediately or potentially dangerous before the hearing officer. Any request for an appeal shall be filed in writing with the Town Clerk within ten days of the notice and shall be conducted in the same manner as all applicable procedures under Sections 1.12.075 through 1.12.080.

D. Omission of any of the foregoing provisions in a notice of summary abatement, whether in whole or in part, or the failure of an owner or responsible party to receive this document, does not render it defective or render any proceeding or action pursuant to this chapter invalid.

E. The enforcement officer shall keep an itemized report of the costs incurred by the Town in the summary abatement. The costs and expenses for summary abatement, if not paid by the property owner within thirty days of the date of the invoice, shall be collected pursuant to the procedures set forth in Sections 1.12.100 through 1.12.105 of this chapter.

1.12.120 Right of judicial review.

Except as otherwise provided by law, any person aggrieved by any administrative decision of a hearing officer pursuant to this chapter, may obtain judicial review of the administrative decision in the superior court by filing with the court a petition for writ of mandate pursuant to Section 1094.6 of the Code of Civil Procedure.

1.12.125 Violations and Penalties.

A. It is a public nuisance and unlawful for any person to allow, cause, create, maintain, suffer, or permit others to maintain, any real property in the Town in such a manner that violates this chapter.

B. Any person violates this chapter is guilty of a misdemeanor offense punishable in accordance with Section 1.08.010 of this Code, unless it is charged as an infraction in the discretion of the Town Attorney or designated prosecuting attorney.

C. Each person shall be guilty of a separate offense for each and every day, or part thereof, during which a violation of this chapter is allowed, caused, committed, continued, maintained, suffered, or permitted by such person.

1.12.130 Remedies.

The remedies provided in this chapter are nonexclusive. The Town may prosecute any violation and abate any nuisance pursuant to any criminal, civil or other administrative remedies available to the Town.”

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 4. CEQA. This ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, “CEQA”) and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*) because it establishes rules and procedures to permit operation of existing facilities; consists only of minor revisions and clarifications to existing regulations and specification of procedures related thereto; and consists of actions taken to assure the maintenance, protection and enhancement of the environment. This ordinance, therefore, does not have the potential to cause significant effects on the environment. Consequently, it is categorically exempt from further CEQA review under 14 Cal. Code Regs. §§ 15301, 15305, and 15308.

SECTION 5. Effective Date and Posting. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women’s Club.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ____ day of _____, 2019, and duly adopted at the next regular meeting of the Town Council on the ____ day of _____, 2019, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

BARBARA COLER, Mayor

ATTEST:

Michele Gardner, Town Clerk

Date

REDLINE OF PROPOSED CHANGES TO SPECIFIED PROVISIONS OF FAIRFAX TOWN CODE CHAPTER 1.12 “NUISANCES”

[Note: Town Code Sections 1.12.010 through 1.12.050 are omitted from this redline because they are not proposed to be amended or repealed.]

§1.12.005 Definitions.

~~For the purpose of this chapter~~Except as otherwise provided, the following words, terms and phrases shall mean~~used in this chapter are defined as set forth in this section:~~

~~A. —~~**OCCUPANT.**~~—~~Includes “Abate” means, but is not limited to, the owner, the owner's agent or employee, a lessee, lessee's agent or employee, a tenant, tenant's agent or employee, or any person otherwise in possession and/or control of any property. If the owner is the occupant of the property, provisions relating to the owner and to the occupant shall be treated as relating to one person modifying, repairing, replacing, removing, securing, locking, demolishing, or otherwise remedying the condition in question by such means and to such extent as necessary.

~~—~~**OWNER.**~~—~~The owner of record as shown in the current Marin County Assessor's tax records. For purposes of providing notice to such owner of any action under this chapter, owner shall include the actual owner of record, or such owner's agent, employee or other legal representative.

~~—~~**PROPERTY.**~~—~~Any grounds, lot, parcel, tract or other piece of land, as well as any building or other structure located thereon.

B. “Building” means any structure, (including but not limited to, any house, garage, duplex, apartment, condominium, stock cooperative, mobile home or other residential buildings or associated accessory structures) and any commercial, industrial or other establishment, warehouse, kiosk, sign or other structure affixed to or upon real property used as a dwelling or for the purpose of conducting a business, storage or any other activity.

C. “Code” means the Fairfax Municipal Code.

D. “Day” means calendar day.

E. “Enforcement Officer” means the town manager, or the building official, fire chief, director of public works or police chief of the Town, or their designees, when such persons have been delegated in writing the authority to enforce and administer the particular provisions of this chapter or of this code at issue in a particular matter.

F. “Hearing Officer” means the hearing officer appointed by the Town Council or, if no officer is appointed, the Town Council. The hearing officer may be a Town employee, but

in that event the hearing officer shall not have had any responsibility for the investigation, prosecution or enforcement of this chapter and shall not have had any personal involvement in the proceeding to be heard within the past twelve months or possess any disqualifying interest in the outcome of the proceeding.

G. “Owner” means any person, his/her heirs, executors, administrators or assigns, agent, firm, partnership or corporation having or claiming any legal or equitable interest in the property in question, including all persons listed as owners on the last available equalized tax assessment roll for Marin County.

H. “Property” means all residential, industrial, commercial, agricultural, open space and other real property, including but not limited to, front yards, side yards, driveways, walkways, alleys and sidewalks, and shall include any building or other structure, whether fixed or moveable, located on such property.

I. “Public nuisance-” or “nuisance” means anything injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by a neighborhood or by a considerable number of persons in the Town. In addition, any condition caused or permitted to exist in violation of any provision of this Code shall be deemed a public nuisance, and each day such condition continues shall constitute a new and separate offense.

J. “Responsible party” means any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of any person under the age of eighteen years, who causes, permits or maintains a violation of this code, its adopted codes or applicable state codes.

K. “Town” means the Town of Fairfax.

L. “Town Council” means the Town Council of the Town of Fairfax.”

[TOWN CODE SECTIONS 1.12.010 THROUGH 1.12.050 OMITTED.]

§“1.12.055 ABATEMENTProperty owner responsibilities.

It shall be the duty of the owner, and of the responsible party occupying or having charge or control of any parcel of land, improved or unimproved, to maintain such parcel of land free of any nuisance and/or nuisance conditions at all times. The same responsibility extends to the public rights-of-way or public land, related to any vehicle, vessel, structure, machinery, container, refuse, debris or other item found to be or having been under the charge or control of a property owner, responsible party, or last registered or documented

owner. Any owner or responsible party shall be responsible for the removal or correction of any nuisance or nuisance conditions and the costs for such removal or correction.

1.12.060 Attorneys' fees.

Notwithstanding anything in this code to the contrary, the Town may only recover its attorneys' fees in any action, administrative proceeding or special proceeding commenced by the Town to abate a public nuisance, to enjoin violation of any provision of this code, including its adopted codes, or to collect a civil debt owing to the Town, if the Town elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In these cases, the prevailing party shall be entitled to recover all costs incurred therein, including reasonable attorneys' fees and costs of suit. In no action, administrative proceeding or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the Town in the action or proceeding. The Town is the prevailing party if the any portion of the notice to abate is upheld.

1.12.065 Notice to abate nuisance conditions.

A. When the enforcement officer finds that a nuisance condition exists upon any property in the Town, he or she may, or upon the direction of the Town Council shall, serve a notice to abate upon all owners and all responsible parties, directing them to abate or cause the nuisance condition(s) upon the premises to be abated on or before a specified compliance date. When ordering abatement of a nuisance, the enforcement officer may order a condition to be abated by repair, rehabilitation, demolition, removal or termination. The notice shall also state that any owner or responsible party may file a written request for a hearing with the Town Clerk to dispute the alleged conditions within ten days of service of the notice.

B. All owners and responsible parties must be served with the notice to abate in the manner required by Section 1.12.070 ("Methods of Service").

C. The procedure in Subsection A does not apply to public nuisances constituting an imminent hazard. In such instances, the provisions in Section 1.12.115 shall be followed.

D. An owner or responsible party may appeal a notice to abate by filing a written request for an appeal with the Town Clerk within ten days of service of the notice to abate. The written appeal shall identify the property address, specify the grounds for the appeal, list the date of the notice to abate being appealed from and be signed by the appellant. In the event an owner or responsible party files a timely request for hearing, the Town Clerk and hearing officer shall schedule the hearing. The hearing shall be conducted no later than 60 days of receipt of the request, unless otherwise agreed to in writing by the parties. The Town Clerk shall send written notice of the location, time and date of the hearing at least ten days in advance of the hearing date.

E. Failure of any owner or responsible party to timely appeal the notice to abate constitutes a waiver of the right to appeal a notice to abate or seek judicial review, and the nuisance conditions shall be deemed confirmed. Such failure shall also constitute a failure to exhaust available administrative remedies. If the owner or responsible party fails to appeal the notice and if the nuisance condition has not been abated on or before the compliance date, the enforcement officer may, without any administrative hearing, cause the abatement of the nuisance condition upon the premises.

1.12.070 Methods of Service.

A. Any notice or document required to be served under this chapter may be served by certified mail with return receipt requested, by first class mail, or by personal service. Service is deemed effective on the date it is personally delivered or placed in a U.S. Postal Service receptacle.

B. Any notice or document issued to an owner must be sent to the mailing address on the last equalized assessment roll of the Marin County Assessor's Office.

C. If there is no known address for any responsible party, the notice must either be sent to the property address or posted at or upon the main entrance of the building or structure or at another prominent location on the real property.

D. Failure of any owner or responsible party to receive a document properly served pursuant to this chapter does not affect the validity of the notice or document, service, or any action or proceeding pursuant to this chapter.

1.12.075 Manner of conducting abatement hearing.

In the event a hearing is timely requested pursuant to Section 1.12.065, the hearing shall be conducted pursuant to the following procedures:

A. At the time and place designated in the notice of hearing, the hearing officer shall hear and consider all relevant evidence, including but not limited to, applicable staff reports, oral evidence, physical evidence and documentary evidence regarding the alleged nuisance, and proposed method of abatement. The hearing may be continued from time to time.

B. Failure of the owner or responsible party to appear at the hearing shall be deemed a waiver of the right to a hearing and an admission by the owner or responsible party of the existence of the nuisance condition charged. In the event of such failure to appear, the hearing officer may order that the nuisance condition be abated by the enforcement officer. Such failure to appear shall also constitute a failure to exhaust available administrative remedies.

C. The Town shall bear the burden of proof to demonstrate, by a preponderance of the evidence, that a nuisance exists and that the proposed mechanism for abatement is appropriate, if specified in the notice to abate. The issuance of a notice to abate constitutes

prima facie evidence of the existence of a violation. The Town need not demonstrate that the proposed mechanism for abatement is either the most appropriate or least expensive.

D. The hearing shall not be conducted according to the formal rules of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to 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 in courts of competent jurisdiction in this state. However, irrelevant or unduly repetitious evidence may be excluded.

E. Prior to conclusion of the hearing, if the owner or responsible party is present, the hearing officer may request the owner or responsible party to sign a consent to enter and perform work. The permission given shall be used only if the nuisance condition is determined to exist and is not abated by the schedule of correction specified in the hearing officer's decision.

F. If the owner or responsible party does not provide written consent, entry onto the property may be made by obtaining verbal permission from the owner or a responsible party, or by means of an inspection or abatement warrant, or by any other lawful manner.

1.12.080 Issuance of decision, findings and order.

A. Within ten days after the conclusion of the hearing, the hearing officer shall issue a written decision. The decision shall set forth the factual findings made by the hearing officer, a conclusion as to whether a nuisance condition exists, the manner of abatement, including an order that such nuisance (if one is found to exist) be abated by the Town and a schedule of correction or the date by which the abatement shall be completed.

B. If the hearing officer determines that a nuisance exists which has not been corrected within the time period specified in the notice to abate nuisance conditions, the hearing officer shall so find in the decision, and may include in the decision any or all of the following:

1. An order to correct, including a schedule of correction where appropriate;

2. An order to pay administrative costs as provided in Section 1.12.095 of this chapter.

C. Failure to issue a decision in ten days shall not affect the validity of such decision.

D. The decision shall be mailed by certified mail with a return receipt requested to the owner and shall be mailed to the enforcement officer. A copy of a summary of the decision and any order it contains shall also be posted on the property by the enforcement officer in a conspicuous location.

1.12.085 Abatement by enforcement officer if nuisance is not abated.

A. If the event that the owner or responsible party fails to appeal the notice to abate, or upon receipt of the hearing officer's decision if: (i) no schedule of correction has been issued; or (ii) upon the failure of the owner and responsible part to comply with such schedule if a schedule was included, and if the nuisance condition has not been abated the enforcement officer shall forthwith abate, or cause to be abated, the nuisance condition upon the premises. The enforcement officer is authorized to enter upon private property for this purpose, consistent with the provisions of the U.S. Constitution.

~~B. (A) The owner and the occupant of any property shall be jointly and severally responsible for abating any condition or act which the Town Council has declared by resolution to be a public nuisance and for all costs associated with the abatement. The cost of abatement shall become a personal obligation of the owner and responsible party and may be collected in any legal manner, expressly including as lien or special assessment pursuant to the procedures set forth in this chapter. The cost of abatement of any public nuisance and related administrative costs shall may include, but not be limited to: inspection costs; investigation costs; boundary determination and measurement costs; attorneys' fees and costs; clerical and associated administrative costs; and costs to repair and eliminate all substandard conditions. If such public nuisance has not been abated within the time prescribed by this chapter, the Town Council may authorize the Director of Public Works or Building Official to remove, abate or destroy the same as hereafter provided, including costs of consultants and private contractors.~~

~~(B) The prevailing party in any action, administrative proceeding or special procedure to abate a public nuisance pursuant to this section may recover its reasonable attorneys' fees in those individual actions or proceedings wherein the town elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party exceed the amount of reasonable attorneys' fees incurred by the town in the action or proceeding.~~

~~(C) The town may collect the cost of abatement of any nuisance and related administrative costs, including but not limited to inspection costs, investigation costs, attorneys' fees and costs, and costs to repair and eliminate all substandard conditions by either: obtaining a court order stating that this reimbursement requirement is a personal obligation of any person held responsible for creating, causing, committing or maintaining a public nuisance, recoverable by the town in the same manner as any civil judgment; recording a nuisance abatement lien pursuant to this Code against the parcel of land on which the nuisance is maintained; or imposing a special assessment pursuant to this Code against the parcel of land on which the nuisance is maintained. (Ord. 734, passed 6-18-2008)~~

~~§ 1.12.060 INITIAL STAFF INVESTIGATION.~~

~~When the Director of Public Works ("Director") or Building Official becomes aware of the possible existence of a nuisance in the town, where feasible the Director or Building Official, or his or her designee, shall contact the owner or occupant to confirm the existence of nuisance conditions and to request voluntary compliance~~

with this Code.

(Ord. 734, passed 6-18-2008)

§ 1.12.065 NOTICE OF VIOLATION FORM.

—(A) A Notice to Abate a Public Nuisance shall be in writing, signed by the Director or Building Official, and have substantially the following form:

~~—NOTICE TO ABATE PUBLIC NUISANCE~~

~~TO THE OWNER, AGENT OF THE OWNER, LESSEE, OCCUPANT, OR PERSON IN POSSESSION OF THE PROPERTY HEREAFTER DESCRIBED:~~

~~—Lot _____ Block _____ Tract _____~~

~~YOUR ATTENTION IS HEREBY DIRECTED to the provisions of Chapter 1.12 of the Code of the Town of Fairfax on file in the office of the Town Clerk. Pursuant to the provisions of said Chapters, you are hereby notified to correct within _____ of the date of this notice, on the property herein before described, the following public nuisance:~~

~~Should you fail to correct this violation by the deadline above, a hearing will be held before the Town Council on _____, at _____ o'clock, in the Fairfax Women's Building, 46 Park Road, Fairfax, California.~~

~~Please be advised that if you do not abate this nuisance as directed by this notice, or as directed by the Town Council, the Town may enter upon the property to abate the public nuisance and the Town's costs thereby incurred shall constitute a special assessment and a lien against the property.~~

~~Date _____~~

~~Director of Public Works/Building Official~~

~~Town of Fairfax~~

~~—[end of form]~~

—(B) If notice is to be posted, pursuant to § 1.12.075, the caption beginning "Notice to Abate" shall be in letters at least one inch in height.

(Ord. 734, passed 6-18-2008)

§ 1.12.070 NOTICE METHODS.

—Notice may be given in any of the following ways:

—(A) Posted at or upon the property;

—(B) Sent by prepaid mail to the owner and to the occupant of the property described in the notice; or

—(C) Delivered personally to the owner and to the occupant of the property described in the notice.

(Ord. 734, passed 6-18-2008)

§ 1.12.075 POSTED NOTICE.

—(A) Posted notice shall be conspicuously located on or in front of the property where the public nuisance exists in accordance with the following:

—(1) One notice to each separately owned parcel of property whose frontage is not over 50 feet;

—(2) Not more than two notices to any such parcel whose frontage is 100 feet or less; and

~~—(3) At least one notice per 100 feet for each such parcel whose frontage is greater than 100 feet.~~

~~—(B) Notice shall be posted at least ten days prior to the time for the public hearing. (Ord. 734, passed 6-18-2008)~~

~~**§ 1.12.080 NOTICE BY MAIL.**~~

~~—(A) Mailed notice shall be sent by registered or certified mail, postage prepaid, to each person to whom the described property is assessed in the last equalized assessment roll and to the occupant of property described in the notice.~~

~~—(B) The Town Clerk may secure such information from the County Assessor pursuant to Cal. Gov't Code § 39567.1. Such a list shall be conclusively deemed to be the proper address for the purpose of mailing such notice. The town shall reimburse the county for the actual cost of furnishing this list and such cost shall be included as a part of the costs of abatement.~~

~~—(C) Notice shall be mailed at least ten days prior to the time for the public hearing and shall conform in all respects to the content requirements of posted notice. (Ord. 734, passed 6-18-2008)~~

~~**§ 1.12.085 NOTICE BY PERSONAL DELIVERY.**~~

~~—Personally delivered notice shall be made by leaving the notice at the residence or place of business of the owner and of the occupant of the property described in the notice, between the hours of 8:00 a.m. and 6:00 p.m., with some person of not less than 18 years of age. Notice shall be served at least ten days prior to the public hearing.~~

~~(Ord. 734, passed 6-18-2008)~~

~~**§ 1.12.090 PUBLIC HEARING.**~~

~~—At the time stated in the notice, the Town Council shall hear and consider the testimony of any interested person and shall accept and consider any other relevant evidence. Formal rules of evidence shall not be applied. The Town Council may continue such hearing from time to time as it deems necessary.~~

~~(Ord. 734, passed 6-18-2008)~~

~~**§ 1.12.095 DECISION OF TOWN COUNCIL.**~~

~~—The Town Council shall make a finding as to whether a nuisance as heretofore defined exists. The owner and the occupant of the property described in the notice shall be notified in writing of the Town Council's decision within three days of the final hearing and, if a nuisance is found to exist, shall be given a written Order to Abate. The decision of the Town Council shall be final.~~

~~(Ord. 734, passed 6-18-2008)~~

~~**§ 1.12.100 COMPLIANCE.**~~

~~—The owner or occupant of the property described in the notice shall comply with an Order to Abate within the time specified by the Town Council. Notwithstanding compliance with an Order to Abate, the owner and the occupant of the property described in the notice shall in all events be jointly and severally liable to the town for any costs which the town incurred in inspection, investigation, boundary determination, measurement, attorney's fees and costs, and clerical and associated administrative costs.~~

~~(Ord. 734, passed 6-18-2008)~~

~~§ 1.12.105 FAILURE TO COMPLY; ABATEMENT BY TOWN.~~

~~—In addition to criminal penalties under Chapter 1.08 of this Code, failure to comply with an Order to Abate within the time specified may result in abatement by the town and the costs thereof assessed against the property as hereinafter provided.
(Ord. 734, passed 6-18-2008)~~

~~§ 1.12.110 ABATEMENT BY DIRECTOR OF PUBLIC WORKS OR BUILDING OFFICIAL.~~

~~—The Director or Building Official shall keep an account of the costs of such abatement for each separate parcel of land and shall submit an itemized written report to the Town Council for confirmation.
(Ord. 734, passed 6-18-2008)~~

~~§ 1.12.115~~ 1.12.090 Abatement by PRIVATE CONTRACTOR owner/responsible party.

A. Any owner or responsible party may, at his/her/its own expense and prior to the scheduled abatement hearing, abate a declared nuisance condition in accordance with the provisions of the notice sent by the enforcement officer; provided that all necessary permits are first obtained. If the enforcement officer determines that the nuisance condition has been abated prior to the hearing, the hearing proceedings shall be terminated. If any abatement referenced in this section takes place after the specified compliance date, but prior to date set for hearing, termination of the hearing shall only take place upon the owner or responsible party's payment of outstanding penalties, administrative and/or abatement costs, including attorneys' fees if applicable.

B. Any owner or responsible party may also request the Town to abate a declared nuisance condition on his/her/its property. However, the owner or responsible party making the request shall be responsible for the payment of all penalties, abatement costs and/or administrative costs, including attorneys' fees if applicable, incurred by the Town. The request for the Town to perform the abatement shall be in writing and include a written consent to enter and perform work. Any such request shall be deemed an agreement to pay for the costs of such abatement, including but not limited to any penalties, administrative costs, and an agreement that such costs may be collected as a lien or special assessment upon the property. The abatement hearing proceedings shall thereafter be terminated.

~~—The Town Council may award a contract to abate the public nuisance to a private contractor. A private contractor awarded such a contract may enter upon private property to abate a nuisance. The private contractor shall keep an account for each separate parcel of land and shall submit the itemized written report to the Town Council for confirmation.~~

~~(Ord. 734, passed 6-18-2008)~~

~~§ 1.12.120 COST REPORT – POSTING.~~

~~—A copy of the itemized written report showing any costs incurred in inspection, investigation, boundary determination, measurement, abatement costs, attorney's fees and costs, and associated clerical and administrative work shall be posted for at least three days prior to its submission to the Town Council in the public places where the Town Council meeting agendas are posted. The report shall indicate the time~~

and date of submission.

(Ord. 734, passed 6-18-2008)

~~§ 1.12.125 COST REPORT HEARING.~~

~~—At the time of submission, the Town Council shall hear any objections of the parties who are liable to be assessed for the town's costs. Formal rules of evidence shall not apply at such hearing. The Town Council may modify the report as it deems necessary. The Town Council shall then confirm the report, as may be modified, by resolution or motion. The decision of the Town Council shall be final.~~

(Ord. 734, passed 6-18-2008)

~~§ 1.12.130 SPECIAL ASSESSMENT AND LIEN.~~

~~—Costs of abatement shall constitute a special assessment against that parcel and after the assessment is confirmed shall be a lien on the parcel.~~

(Ord. 734, passed 6-18-2008)

~~§ 1.12.135 COLLECTION OF~~ 1.12.095 Liability for abatement costs.

A. In addition to liability for the costs of abatement itself pursuant to Section 1.12.085 and this section of this chapter, the owner and responsible party shall be jointly and severally liable for any expenses and administrative costs incurred by the Town, county or any related agency incurred after the initial inspection and identification of the nuisance.

B. The administrative costs may include any and all fees and costs incurred by the Town in connection with the matter before the hearing officer, including but not limited to, costs of investigation, Town staffing costs incurred in preparation for the hearing and for the hearing itself, fees and costs of the Town's consultants, and costs for all re-inspections necessary to enforce the notice to abate nuisance conditions.

C. In the event that the Town is entitled to recover its attorneys' fees and costs pursuant to Section 1.12.060, such fees and costs shall be collected at the same time and pursuant to the same procedures as administrative costs pursuant to this section.

D. The enforcement officer or other authorized Town official shall keep an itemized report of the costs incurred by the Town in the abatement of any public nuisance. The owner and responsible party shall be invoiced for the total. If payment is not received, the itemized report shall be submitted in writing to the Town Clerk no sooner than twenty days of the invoice date. In the event the invoice is not paid within thirty days, the Town may collect all such abatement costs and interest through a lien or special assessment under Sections 1.12.100 and 1.12.105.

E. All abatement costs shall bear interest at the rate of ten percent per annum from the date of abatement.

~~—(A) After confirmation of the report, the assessment shall be collected in any of the following ways:~~

~~—(1) The owner or occupant of the property described in the notice may pay to the Town Treasurer the amount due on the abatement after the confirmation of the report and until ten days before a copy of such report is given to the County Assessor or, if~~

~~certified copies were filed with the County Auditor, until August 1 following the confirmation of the report.~~

~~—(2) The County Assessor may collect the assessments by issuing separate bills and receipts for the assessments, or the amount of the assessment may be added to the next regular tax bill levied against the parcel for ordinary municipal purposes and be collected therewith at the time and in the manner as ordinary municipal taxes, subject to the same penalties and procedures of foreclosure and sale for delinquencies.~~

~~—(3) Foreclosure of a nuisance abatement lien on the property.~~

~~—(B) Notwithstanding the foregoing, the Town Council may direct that the assessment be collected in successive annual installments at the time and in the manner of ordinary municipal taxes. Such installments would be subject to the same penalties and procedures for foreclosure and sale for delinquencies applicable to ordinary municipal taxes. An assessment payment made in installments may include interest on the unpaid balance at a rate to be determined by the Town Council.~~

~~(Ord. 734, passed 6-18-2008)~~

~~§ 1.12.140 REFUNDS.~~

~~—The Town Council may order a refund of all or part of the assessment paid pursuant to this chapter if it finds that all or part of the assessment had been erroneously levied. An assessment or part thereof shall not be refunded unless a claim is filed with the Town Clerk on or before six months after the assessment became due and payable. Any claim shall be verified by the person who paid the assessment, or his guardian, executor, or administrator.~~

~~(Ord. 734, passed 6-18-2008)~~

~~§ 1.12.145 NUISANCE ABATEMENT~~1.12.100 Lien procedure.

~~—(A) A nuisance abatement lien may be recorded in the Marin County Recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.~~

~~—(B) Prior to the recordation of the lien against the parcel of land on which the nuisance is maintained, the owner of record of the parcel of land shall receive notice. The notice of the recordation of the lien against the parcel of land on which the nuisance is maintained shall be served on the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll, or the supplemental roll, whichever is more current. Such notice shall be served in the same manner as a summons in a civil action in accordance with Cal. Code of Civil Procedure §§ 415.10 *et seq.* The date upon which service is made shall be entered on or affixed to the face of the copy of the notice at the time of service. However, service of such notice without such date shall be valid and effective.~~

In the event the Town decides to collect abatement costs as a lien, it shall impose such lien pursuant to this section:

A. Upon receipt of the itemized report, the Town Clerk, or his or her designee, shall serve notice of the lien upon all owners in the same manner as summons in a civil action in accordance with Code of Civil Procedure section 415.10 *et seq.* or otherwise as provided

by Government Code, section 38773.1, as may be amended from time to time. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation in Marin County. The period of notice commences upon the first day of publication and terminates at the end of the tenth day, including therein the first day. Publication shall be made on each day on which the newspaper is published during the ten-day period.

B. The notice shall inform the owner of the pending lien and inform the property owner of the public hearing where the Town Council will consider imposing the itemized report as a lien against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, including any evidence or objections of the owners as to the itemized report, the Town Council may adopt a resolution confirming the itemized report and directing the Town Clerk to record a lien against the property in the Marin County Recorder's office and, from the date of recording, shall have the force, effect and priority of a judgment lien.

D. The lien shall identify:

1. The amount of the lien;

~~—(C)—A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of 2. The Town as the agency on whose behalf the lien is imposed, the date of the abatement order;~~

3. The date of the abatement order or citation;

4. The street address, legal description and ~~assessor's~~ assessor's parcel number of the parcel on which the lien is imposed; and

5. The name and address of the recorded owner of the parcel.

~~—(D)~~E. In the event that the lien is discharged, released, or satisfied, ~~either~~ through either payment or foreclosure, notice of the discharge, release, or satisfaction containing the information specified in ~~division (C) of this section~~ Subsection D shall be recorded by the Town. ~~A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index. Clerk.~~

F. A lien may be foreclosed by an action brought by the Town for a money judgment.

~~—(E)—A nuisance abatement lien may be foreclosed by the town as a money judgment.~~G. The Town may recover from the property owner any costs incurred regarding in the processing and recording of the lien and providing notice to the property

owner as part of its foreclosure action to enforce the lien ~~or as a condition of removing the lien upon payment.~~

~~(Ord. 734, passed 6-18-2008)~~

1.12.105 Special assessment procedure.

In the event the Town decides to collect abatement costs as a special assessment, it shall impose such special assessment pursuant to this section:

A. Upon receipt of the itemized report, the Town Clerk shall provide written notice of the special assessment to all owners by certified mail if the property owner's identity can be determined from the county assessor's or county recorder's records, or as otherwise provided by Government Code, section 38773.5, as may be amended from time to time. The notice shall inform the owner of the pending special assessment, and the date, time and location of the public hearing where the Town Council will consider imposing the itemized report as a special assessment against the property, and that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The hearing shall be conducted no less than ten days from service of the notice.

B. At the hearing and after considering the relevant evidence, including any evidence or objections of the owners as to the itemized report, the Town Council may adopt a resolution confirming the itemized report and assessing the report as a special assessment against the property. The Town Clerk shall then provide all documentation necessary to the county to enter such assessment. After entry, the assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead transferred to the unsecured roll for collection.

C. Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the Town may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

D. Notices or instruments relating to the special assessment shall be entitled to recordation with the Marin County Recorder's Office. After recordation, the special assessment may be foreclosed on as a lien in the manner and means provided by law.

1.12.110 Order for treble costs of abatement.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with the provisions of this chapter, except for conditions abated pursuant to section 17980 of the Health and Safety Code, relating to abandoned buildings, the court may order the owner to pay treble the costs of the abatement, as authorized by Government Code section 38773.7. Costs of abatement shall include, without limitation by reason of enumeration, all administrative costs of the Town.

§ 1.12.150 1.12.115 Summary abatement.

~~—If, in the opinion of the Town Manager or his or her designee, there exists a condition on any premises which is of such a nature as to be imminently dangerous to the public health, safety or welfare, which if abated according to the generally applicable procedures of this chapter would, during pendency of the proceedings, subject the public to potential harm of a serious nature, the same may be abated summarily without compliance with the provisions of this chapter. As an alternative to summary abatement, the Town Attorney may institute an action in a court of competent jurisdiction for the abatement of any nuisance.~~

~~(Ord. 734, passed 6-18-2008)~~

A. Notwithstanding any provision of the code to the contrary, the Town Manager, or his or her designee, may cause a public nuisance to be summarily abated in accordance with the procedures set forth in this section if it is determined that the nuisance is immediately or potentially dangerous to the life, health or safety of the occupants of the property or to the public.

B. Actions taken to abate immediately or potentially dangerous nuisances may include, but are not limited to, repair or removal of the condition creating the danger and/or the restriction from use or occupancy of the property on which the condition exists or any other abatement action determined by the enforcement officer to be necessary. Where a residential rental property is involved, this may require the moving and relocation of the occupants by the owner and/or responsible party to other habitable temporary or permanent accommodations. Any temporary accommodations will be maintained by the owner and/or responsible party, at his/her/its expense, until the corrections are done to the vacated residential property so that it is habitable and the occupants are returned.

C. Within 10 days following summary abatement, or as soon thereafter as reasonable possible under the circumstances, notice of the summary abatement must be provided to all owners and responsible parties in the manner required by Section 1.12.070. The notice shall describe the condition and the reason it was immediately or potentially dangerous, and a brief description of the actions Town personnel took to abate the dangerous condition. Such notice shall include a provision authorizing the owner or responsible party to dispute the existence of the nuisance conditions or the Town's determination that the condition was immediately or potentially dangerous before the hearing officer. Any request for an appeal shall be filed in writing with the Town Clerk within ten days of the notice and shall be conducted in the same manner as all applicable procedures under Sections 1.12.075 through 1.12.080.

D. Omission of any of the foregoing provisions in a notice of summary abatement, whether in whole or in part, or the failure of an owner or responsible party to receive this document, does not render it defective or render any proceeding or action pursuant to this chapter invalid.

E. The enforcement officer shall keep an itemized report of the costs incurred by the Town in the summary abatement. The costs and expenses for summary abatement, if not paid by the property owner within thirty days of the date of the invoice, shall be collected pursuant to the procedures set forth in Sections 1.12.100 through 1.12.105 of this chapter.

1.12.120 Right of judicial review.

Except as otherwise provided by law, any person aggrieved by any administrative decision of a hearing officer pursuant to this chapter, may obtain judicial review of the administrative decision in the superior court by filing with the court a petition for writ of mandate pursuant to Section 1094.6 of the Code of Civil Procedure.

1.12.125 Violations and Penalties.

A. It is a public nuisance and unlawful for any person to allow, cause, create, maintain, suffer, or permit others to maintain, any real property in the Town in such a manner that violates this chapter.

B. Any person violates this chapter is guilty of a misdemeanor offense punishable in accordance with Section 1.08.010 of this Code, unless it is charged as an infraction in the discretion of the Town Attorney or designated prosecuting attorney.

C. Each person shall be guilty of a separate offense for each and every day, or part thereof, during which a violation of this chapter is allowed, caused, committed, continued, maintained, suffered, or permitted by such person.

~~§ 1.12.155 INDEPENDENT PROVISIONS~~ 1.12.130 Remedies.

~~—The provisions of this chapter are to be supplementary and complementary to all of the provisions of the Town Code, state law and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit an existing right or power of the town to abate any and all nuisances.—~~

~~Where another part of this Code provides an alternative process for abatement of a particular type of nuisance, the town shall have the discretion to proceed under either or both of the alternative processes.~~

~~(Ord. 734, passed 6-18-2008)~~

The remedies provided in this chapter are nonexclusive. The Town may prosecute any violation and abate any nuisance pursuant to any criminal, civil or other administrative remedies available to the Town.”