

ORDINANCE NO. 831

**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.

§ 1.12.057 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)

1.12.060 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 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, and the notice must be sent to the property address and posted at or upon the main entrance of the building or structure or at another prominent location on the real property.

C. If there is no known address for any responsible party, the notice must be sent to the property address and 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.

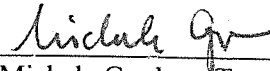
The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 3rd day of April 2019, and duly adopted at the next regular meeting of the Town Council on the 1st day of May 2019, by the following vote, to wit:

AYES: ACKERMAN, COLER, GODDARD, LACQUES, REED
NOES: None
ABSENT: None
ABSTAIN: None



BARBARA COLER, Mayor

ATTEST:


Michele Gardner, Town Clerk

5/03/19
Date