

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

IN THE MATTER OF:)
)
A Ordinance of the Town Council of the)
Town of Moraga Replacing Chapter 7.16)
Regarding Nuisance Abatement of the)
Moraga Municipal Code)

ORDINANCE NO. 245

WHEREAS, there is a need for updated regulation regarding nuisance abatement in the Town of Moraga; and

WHEREAS, the Town Council desires to adopt updated nuisance regulations as follows.

NOW, THEREFORE, the Town Council of the Town of Moraga hereby ordains as follows:

SECTION 1: Chapter 7.16 of the Moraga Municipal Code is hereby deleted in its entirety and replaced with the following:

“Chapter 7.16 Nuisance Abatement

Sections:

- 7.16.010 Purpose.
- 7.16.020 Applicability.
- 7.16.030 Definitions.
- 7.16.040 Unlawful activities.
- 7.16.050 Nuisance declared.
- 7.16.060 Notice of public nuisance and order to abate.
- 7.16.070 Notice.
- 7.16.080 Appeal procedure.
- 7.16.090 Hearing procedure.
- 7.16.100 Decision.
- 7.16.110 Appeal of hearing officer’s decision.
- 7.16.120 Abatement by town.
- 7.16.130 Special assessment hearing.
- 7.16.140 Notice of assessment and abatement lien.
- 7.16.150 Manner of collection.
- 7.16.160 Cost of abatement a personal obligation.
- 7.16.170 Summary abatement.
- 7.16.180 Violations.

7.16.190 Treble abatement cost for repeat public nuisance.

7.16.010 Purpose.

It is declared to be in the public interest to promote the health, safety and welfare of the residents of the Town by providing procedures for the enforcement of unlawful activities; and for the abatement of nuisances, as declared by the Town Council.

7.16.020 Applicability.

Whenever a public nuisance is declared, it may be abated in accordance with the procedures provided in this chapter. The procedures set forth in this chapter are not exclusive but are in addition to any other civil and criminal remedies provided by law. The seeking of other remedies shall not preclude the simultaneous commencement of proceedings pursuant to this chapter.

7.16.030 Definitions.

For purposes of this chapter, the following definitions shall apply:

“Building official” means the Town’s designated building official.

“Code” means the Moraga Municipal Code.

“Director” means the Director of Administrative Services and Finance of the Town of Moraga.

“Hearing officer” means a person appointed by the Town Manager, in compliance with any and all applicable legal requirements, to serve as the hearing officer for administrative nuisance abatement hearings.

“Notice and order” means the written notice and order to abate given by the Town Compliance Officer in accordance with this chapter.

“Owner” means the recorded owner of a parcel according to Contra Costa County’s latest equalized property tax assessment roll.

“Person” means and includes a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees and general partners of a legal entity.

“Property” means any property located within the Town and any building or portion of a building located on such property.

“Responsible party” means any person or persons in charge of the property or location or the person or persons responsible for the event or incident and shall include any of the following:

1. The person or persons who own the property where the violation(s) exist(s) or occur;
The person or persons in charge of the property where the violation(s) exist(s) or occur(s);
3. The person or persons using the property when the violation(s) exist(s) or occur(s);
4. The lienholder as shown on the last equalized assessment roll or the supplemental roll, whichever is more current;
5. If any of the persons in subsections 1 through 3 of this definition are minors, the parent or guardian of such minor; and
6. If the person or persons is a business entity, the manager or on-site supervisor where the violation(s) exist(s) or occur(s).

“Town Compliance Officer” means the officer or employee designated by the Town Manager or contracted for enforcing the Code.

7.16.040 Unlawful activities.

It is unlawful for any person owning, leasing, renting, occupying or having charge or possession of any property in the Town to maintain such property or allow such property to be maintained in such a manner that any of the following conditions are found to exist thereon or to allow any of the following conditions to occur:

- A. Anything declared by state law, judicial action or resolution of the Town Council to be a nuisance and not otherwise described as a nuisance in this chapter;
- B. Visible rubbish or refuse on property;
- C. Any structure, other improvement, activity, use or act on private or public property which is in violation of the provisions of the Town’s Municipal Code;
- D. Any violation of a permit issued by the Town or conditions of development approval;

- E. Tangible personal property not intended for outdoor use (including but not limited to broken or discarded furniture, household equipment and furnishings, or shopping carts) which is stored on property so as to be visible from a public street or public space;
- F. Overgrown vegetation likely to harbor rats, vermin or other nuisances, which obstructs the view of drivers on public streets or private driveways and creates a safety hazard or likely to provide concealment or shelter to trespassers;
- G. Dead, decayed, diseased or hazardous vegetation visible from a public street or public space;
- H. Packing boxes, cardboard boxes, lumber, trash, barrels, drums, salvage materials, vehicle parts or other debris kept on the property for more than sixty days, and visible from a public street or public space;
- I. Attractive nuisances dangerous to children and other persons, including but not limited to abandoned, broken, neglected or hazardous equipment, machinery, appliances, refrigerators and freezers and excavations;
- J. Vehicles in residential zoning districts which are wrecked, inoperable or in a state of partial repair, when visible from a public space;
- K. Vehicles in commercial zoning districts which are wrecked, inoperable or in a state of partial repair, when visible from a public space, unless located at an operational service station which is conducting repairs on the vehicle or commercial vehicle storage facility;
- L. Buildings which appear to be abandoned, partially destroyed, left in an unreasonable state of partial construction or have been declared substandard or dangerous by the Building Official. "Unreasonable state of partial construction" means any unfinished building or structure: (1) which has been under construction more than one year or where no substantial work has occurred for more than six months; and (2) because of the incomplete construction or exterior finish, the building or structure substantially detracts from the safety of the immediate neighborhood or otherwise adversely affects neighboring properties;
- M. Buildings with windows and doors intended to be glazed which contain broken glass or no glass at all. Plywood or other material used to cover such window and door space for more than two (2) weeks, if permitted under this Code, shall be painted in a color or colors compatible with the remainder of the building;

- N. Building exteriors, walls, fences, driveways, sidewalks or walkways which present a public safety hazard, such as cracked, uneven or broken sidewalks;
- O. Scaffolding, construction equipment and other machinery of any type or description parked or stored on property when it is visible from a public street or other public space, except during excavation, construction or demolition operations covered by an active building permit which are in progress on the property or an adjoining property;
- P. Construction or grading (ongoing or completed) without proper approvals and permits, and construction not conforming to or in excess of approvals and permits obtained;
- Q. Obstruction of watercourses, including but not limited to uneven, cracked or broken curb, gutter, ditches and stormwater conveyance systems;
- R. Water that is a breeding place for vectors, with the presence of vectors in their developmental stages in the water being prima facie evidence that the water is a public nuisance;
- S. The unpermitted release, discharge, placement, spill or deposit of any hazardous substance or waste on private or public property;
- T. The unpermitted release, discharge, placement, spill or deposit of materials, hazardous or otherwise, in or on Town streets, the public right-of-way, storm drains or creeks;
- U. Machine-made conditions on property (other than water) that support the development, attraction or maintenance of vectors, with the presence of vectors in their developmental stages on property being prima facie evidence that the condition is a public nuisance;
- V. Storage of mobile homes, trailers, camp cars, and recreational vehicles at a residence unless adequately screened from view from a street or other property by a closed garage, fence or landscaping; and
- W. Placement of personal property or sports equipment, such as basketball standards, soccer goals and skate ramps, in the public right of way on arterials or collector streets, or in a manner that blocks the public right of way or in a manner that blocks the travel lane in the public right-of-way.
- X. Signs placed, located or otherwise in violation of the Town's Municipal Code.

7.16.050 Nuisance declared.

It is declared a nuisance and subject to abatement pursuant to this chapter for any person owning, leasing, renting, occupying or having charge or possession of any property in the Town to maintain such property or allow such property to be maintained in such a manner that any of the conditions listed in Section 7.16.040 of this code are found to exist thereon or to allow any of the conditions listed in Section 7.16.040 of this code to occur.

7.16.060 Notice of public nuisance and order to abate.

Whenever a Town Compliance Officer determines that any property is being maintained or kept in violation of this chapter, the officer shall have the authority to give written notice and order to abate to the owner and/or responsible party substantially in the following form:

“NOTICE AND ORDER TO ABATE

NOTICE IS HEREBY GIVEN that (specify the condition constituting the nuisance) is in violation of Section _____ of the Town of Moraga Municipal Code. The violation has been declared a public nuisance and must be abated. The public nuisance is on property located at (insert address or other legal property description).

YOU ARE HEREBY ORDERED TO ABATE SAID PUBLIC NUISANCE within (insert 10 (days) or other reasonable period) _____ calendar days from the issuance of this order. The issuance date is specified below. You may abate the nuisance by (insert desired action which, if taken, will adequately remedy the situation). If you fail to abate the public nuisance within the number of days specified, the Town may order its abatement by public employees, private contractor, or other means. The cost of said abatement, if not paid to the Town, may be levied and assessed against the property as a special assessment lien.

YOU MAY APPEAL THIS ORDER OF ABATEMENT, but any such appeal must be brought prior to the expiration of the number of days specified above for completion of abatement. The appeal must be in writing; specify the reasons for the appeal; contain your name, address and telephone number; be accompanied by an appeal fee of _____ dollars (\$_____); and be submitted to the Town Clerk at the following address:

Town Clerk
Town of Moraga
329 Rheem Boulevard
Moraga, CA 94556

One who is legally indigent may apply for a waiver of the appeal fee. Upon timely receipt of the appeal and accompanying fee, or waiver, the Town Clerk will cause the matter to be set for hearing and notify you of the date and location of the hearing.

If you have any questions regarding this matter, you may direct them to the Town Compliance Officer issuing this notice at the address or telephone number listed below.

ISSUANCE DATE: _____

(Insert: name, title, address and telephone number of the Town Compliance Officer issuing this notice.)”

7.16.070 Notice.

The notice and order shall be served by the method specified either in subsection (A) or (B).

- A. Certified Mail, Posting and Publishing. Certified mail shall be addressed to the owner at the address shown on the last equalized assessment roll or as otherwise known, and addressed to anyone known to the Town Compliance Officer to be in possession of the property at the street address of the property being abated or a responsible party. Simultaneously, the notice and order to abate may be sent by regular mail. Posting of the notice and order shall be conspicuously on or in front of the property. If the property has no frontage, posting shall be on the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner. The notice shall be published in a newspaper of general circulation within the jurisdiction. The failure of a person to receive a properly addressed service shall not affect the validity of the proceedings.
- B. Personal Service. Personal service is deemed complete on the date the notice is personally served.

7.16.080 Appeal procedure.

- A. Any owner or responsible party may appeal within the number of days specified in the notice and order. The appeal shall be submitted in writing,

specify the grounds upon which the appeal is taken, contain the name, address and telephone number of the appellant, and be filed with the Town Clerk.

- B. An appeal filed with the Town Clerk must be accompanied by an appeal fee or a hardship waiver. The amount of the appeal fee will be determined periodically by the Town Council by resolution
- A. Any person who intends to request a hearing to contest the order to abate a nuisance, or that he or she is the responsible party, and who is enrolled in a State of California public assistance program, may request an hardship waiver for the appeal application fee.
- B. The request shall be submitted to the Town Clerk and processed by the administrative services department. The requirement of submittal of the appeal application fee shall be stayed unless or until the Director of Administrative Services, or his or her designee, makes a determination to grant or deny the hardship waiver.
- C. The Director, or his or her designee, may waive the appeal application fee and issue a hardship waiver only if the applicant has submitted a sworn affidavit, together with any supporting documents or materials that demonstrate proof of enrollment in a State of California public assistance program, such as Medi-Cal, to the satisfaction of the Director, or his or her designee.
- D. If the Director, or his or her designee, determines to deny a hardship waiver, the person shall submit the appeal application fee to the Town within ten days of the date of that decision or within the number of days specified in the notice and order.
- E. The Director, or his or her designee, shall issue a written determination to issue or not issue the hardship waiver. The written determination of the Director, or his or her designee, shall be final and shall be served upon the person who applied for the hardship waiver.
- C. Failure to submit the completed fee waiver forms or pay the appeal fee in a timely manner shall cause the appeal request to be automatically denied. Enforcement of the order to abate may then proceed as if no appeal request had been submitted.
- D. Upon the filing of a timely and complete appeal, including payment of the appeal fee or submission and approval of completed fee waiver forms, the

matter will be set for hearing. The Town Clerk will notify the parties in writing of the date, time and location of the hearing at least ten days prior to the hearing date. Further abatement action shall be stayed until the appeal decision is issued.

- E. The Town Manager shall designate the hearing officer for the appeal or may choose, in his or her discretion, to have the appeal heard by the Town Council.
- F. If the appeal fee is paid and the hearing officer or Town Council finds there is no nuisance, the appeal fee shall be refunded to the appellant without the payment of any interest that could have accrued.
- G. The failure to file a timely and complete appeal of a notice and order shall be deemed to be a failure to exhaust administrative remedies.

7.16.090 Hearing procedure.

- A. A hearing shall be set for a date that is not less than fifteen or more than sixty calendar days from the date the request for a hearing is filed. The formal rules of evidence shall not apply to the administrative hearing. All relevant evidence may be considered, and the hearing officer or Town Council has the discretion to exclude evidence is found to be irrelevant or redundant.
- B. The appellant shall be given the opportunity to (1) testify and present witnesses; (2) introduce relevant evidence; (3) cross-examine and/or rebut any witness testifying in support of the declaration of a public nuisance; and (4) be represented by anyone who is designated by the responsible party.
- C. The hearing officer or Town Council may continue the hearing and request additional information from the Town Compliance Officer or the appellant before issuing a written decision.

7.16.100 Decision.

- A. At the conclusion of the hearing, the hearing officer or Town Council may reverse, modify or affirm the determinations of the Town Compliance Officer. If the hearing officer or Town Council decides that the notice and order should be enforced, the owner or responsible party shall comply with the order within such period of time as may be prescribed, and in the absence of any prescribed time, within thirty days from the date of mailing of the final decision. The decision may direct the Town Compliance Officer to proceed and perform the work of abatement if not performed by

the owner or the person in possession of the property within a prescribed period of time.

- B. The decision of the hearing officer or Town Council shall be in writing, be based on the record, and include a statement of the factual and legal basis of the decision. The decision of the hearing officer or Town Council shall be filed with the Town Clerk within thirty days of the conclusion of the hearing. A copy of the decision shall be sent by first-class mail to the appellant at the address specified in the appeal, and by mail to each responsible party appearing at the hearing.
- C. The decision is final on the date of the decision. Any appeal of the decision is governed by California Code of Civil Procedure Section 1094.6, as may be amended from time to time.

7.16.110 Appeal of hearing officer's decision

A responsible party may appeal the decision of the hearing officer to the Town Council by filing an appeal in the same manner as set forth above and depositing an appeal fee in an amount to be determined by Council resolution. The procedures for a Town Council appeal shall be the same as a hearing before the hearing officer.

7.16.120 Abatement by Town.

- A. Upon the failure, neglect or refusal to properly comply with the order to abate within the prescribed time period, the Town Compliance Officer may cause to be done whatever work is necessary to abate the public nuisance. An account of the cost of abatement shall be kept for each separate assessor's parcel involved in the abatement.
- B. When the Town has completed the work of abatement, or has paid for the work, the total abatement costs shall be charged to the owner of the property. "Total abatement costs" means the costs of the actual work of abatement, administrative costs, inspection and re-inspection costs, the appeal fee if waived, interest on late payment and attorneys' fees if elected by the Town pursuant to Subsection C below.
- C. Attorneys' fees may be recovered in a proceeding under this chapter if the Town elects, at the initiation of the proceeding, to seek recovery of its own attorneys' fees. If the Town so elects, attorneys' fees shall be recovered by the prevailing party. In no proceeding shall an award of attorneys' fees exceed the amount of reasonable attorneys' fees incurred in the proceeding.

- D. The total abatement costs shall be included in a bill and sent by certified mail to the last known address of the property owner. Simultaneously, the bill may be sent by regular mail. If the bill sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail. The bill shall inform the owner that failure to pay the bill within forty-five calendar days from the date of mailing may result in a lien upon the property. The Town may place a lien on the property or may schedule a hearing to place the lien as a special assessment.

7.16.130 Special assessment hearing.

- A. If the bill is not paid within forty-five days from the date of mailing, the Town Compliance Officer shall render an itemized report in writing to the Town Clerk for submittal to the Town Council for hearing and confirmation. The report shall include, at a minimum, the names and addresses of the possessor of the property and all persons having any record interest in the property (including but not limited to, holders of mortgages or deeds of trust), the date upon which the abatement of the nuisance was ordered, the date the abatement was complete, a description of the real property subject to the lien, and the total abatement costs.
- B. At least ten days prior to the hearing, the Town Clerk shall give notice, by certified mail, of the hearing to all persons named in the Town Compliance Officer's report. The notice shall be prepared by the Town Compliance Officer and shall describe the property by assessor's parcel number and street number or some other description sufficient to enable identification of the property and contain a statement of the amount of the proposed assessment.
- C. At the time fixed for receiving and considering the report, the Town Council shall hear the report and the objections of any of the owners liable to be assessed for the work of abatement or any other persons who may have a legal interest in the property. The Town Council may add to the proposed assessment an amount equal to the cost of conducting the assessment confirmation hearing. The Town Council may also make such other modifications in the report as it deems necessary, after which, the Council may order the report confirmed. The order and modified report shall be filed with the Town Clerk and shall be final and conclusive.
- D. The amounts and the costs of abatement mentioned in the report as confirmed shall constitute a special assessment against such property and are a lien on the property for the amount of the respective assessment.

7.16.140 Notice of assessment and abatement lien.

The Town Compliance Officer shall record at the office of the County Recorder a certificate substantially in the following form:

“NOTICE OF SPECIAL ASSESSMENT

Under the authority of Government Code section 38773.5 and chapter 7.16 of the Moraga Municipal Code, the Town of Moraga did on _____, abate a nuisance upon the real property hereafter described and then on _____, did assess the cost of the abatement upon the real property.

The Town of Moraga claims a special assessment on the real property for the expense of doing the work in the amount of \$ _____. This amount is a special assessment against the real property until it is paid, together with interest at the legal maximum rate computed from the date of confirmation of the statement until payment from _____, (insert date of confirmation of statement), and discharged of record. The real property referred to above, and upon which the special assessment is claimed, is that certain parcel of land situated wholly or partially within the Town of Moraga, County of Contra Costa, State of California, more particularly described as follows:

Dated: _____, 20__

Town of Moraga

By: _____

7.16.150 Manner of collection.

Thereafter, the amounts of the assessment shall be collected at the same time and in the same manner as county taxes are collected, and are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes are applicable to such assessments, except that if any real property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or 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 such taxes would become delinquent, then the lien which would otherwise be imposed shall not attach to such real property and the cost of abatement and the cost of enforcing the abatement as confirmed, relating to such property, shall be transferred to the unsecured roll for collection.

7.16.160 Cost of abatement a personal obligation.

Along with placing a lien or assessment upon the real property pursuant to the procedures set forth in this chapter, the Town may make all costs and penalties the personal obligation of the property owner, tenant or other person creating, causing, committing or maintaining the nuisance. In such a case, all of the procedures of this chapter apply except those specifically related to liens and assessments.

7.16.160 Summary abatement.

- A. Nothing in this chapter prohibits the summary abatement of a nuisance upon order of the Town Council or upon order of any other Town officer authorized by law to summarily abate nuisances, if the Town Council or Compliance Officer determines that the nuisance constitutes an immediate threat to public health and safety.
- B. If a public nuisance is summarily abated, the Town Compliance Officer shall keep an account of the cost of abatement and bill the property owner for the cost of abatement. The bill shall be sent by certified mail to the last known address of the property owner. Simultaneously, the bill may be sent by regular mail. If the bill sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail.
- C. If the bill is not paid within forty-five days from the date of mailing, the Town Compliance Officer may proceed to obtain a special assessment and lien against the owner's property in accordance with the procedures set forth in this chapter, except that, in addition to a review of the costs of abatement, the Town Council shall also hear and determine any issues relative to the necessity for the abatement or the manner in which the property was declared to be a public nuisance and summarily abated.

7.16.180 Violations.

It is unlawful for any person to interfere with the performance of the duties herein specified for the Town Compliance Officer or any authorized officer or employee thereof, or to refuse to allow any such officer or employee or approved private contractor, to enter upon any premises for the purpose of abating the public nuisance or to interfere in any manner whatever with said officers or employees in the work of abatement.

7.16.190 Treble abatement cost for repeat public nuisance.

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 this chapter, except for conditions abated pursuant to Section 17980 of the Health and Safety Code related to substandard buildings, the court may order the owner to pay treble the costs of the abatement.”

SECTION 2: The Town Council hereby declares that it would have passed this Ordinance, sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions in this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 3: This Ordinance shall be published and posted according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

Passed and adopted as an Ordinance of the Town of Moraga at a regular meeting thereof held on the 11th day of June, 2014, by the following vote:

AYES: Councilmembers Arth, Metcalf and Trotter
NOES: None
ABSTAIN: None
ABSENT: Mayor Chew and Vice Mayor Wykle

Ken Chew, Mayor

ATTEST:

Marty C. McInturf, Town Clerk