



Town of Atherton

MEMORANDUM

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: JENNIFER LARSON, ASSISTANT CITY ATTORNEY

DATE: MARCH 8, 2017

**SUBJECT: UPDATE ON USE OF PUBLIC FUNDS FOR WORK WITHIN THE
TOWN'S RIGHT OF WAY.**

SUMMARY

Council considered the use of public funds to remove fallen trees obstructing public roads and channels. The past practice had been for Public Works to remove enough of the tree to create safe passage through the obstruction, and hold the rightful owner of the tree wholly responsible for any remaining clean up. The Town did not seek reimbursement for Public Work's time and effort, reflecting a belief that clearing a public road is a public service that benefits many. (It should be noted that we are not talking about trees that have fallen as a result of owner negligence, nor are we talking about liability for objects damaged as a result of falling trees- this is only about recovering the cost to remove enough of the tree to clear the public road or channel).

While it is common to view emergency clearing of a public roadway or channel to be a public service, Staff was concerned about Atherton Municipal Code Section 8.20.020 (F) (Nuisance Abatement- Findings) which reads in part "[i]t is in the public interest to establish a cost recovery procedure so that the abatement of a public nuisance is at the expense of the person(s) creating... the nuisance." Private trees that fall and obstruct public roads or channels meet the definition of public nuisance, 8.020.030 (K), and therefore the Town's Code seems to require the Town to seek reimbursement for the cost of clearing the road or channel. Failure to do so could be construed a gift of public funds in violation of the California Constitution, Article XVI Section 6.

In order to avoid any constitutional violations, and to continue the practice of providing emergency tree clearing as an important and valued public service, two actions are needed. The first is for the Council to make a finding that emergency tree clearing of public roads and drainage channels is a public service. It is likely that this requirement was already met during the previous consideration of this item. The second is that the Municipal Code be amended to specifically exclude this work from the reimbursement requirement. Such an exclusion could be narrowly tailored to apply only to emergency tree removal where needed to clear public roads and channels, without jeopardizing the larger nuisance abatement scheme.

NEIGHBORING JURISDICTIONS

Staff spoke with representatives in neighboring jurisdictions to ascertain common practices in this area including Hillsborough, Portola Valley, and Woodside. The consensus is that emergency tree removal is considered a public service for which reimbursement is not sought, however this would not be the case where a property owner had been warned about a tree and failed to take action. In cases of negligence and failure to maintain property, reimbursement is sought for any work done by the jurisdiction. One jurisdiction (Portola Valley) draws a distinction between obstruction of a public road and obstruction of a public horse trail- the former carrying far more safety concerns. There, work to clear the public road is free (even though there is incidental benefit to the property owner), but work to clear a horse trail would be the responsibility of the property owner because it is not a danger to the public at large in the same way as a road obstruction.

POSSIBLE CHANGE TO ORDINANCE

Nuisance abatement, Chapter 8.20, is an important area of the Municipal Code and should not be inadvertently undermined. Therefore it seems the simplest approach would be to specifically exclude emergency tree removal where necessary to clear a public road or drainage channel from the requirement to seek reimbursement for abatement of public nuisances. This, along with a finding that such services are fundamentally public even if they may inadvertently benefit an individual, will alleviate any concerns about public gifts of funds.

CONCLUSION

This issue will be considered at the regularly scheduled July 2017 Council meeting, at which time a draft amendment to Chapter 8 will be available. In the interim Staff will not seek reimbursement for emergency tree removal, as per longstanding past practice.

FISCAL IMPACT

None.

ATTACHMENT

Chapter 8.20 of the Atherton Municipal Code- Nuisance Abatement.

Chapter 8.20 NUISANCE ABATEMENT*

Sections:

- [8.20.010](#) Title of provisions.
- [8.20.020](#) Findings.
- [8.20.030](#) Definitions.
- [8.20.040](#) Administration and enforcement.
- [8.20.050](#) Unlawful materials, conditions and activities (nuisances per se).
- [8.20.060](#) Maintaining public nuisances prohibited.
- [8.20.070](#) Abandonment of unlawful conditions—Notice.
- [8.20.080](#) Abatement work—Extension of time.
- [8.20.090](#) Abatement work—Appeal of notice.
- [8.20.100](#) Performance of abatement—Town authority.
- [8.20.110](#) Entering property for abatement work.
- [8.20.120](#) Dangerous nuisance— Immediate abatement— Notice and costs.
- [8.20.130](#) Costs of abatement— Recordkeeping.
- [8.20.140](#) Costs of abatement— Assessment—Notice—Protests.
- [8.20.150](#) Proposed assessment hearing.
- [8.20.160](#) Confirmed assessment—Notice of lien.
- [8.20.170](#) Confirmed assessment—Collection.
- [8.20.180](#) Remedies of private parties.
- [8.20.190](#) Limitation of filing judicial action.
- [8.20.200](#) Alternatives.
- [8.20.210](#) Enforcement authority.
- [8.20.220](#) Violation—Penalty.

* Prior ordinance history: Ords. 10, 329 § 6, 387 and 417 § 3.

8.20.010 Title of provisions.

This chapter shall be known as the “Town of Atherton Nuisance Abatement Ordinance.” (Ord. 490 § 18 (part), 1996)

8.20.020 Findings.

The city council finds and determines as follows:

A. The town wishes to encourage the maintenance of well-kept properties. The town recognizes that property values and the general welfare of the community are founded in large part on the appearance, maintenance and safety of properties.

B. The existence of property in a condition constituting a nuisance as defined in this code is injurious to the public health, safety and welfare of the residents of this town. Such conditions contribute substantially and increasingly to the necessity for excessive expenditures for protection against hazards, diminution of property values, and the preservation of the public health and safety.

C. Public nuisances are those affecting the entire community, neighborhood or a considerable number of

people. Under California law, local governments have standing to intercede and to abate a public nuisance. However, local governments do not have standing to abate a private nuisance. Remedies in the law are available to those affected by private nuisances. However, it is the town policy to assist and to facilitate resolution of private nuisance issues where possible and appropriate.

D. The existence of public nuisances of the type designated and the abatement of them, is reasonably related to the proper exercise of the police power in protecting the health, safety and welfare of the public, and the exercise of that power by this town is authorized by the constitution of the state and applicable laws.

E. Unless uniform and expedient corrective measures are available to be undertaken to alleviate such conditions, the public health, safety and general welfare and the property values and social and economic standards of this community will be substantially depreciated. The abatement of such conditions will enhance the appearance and value of such properties and will improve the tax base of the town.

F. It is in the public interest to establish a cost recovery procedure so that the abatement of a public nuisance is at the expense of the person(s) creating, causing, committing or maintaining the nuisance. (Ord. 490 § 18 (part), 1996)

8.20.030 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless from the context a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

A. "Abatement costs and administrative expenses" include, but are not limited to, the actual expenses and costs of the town in preparing notices, specifications and contracts; in conducting inspections; for legal fees; and for other related costs incurred in enforcing the provisions of this chapter, as well as reasonable costs to abate a nuisance.

B. "Attractive nuisance" means any condition, instrumentality or machine that is unsafe and unprotected and thereby dangerous to children by reason of their inability to appreciate the peril therein, and that may reasonably be expected to attract children to the premises and risk injury by playing with, in or on it;

C. "Nuisance abatement team" means the person(s) designated by the city manager to enforce this chapter.

D. "Commercial vehicle" means a vehicle of a type required to be registered under the California State Vehicle Code used or maintained for the transportation of persons for hire, compensation or profit or designed, used or maintained primarily for the transportation of property. Passenger vehicles that are not used for the transportation of persons for hire, compensation or profit, house cars, vanpools, and other vehicles exempt by the California State Vehicle Code are not considered commercial vehicles for purposes of this chapter.

E. "Compost" means the product resulting from controlled biological decomposition of organic waste that is source separated from the municipal solid waste stream and which does not produce objectionable odors, insect problems or fire hazards and meets all other applicable municipal and state codes relating to compost.

F. "Landowner" means the person to whom land is assessed, as shown on the last equalized assessment roll of the county.

G. "Nuisance" means anything which is injurious to health, or is 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, or unlawfully obstructs the use in the customary manner of any public park, street or highway.

H. "Parkway" means that portion of a street right-of-way that lies between the property line and the outside edge of a gutter or gutter lip, including a driveway approach. Where no curb exists, "parkway" means the area of property from the property line to the edge of the pavement. "Parkway" also means any unimproved street right-of-way on the opposite side of an abutting street where the street was created to provide access to the abutting property.

I. "Private nuisance" means all nuisances not included in the definition of a public nuisance.

J. "Property" means any lot or parcel of land. For the purposes of this definition, "lot or parcel of land" means and includes any alley, sidewalk, parkway or unimproved public easement abutting such lot or parcel of land.

K. "Public nuisance" means a nuisance which affects at the same time an entire community, neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (Ord. 490 § 18 (part), 1996)

8.20.040 Administration and enforcement.

A. The city manager shall be the primary city official responsible for the administration and enforcement of this chapter. The city manager may appoint a nuisance abatement team or other city official as his/her designee and delegate all or a portion of the administration and enforcement responsibilities to that team or official. If a nuisance abatement team is appointed it shall be comprised of a representative of the planning department, the building department, the police department, and the public works department, and shall be under the direction of the department head as appointed by the city manager. The city manager or his/her designee shall provide property owners in violation of this code with a thirty-day notice of compliance. Thereafter, any legal remedies available within this code may be pursued by the city manager or his/her designee and the city attorney unless all applicable code violations are corrected.

B. Enforcement of this chapter shall occur when violations are public nuisances as defined herein. Enforcement of violations which are visible from the public right-of-way shall be given priority, unless otherwise specified or determined to be an imminent hazard by the city manager or his/her designee. For private nuisances, the town will attempt to contact the affected or involved individuals and facilitate a resolution of the issues. In addition to other conflict resolution techniques, the town may utilize a professional mediation service to help resolve the matter. (Ord. 490 § 18 (part), 1996)

8.20.050 Unlawful materials, conditions and activities (nuisances per se).

It is unlawful for any landowner or person leasing, occupying, or having charge or possession of any real property in the town to keep, maintain, deposit, bury or perform on such property or within the public right-of-way abutting or adjoining such property any public nuisance per se. The following (although not exclusive) are declared nuisances which may be abated as outlined in this chapter.

A. A building or structure which is structurally unsafe, partially destroyed, in an unreasonable state of partial construction, a fire hazard or otherwise dangerous. An "unreasonable state of partial construction" exists if the building has been under construction for more than two years and the appearance and other conditions substantially detract from the appearance of the immediate neighborhood or reduce the property values in

the immediate neighborhood, notwithstanding the status of building permits;

B. A building or structure which because of obsolescence, dilapidated condition, deterioration, damage, electrical wiring, gas connections or other cause is in such a condition as to constitute a fire hazard;

C. Graffiti;

D. Rubbish or junk, including but not limited to refuse, garbage, food waste (with the exception of compost as defined in Section 8.20.030) trash, scrap metal or lumber (including hazardous fences), concrete, asphalt, tin cans, bottles, tires, litter, piles of dirt, abandoned, broken, discarded or unused furniture, stoves, sinks, toilets, cabinets, refrigerators, freezers, discarded or inoperable equipment, discarded building materials, yard waste, or other fixtures, appliances or equipment;

E. Construction equipment and machinery and building supplies and materials (except while excavation, construction or demolition is in progress at the site under a current town-issued permit);

F. Overgrown, dead, decayed, diseased or hazardous trees or other vegetation (with the exception of compost as defined in Section 8.20.030); weeds and other vegetation likely to harbor rats, vermin or nuisances, that constitute a fire hazard, or vegetation that creates a vehicular, bicycle or pedestrian hazard or otherwise interferes with public circulation or which impedes drainage within the public right-of-way or watercourse;

G. Combustible material likely to become easily ignited or debris resulting from any fire;

H. Trash, garbage or refuse cans, bins, boxes or such containers, where there is no closed lid in place, or where the can or containers are overflowing and are stored in front or side yards visible from public street, unless in an enclosed or screened area according to this code;

I. The disposal of oil, gasoline, other petroleum products, noxious chemicals, pesticides, or any gaseous, liquid or solid wastes in such manner as to constitute a health hazard, a violation of Chapter 8.50, or degrade the appearance of or detract from the aesthetic and property values of the neighborhood;

J. Performance of work on motor vehicles or motor vehicle engines or parts on public right-of-way or in yard areas of residential properties so as to be visible from the public rights-of-way, other than emergency repairs or minor maintenance, as determined by the police chief;

K. Tents, trailers, campers or other similar vehicles or equipment that are being used for sleeping, cooking or living purposes; no tent, vehicle or trailer shall be used for living purposes or permitted as an accessory structure;

L. Abandoned, wrecked, dismantled, disrepaired or nonoperating boats and vehicles, or parts thereof, which are not stored within an entirely enclosed building on private property;

M. More than one commercial vehicle per property within residential zoning districts. No attachments of equipment or machinery used for business purposes shall be permitted on vehicles when the vehicles are not in use;

N. Permanent storage, unless within an entirely enclosed building on private property, of house campers, house cars, buses designed for transportation of more than ten persons, trucks rated at one-and-one-half ton capacity or over, or any truck-tractor and/or trailer irrespective of weight, trailer coaches, earth-moving,

landscaping and building construction vehicles, boats, boat trailers and horse trailers. On public right-of-way, permanent storage shall mean for a period of time greater than seventy-two hours. On private property, permanent storage shall mean for a period of time greater than ten days in a calendar year unless a permit to extend storage is obtained from the police chief. Earth-moving, landscaping and building construction vehicles are exempt from this section when the vehicles are currently being used as part of permitted grading and building construction activities on the same site;

O. Activities and uses not permitted within the zoning district within which a site is located, activities not permitted by a conditional use permit or variance governing the site, and unpermitted home occupation activities;

P. Conditions that may prove detrimental or dangerous to children, whether in a building, on the premises of a building, or on an unoccupied lot, including but not limited to:

1. Abandoned and broken equipment,
2. Abandoned and unsealed wells, shafts or basements,
3. Hazardous or unprotected pools, ponds or excavations,
4. Structurally unsound fences or structures,
5. Neglected machinery,
6. Lumber, trash or debris that may prove a hazard for inquisitive minors,
7. Inoperative refrigerators and freezers, unless the door has been removed or locked;

Q. Logs, curbs, rocks, fences, screen-ings, sand, dirt, yard waste, compost materials or other similar obstacles, that create a vehicular, bicycle or pedestrian hazard or otherwise interfere with public circulation or which impede drainage within the public right-of-way or watercourse;

R. Water from private property which enters or negatively affects the public right-of-way, as determined by the city engineer;

S. Cesspools, vaults or privy for the reception of human excrement or fecal matter where there is a public sewer capable of serving the premises or which emit offensive odors or are not connected with and do not drain into a septic tank;

T. Burning of any substance in such a manner as to cause odors or gas therefrom to taint the air and render it unwholesome or injurious to the health or offensive to the senses of the inhabitants of the town, or any number;

U. Maintenance or contamination of water wells used for domestic purposes where the San Mateo County environmental health department has determined the water of which has become polluted or in any way rendered unsafe for domestic drinking purposes, or has become otherwise prejudicial to health or dangerous to life;

V. Contaminated or infected dwellings which are unfit for human habitation because of disease or other hazards, as determined by the San Mateo County environmental health department;

W. Animal carcasses not abated by the San Mateo County environmental health department or humane society; and

X. Outdoor lighting which creates a safety hazard from the public right-of-way, as determined by the city engineer, or does not meet the requirements of this code and Uniform Building Code. (Ord. 490 § 18 (part), 1996)

8.20.060 Maintaining public nuisances prohibited.

It is declared a public nuisance for any landowner or person leasing, occupying, directly controlling or having possession of any property in this town to maintain any condition described in Section [8.20.050](#) of this chapter, or to maintain any attractive nuisance. It is not the intent of the town that this chapter preempts any private nuisance action or any and all other legal remedies available to private parties. (Ord. 490 § 18 (part), 1996)

8.20.070 Abandonment of unlawful conditions—Notice.

Whenever the city manager or his/her designee has inspected and finds that conditions constituting a public nuisance or other municipal code violation exist thereon, the city manager or his/her designee may use the procedures set forth in this chapter for the abatement of such unlawful condition.

A. The city manager or his/her designee shall issue a notice and abatement order, and mail a copy of such notice and order to the landowner and the person, if other than the landowner, occupying or otherwise in real or apparent charge and control of the property. The notice and order shall contain:

1. The street address and a legal description sufficient for identification of the property on which the condition exists;
2. A statement that the city manager or his/her designee has determined that a public nuisance is being maintained on the property, with a brief description of the conditions that render the property a public nuisance;
3. An order to secure all appropriate permits and to physically commence, within ten days from the date of service of the notice and order, and to complete within thirty days from such date, the abatement of the described conditions;
4. A statement advising that the disposal of material involved in public nuisances shall be carried forth in a legal manner;
5. A statement advising that if the required work is not commenced within the time specified, the city manager or his/her designee will proceed to cause the work to be done, and bill the persons named in the notice for the abatement costs and administrative expenses and/or levy the costs against the property;
6. A statement advising that any person having any interest or record title in the property may appeal the notice and order or any action of the city manager or his/her designee to city council, or any action of the city manager or his/her designee, within ten days from the date of service of the notice and order;
7. A statement advising that the notice and order will be recorded against the property in the office of

the county recorder and that a lien may be placed on the property to cover abatement costs and administrative expenses.

B. 1. The notice and order and any amended notice and order, shall be served by the following method:

a. Personal service; or

b. Certified mail, postage prepaid, return receipt requested to each person as required pursuant to the provisions of subsection A of this section at the address as it appears on the last equalized assessment roll of the county, and as known to the city manager or his/her designee. The address of the owner shown on the assessment roll shall be conclusively deemed to be the proper address for the purpose of mailing such notice. Simultaneously, the same notice may be sent by first class (regular) mail. If a notice that is sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned.

2. Service by certified or regular mail in the manner described above shall be effective on the date of mailing.

3. The failure of any person with an interest in the property to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this code. 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 published in the county in which the property is located pursuant to Government Code Section [6062](#).

C. Proof of service of the notice and order shall be documented at the time of service by a declaration under penalty of perjury executed by the person effecting service, declaring the time and manner in which service was made.

D. After the city council has affirmed the notice and order on appeal pursuant to Section [8.20.090](#), or in the event no hearing has been requested, and the nuisance has not been abated, the city manager or his/her designee shall file in the office of the county recorder a certified copy of the notice of nuisance and order of abatement as set forth in subsection A of this section. The city manager or his/her designee shall file a certificate with the county recorder that the nuisance has been abated, whenever the corrections ordered shall have been completed, so that there no longer exists a public nuisance on the property described in the certificate; or the notice and order is rescinded by the city council on appeal, or whenever the town abates the nuisance and the abatement costs and administrative expenses have been paid. (Ord. 490 § 18 (part), 1996)

8.20.080 Abatement work—Extension of time.

Upon receipt of a written request from any person required to comply with the order, the city manager or his/her designee may grant a extension of time within which to complete the abatement, if the city manager or his/her designee determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The city manager or his/her designee shall have the authority to place reasonable conditions on any such extensions. (Ord. 490 § 18 (part), 1996)

8.20.090 Abatement work—Appeal of notice.

Any person aggrieved by the action of the city manager or his/her designee is issuing a notice and order pursuant to the provisions of this chapter may appeal to the city council within ten days of the notice and order. If no appeal is filed within ten days of service of the notice and order, the action of the city manager or his/her designee shall be final. (Ord. 490 § 18 (part), 1996)

8.20.100 Performance of abatement—Town authority.

Abatement of the nuisance may, in the discretion of the city manager or his/her designee, be either performed by the town or by a contractor retained by the town. (Ord. 490 § 18 (part), 1996)

8.20.110 Entering property for abatement work.

The city manager or his/her designee may enter upon private property to abate the nuisance pursuant to the provisions of this chapter upon completion of the noticing provisions outlined in Sections [8.20.120](#) or [8.20.070](#) of this chapter. No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the town whenever such person is engaged in the work of abatement, pursuant to the provisions of this chapter, or in performing any necessary act preliminary to or incidental to such work, as authorized or directed pursuant to this chapter. (Ord. 490 § 18 (part), 1996)

8.20.120 Dangerous nuisance—Immediate abatement—Notice and costs.

Whenever the city manager or his/her designee determines that a public nuisance is so imminently dangerous to life, limb or property that such condition must be immediately corrected or isolated, the town may institute the following procedures:

A. Notice. The city manager or his/her designee shall attempt to make contact through a personal interview, or by telephone, with the landowner or the person, if any, occupying or otherwise in real or apparent charge and control thereof. In the event contact is made, the city manager or his/her designee shall notify such person or persons of the danger involved and require that such condition be immediately removed, repaired or isolated so as to preclude harm to any person or property.

B. Abatement. In the event the city manager or his/her designee is unable to make contact as herein above noted, or if the appropriate persons, after notification by the city manager or his/her designee, do not take action as specified by such official, within twenty-four hours or such lesser time as circumstances may warrant in the discretion of the city manager, then the city manager or his/her designee may, with the approval of the city manager, take all steps deemed necessary to remove or isolate such dangerous condition, or conditions, with the use of town forces or a contractor retained pursuant to the provisions of this code. (Ord. 490 § 18 (part), 1996)

8.20.130 Costs of abatement—Recordkeeping.

The city manager or his/her designee shall keep an itemized account of the expenses and costs incurred by the town in the abatement of any public nuisance under this chapter. Upon completion of the abatement work, the city manager or his/her designee shall prepare a report specifying the work done, the itemized costs of the work for each property, including direct and indirect costs, a description of the real property, and the names and addresses of the persons entitled to service pursuant to Sections [8.20.070](#) through [8.20.090](#). Any such report may include expenses and costs on any number of properties, whether or not contiguous to each other. Each person named in the notice shall be jointly and severally liable for such abatement costs and administrative expenses for their property, and the amount of such costs and expenses shall be a debt owned to the town. (Ord. 490 § 18 (part), 1996)

8.20.140 Costs of abatement—Assessment—Notice—Protests.

A. Unpaid Costs Forwarded to the City Clerk. When any costs assessed pursuant to this chapter remain unpaid for a period of sixty days or more after the date on which they were billed, the city manager or his/her designee, in the city manager or his/her designee's discretion, may forward the abatement costs and administrative expenses report described in Sections [8.20.130](#) and [8.20.140](#) to the city clerk.

B. Hearing Notice. Upon receipt of the abatement costs and administrative expenses report, the clerk shall fix a time and place for hearing and passing upon the report. The clerk shall cause notice of the amount of the proposed assessment shown in this report to be given in the manner and to the persons specified in Section [8.20.070](#). Such notice shall contain a description of the property sufficient to enable the persons served to identify it, and shall specify the day, hour and place when the city council will hear and pass upon the report, together with any objections or protests which may be raised by any landowner liable to be assessed for the costs of such abatement. Notice of the hearing shall be given not less than fifteen days prior to the time fixed by the clerk for the hearing, and shall also be published once, at least fifteen days prior to the date of the hearing, in a newspaper of general circulation in the town.

C. Protests. Any interested person may file a written protest with the city clerk at any time prior to the time set for the hearing on the report of the city manager or his/her designee. Each such protest shall contain a description of the property in which the person signing the protest is interested, and the grounds of such protest. The city clerk shall endorse on every such protest the date and time of filing, and shall present such protest to the city council at the time set for hearing. Any interested person may also register a protest at the time of the hearing. (Ord. 490 § 18 (part), 1996)

8.20.150 Proposed assessment hearing.

Upon the day and hour fixed for the hearing, the city council shall consider the report of the city manager or his/her designee, together with any protests that have been filed with the city clerk. The city council may make such revision, correction or modification in the report as it may deem just, and when the city council is satisfied with the correctness of the assessment, the report, and proposed assessment, as submitted or as revised, corrected or modified, shall be confirmed. The decision of the city council on the report and the assessment and on all protests shall be final and conclusive. The city council may adjourn the hearing from time to time. (Ord. 490 § 18 (part), 1996)

8.20.160 Confirmed assessment—Notice of lien.

A. Notice of Lien. Immediately upon the confirmation of the assessment by the city council, the city manager or his/her designee shall execute and file in the office of the county recorder a certificate in substantially the following form:

NOTICE OF LIEN

Pursuant to the authority vested in the City Manager or his/her Designee by the provisions of the Atherton Ordinance Code, said City Manager or his/her Designee, on or about the _____ day of 19__, caused the abatement of a nuisance on real property at _____ (Assessor's Parcel Number _____), and the City Council for the Town of Atherton, on the _____ day of 19__, assessed administrative expenses and abatement costs upon said real property and the same has not been paid nor any part thereof. The Town of Atherton hereby claims a lien on said real property for the net expense of the administrative expenses and abatement costs in the amount of \$_____. This amount shall be a lien upon said real property until the sum has been paid in full and discharged of record.

Dated: This ____ day of 19__

CITY MANAGER OF THE TOWN OF ATHERTON

(ACKNOWLEDGMENT)

B. Recordation. Immediately upon the recording of the notice of lien, the assessment shall constitute a lien on the real property assessed. Such lien shall, for all purposes, be upon a parity with the lien of state and local taxes. (Ord. 490 § 18 (part), 1996)

8.20.170 Confirmed assessment—Collection.

A. Assessment Book. The notice of lien, after recording, shall be delivered to the tax assessor of San Mateo County, who shall enter the amount on the county assessment book opposite the description of the particular property, and the amount shall be collected together with all other taxes thereon against the property. The notice of lien shall be delivered to the auditor before the date fixed by law for the delivery of the assessment book to the county board of equalization.

B. Collection. Thereafter, the amount set forth in the notice of lien shall be collected at the same time and in the same manner as ordinary town taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary town taxes. All laws applicable to the levy, collection and enforcement of town taxes are made applicable to such assessment. The amount set forth in the notice of lien shall be returned to the town to the fund designated for code enforcement activities. (Ord. 490 § 18 (part), 1996)

8.20.180 Remedies of private parties.

The provisions of this chapter shall not affect the rights of private parties to pursue any and all legal remedies, including but not limited to private nuisance actions or actions for damages. (Ord. 490 § 18 (part), 1996)

8.20.190 Limitation of filing judicial action.

An owner or other person who has an interest in the property aggrieved at any proceeding taken on appeal by the city council in affirming, reversing or modifying in whole or in part either the order finding and ordering the abatement of a public nuisance or the order determining the cost of abatement must bring judicial action to contest such decision within ninety days after the date of such decision of the city council. Otherwise, all objections to such decision shall be deemed waived. (Ord. 490 § 18 (part), 1996)

8.20.200 Alternatives.

Nothing in this chapter shall prevent the city council from ordering the town attorney to commence a civil or criminal proceeding to abate a public nuisance as an alternative to the proceedings set forth in this chapter. (Ord. 490 § 18 (part), 1996)

8.20.210 Enforcement authority.

The procedures set forth in this chapter shall not be exclusive and shall not in any manner limit or restrict the town from enforcing other town ordinances or abating public nuisances in any other manner provided by law. (Ord. 490 § 18 (part), 1996)

8.20.220 Violation—Penalty.

A. The owner or other person having charge or control of any such buildings or premises who maintains any public nuisance defined in this chapter, or who violates any order of abatement served as provided in this chapter, is guilty of a misdemeanor.

B. Any occupant or lessee in possession of any such building or structure who fails to vacate the building or structure in accordance with an order given as provided in this chapter, is guilty of a misdemeanor.

C. Any person who removes any notice or order posted as required in this chapter, for the purpose of interfering with the enforcement of the provisions of this chapter, is guilty of a misdemeanor.

D. Any person who obstructs, impedes or interferes with any representative of the city council or with any representative of a town department or with any person who owns or holds any estate or interest in a building which has been ordered to be vacated, repaired, rehabilitated or demolished, or with any person to whom any such building has been lawfully sold pursuant to the provisions of this chapter when any of the aforementioned individuals are lawfully engaged in proceedings involving the abatement of a nuisance, is guilty of a misdemeanor. (Ord. 490 § 18 (part), 1996)

The Atherton Municipal Code is current through Ordinance 621, passed November 16, 2016.

Disclaimer: The City Clerk's Office has the official version of the Atherton Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.
