**TOWN OF FAIRFAX**
**STAFF REPORT**

**TO:** **Mayor, Members of the Town Council**

**FROM:** **Jim Moore, Director of Planning and Building Services**
**Mark Lockaby, Building Official**

**DATE:** **July 11, 2012**

**SUBJECT:** **Adoption of Resolution 12-48 declaring the conditions at 15 Belmont (APN: 002-212-04) a Public Nuisance and ordering the Town Manager to abate the Nuisance**

## RECOMMENDATION

Staff recommends the Town Council adopt the attached Resolution 12-48 declaring the described conditions on the property and in the public right of way to be a public nuisance and specifically:

1) Order the Acting Town Manager to cause the abatement of the nuisance by hiring a contractor to remove the litter, refuse, rubbish, salvaged items, construction debris, and complete minor landscaping.

2) Hire a towing company to remove the two abandoned trailers.

3) Prior to abatement by a building contractor and towing company, the owners will be given notice and a final ten day period of time in which to remedy the listed Code violations on the property. Any abatement will be completed in accordance with applicable law.

4) Unless written permission is obtained from the property owner, authorize the Town Attorney to seek a warrant to enter the property and abate the nuisance conditions.

5) Town staff will return to Council at a future date to report on the abatement and request the costs of abatement be charged to the property owners as a special assessment lien on the property.

## DISCUSSION

The project located at 15 Belmont is a Single Family Residence owned by Michael and Sarah Kenyon that has an accumulation of miscellaneous items located on the property, and in the public right of way. These items consist of but are not limited to: plywood, plastic flower pots, clay flower pots, old newspapers, sheet metal ductwork, cardboard boxes, masonry blocks, plastic tarps, plastic storage cabinets, galvanized buckets, ropes, ceramic coffee cups, plastic coffee cups, metal wire, lamp shades, coffee pots, measuring cups, miscellaneous spray cans, old stereo components, wood tool handles, bungee cords, garden stakes, metal down spouts, plastic tool boxes, a potted cactus plant, wood shelving, electrical wire, electrical cords, electric fans, empty wine bottles, aluminum cans, miscellaneous bottles, paper bags, plastic bags, a broken power washer, old tires, metal oil drums, plastic storage drums, bricks, old car seats, fire extinguishers, plastic cups, old television sets, wood scraps, bicycle tires, bicycle wheels, metal scraps, plastic gas cans, metal gas cans, plastic jugs with unknown fluids, and many other salvaged items. The items are haphazardly strewn around the property, and in various vehicles parked on the street.



AGENDA ITEM # 12

The Kenyons have ignored all letters and citations requesting the removal of the items. All attempts to have the Kenyons maintain their property in compliance with the Town's Municipal Code have been ignored.

The conditions on the property constitute a public nuisance due to the town code violations, and the unsightly appearance to the neighborhood.

**BACKGROUND**

The conditions that constitute a public nuisance at 15 Belmont Avenue have been evident for many years and concerned neighbors have been asking staff and council to help abate the situation. The chronology of events that have led to this point in time are as follows:

- On August 5, 2003 the Town Council had an abatement hearing on this issue
- On October 7, 2003 the Town Council continued the abatement hearing on this issue.
- On December 2, 2003 the Town Council continued the abatement hearing on this issue.
- On September 5, 2008 Notice to remove litter posted and sent
- On March 24, 2010 Notice to remove litter posted and sent
- On March 24, 2010 Administrative citation issued to remove litter
- On April 27, 2012 Notice to remove litter posted and sent
- On June 1, 2012 Notice of abatement hearing posted and sent

In addition to letters and notices sent, staff has meet with Mr. and Mrs. Kenyon on numerous occasions to discuss the ongoing code violations. In every meeting Mr. Kenyon promised to quickly clean up the property and to keep it clean. Over the years that I have been involved with this I have not seen any improvement to these ongoing conditions.

**TOWN CODE VIOLATIONS:**

1. An accumulation of salvage materials, litter, rubbish, lumber, and refuse.

2. There are two trailers, a pickup truck, and a motor home all filled with salvage materials.

3. The landscaping is unmaintained and overgrown.

**§ 1.12.045 SUBSTANDARD OR DANGEROUS PROPERTY CONDITIONS.**

No occupant shall cause or allow any condition on its property, or on an adjacent sidewalk, which unreasonably increases the risks to public safety or public health, or which results in substantial detriment to the property of others in the immediate vicinity thereof. Such conditions include but are not limited to the following:

(D) A property **maintained so poorly** that it is out of conformity with community maintenance standards as set forth in this Code or otherwise by the town, and which substantially diminishes the use of neighboring properties.

(F) An **accumulation of litter, refuse, rubbish, lumber, debris, salvage materials** which are visible from public or private property or otherwise in violation of this Code.

(I) Dead, decayed, diseased or hazardous trees, **weeds or overgrown vegetation** which is likely to harbor rats, vermin or other pests, or which protrudes over or across a city street or sidewalk so as to substantially obstruct the clear passage of vehicles or pedestrians.

(K) The presence of abandoned dismantled, wrecked or **inoperable motor vehicles**, motorcycles, recreational vehicles, **trailers**, **campers**, boats or parts thereof, except when such vehicles are completely

enclosed within a building in a lawful manner where they are not visible from the street or other public or private property.

**ATTACHMENTS**

Exhibit 1: Notice to Remove Litter September 5, 2008
Exhibit 2: Notice to Remove Litter March 24, 2010
Exhibit 3: Administrative Citation March 24, 2010
Exhibit 4: Notice to Remove Litter April 27, 2012
Exhibit 5: Notice to Abate a Public Nuisance June 1, 2012
Exhibit 6: Photos of 15 Belmont

**RESOLUTION 12-48**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DECLARING THE CONDITIONS AT 15 BELMONT A PUBLIC NUISANCE AND ORDERING THE TOWN MANAGER TO ABATE THE NUISANCE**

**WHEREAS,** the California Government Code sections 38771 et seq. and the Fairfax Town Code ("Code") Chapter 1.12 provide for the declaration of a public nuisance on private property that is being maintained in violation of the Town Code; and

**WHEREAS,** the Town Council may order the Town Manager to abate any public nuisance; and

**WHEREAS,** the property at 15 Belmont Ave. in Fairfax (Assessor's Parcel Number (APN) 002-212-04) is being maintained in violation of provisions of the Town Code, the California Building and Fire Code; and

**WHEREAS,** the specific violations include the following:
Town Code sections 1.12.045 (D) A poorly maintained property (F) An Accumulation of salvaged materials (I) Overgrown vegetation (K) The presence of abandoned trailers, and campers; and

**WHEREAS,** the nuisance conditions consist of the following: 1) storage of accumulated items on the property, and in the public right of way including, but not limited to, salvaged materials, construction debris, household items, etc; 2) Overgrown vegetation ; 3) The presence of abandoned vehicles ; and

**WHEREAS,** the property owner has been notified of the violations and nuisance conditions and has failed to bring the property into compliance with applicable Codes; and

**WHEREAS,** the property owner was notified of the Town Council hearing on this matter.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Fairfax as follows:

1. The property at 15 Belmont Ave. in Fairfax, APN 002-212-04, is being maintained in violation of Town Code section 1.12.045. (D), (F), (I), and (K).

2. The listed conditions existing at 15 Belmont Ave. are hereby declared to be a public nuisance.

3. Owner shall: 1) remove the salvaged items, construction debris, and other miscellaneous items on the property and in the public right of way, trim overgrown vegetation, and remove abandoned vehicles within 15 days.

4. The Town Council authorizes and orders the Town Manager to abate the nuisance by hiring a contractor to remove the accumulated items from the property, notice the owner that the items will be held for ten days at the contractor's warehouse and thereafter disposed of if not retrieved.

5. This Resolution shall become effective immediately upon adoption.

The foregoing Resolution was duly passed and adopted at a Regular Meeting of the Town Council of the Town of Fairfax held in said Town on the 11th of July, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

_____
MAYOR Pam Hartwell-Herrero

Attest:

_____
Judy Anderson, Town Clerk

**TOWN OF FAIRFAX**
142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

September 5 , 2008

**DO NOT REMOVE THIS NOTICE**

**Sarah A. Kenyon**
15 Belmont Avenue
Fairfax, CA. 94930

# NOTICE TO REMOVE LITTER

RE: 15 Belmont Avenue; Assessor's Parcel No. 002-212-04; Litter Violations of Town Code

Dear Mr. and Mrs. Kenyon,

The Town has received several complaints about this property and the accumulating garbage, boxes, bottles, suitcases and other household items being stored in and around the property. Town staff has also verified this by visual inspection and has determined that the litter is a danger to the public health, safety and welfare. This is a violation of Section 8.12.120 of the Town Code, which requires owners to maintain property free of litter [see enclosed].

Please remove the litter, and when it has been removed please contact the Fairfax Building Official to schedule an inspection by calling the inspection schedule line at (415) 453-2263.

While we prefer to gain compliance with the Town regulations voluntarily, if we have to, we will take steps to force your compliance in accordance with Section 8.12.150 of the Town Code.

THEREFORE, YOU ARE HEREBY NOTIFIED that should you fail to clean up the property within fifteen (15) days of your receipt of this notice, [or thirty (30) days after the date of this notice if it is returned to the Post Office because of its inability to make delivery (December 13, 2007),] the Town will begin proceedings in accordance with Town Code Section 8.12.150 to clean up your property. Under Town Code Section 8.12.160, the costs of such clean up, plus

EXHIBIT # 1

accrued interest, shall become a charge added to your property tax bill. [See enclosed copies of code sections.]

Sincerely,

Mark Lockaby
Building Official

**TOWN OF FAIRFAX**
142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

March 24, 2010

**DO NOT REMOVE THIS NOTICE**

**Sarah A. Kenyon**
15 Belmont Avenue
Fairfax, CA. 94930

# NOTICE TO REMOVE LITTER

RE: 15 Belmont Avenue; Assessor's Parcel No. 002-212-04; Litter Violations of Town Code

Dear Mr. and Mrs. Kenyon,

The Town has received several complaints about this property and the accumulating garbage, boxes, bottles, suitcases and other household items being stored in and around the property. Town staff has also verified this by visual inspection and has determined that the litter is a danger to the public health, safety and welfare. This is a violation of Section 8.12.120 of the Town Code, which requires owners to maintain property free of litter [see enclosed].

All of the litter must be removed from the property on a continual basis. Failure to remove the litter on a continual basis will result in the Town issuing an administrative citation in the amount of $100.00. Continued failure to comply will result in fines increasing to $200.00 and then to $500.00. Once the fine reaches $500.00 the fines will remain at the rate of $500.00 per day each and every time litter is not contained.

If you have questions regarding this matter please feel free to contact me.

Sincerely,

Mark Lockaby
Building Official

EXHIBIT # 2

**Town of Fairfax**
**Department of Planning and Building Services**

Citation No: 10-003

# NOTICE OF ADMINISTRATIVE CITATION

CODE ENFORCEMENT
142 BOLINAS ROAD
FAIRFAX, CA 94930
(415) 453-1584

Date: 3-24-10 Time: 1:15
An inspection of the premises located at 15 BELMONT in the Town of Fairfax, revealed a violation(s) of the Fairfax Municipal Code.

Name of owner or business: K.ENYON

Address if different than violation:

☒ 1ST. CITATION $100.00.....IS NOW DUE AND PAYABLE.

☐ THE NEXT LEVEL CITATION IS NOW PENDING AND YOU MAY BE CITED EACH DAY THE VIOLATION CONTINUES. OTHER ENFORCEMENT PENALTIES MAY ALSO RESULT IF COMPLIANCE IS NOT ACHIEVED OR IF YOU CONTINUE TO INGNORE THIS CITATION.

☐ 2ND. CITATION $200.00.....IS NOW DUE AND PAYABLE.

☐ 3RD. CITATION $500.00.....IS NOW DUE AND PAYABLE.

YOU WERE ADVISED AND/OR WARNED OF THIS VIOLATION ON
AND YOU HAVE NOT CORRECTED AND/OR RESOLVED THE VIOLATION(S).

TOWN OF FAIRFAX MUNICIPAL CODE 8.12.120 DESCRIPTION OF VIOLATION(S) LITTER ARROUND PROPERTY

REMOVAL OF OFFICIAL NOTICE

TO CORRECT THIS VIOLATION: DO NOT REMOVE NOTICES AND CLEAN UP JUNK AND LITTER

RECEIPT ACKNOWLEGED by: DATE

SIGNATURE OF INSPECTING OFFICIAL: PRINT NAME MARK LOCKABY

VIOLATION CLEARED DATE: (DATE INSPECTED).

Any person aggrieved by the action of an administration official, advisory body, or the commission, in the administration or enforcement of this title, may make verified application to the Town Clerk in the manner prescribed by the Town Council within ~~ten days of this action PTC 17.20.030.~~ SEVEN

EXHIBIT # 3

**TOWN OF FAIRFAX**
142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

April 27, 2012

Sent certified and regular mail #7010 3090 0001 9562 5231

Michael Kenyon
15 Belmont Avenue
Fairfax, CA. 94930

## NOTICE TO REMOVE LITTER

RE: 15 Belmont Avenue; Assessor's Parcel No. 002-212-04; Litter Violations of Town Code

Dear Mr. and Mrs. Kenyon,

The Town has received numerous complaints about this property and the accumulating garbage, boxes, bottles, suitcases and other household items being stored in and around the property. Town staff has also verified this by visual inspection and has determined that the litter is a danger to the public health, safety and welfare. This is a violation of Chapter 1.12 of the Town Code, which requires owners to maintain property free of litter.

Please remove the litter, and when it has been removed please contact the Fairfax Building Official to schedule an inspection by calling the inspection schedule line at (415) 453-2263.

While we prefer to gain compliance with the Town regulations voluntarily, if we have to, we will take steps to force your compliance in accordance with Chapter 1.12 of the Town Code.

THEREFORE, YOU ARE HEREBY NOTIFIED that should you fail to clean up the property within thirty (30) days after the date of this notice the Town will begin abatement proceedings before the Town Council in accordance with Town Code Chapter 1.12, to clean up your property. Under Town Code Chapter 1.12, the costs of such clean up, plus accrued interest, shall become a charge added to your property tax bill.

Sincerely,

Mark Lockaby
Building Official

EXHIBIT # 4

**TOWN OF FAIRFAX**
142 Bolinas Road, Fairfax, California 94930
(415) 453-1584 / Fax (415) 453-1618

6-1-2012

Sent regular and certified mail # 7010 3090 0001 9562 5316

# NOTICE TO ABATE PUBLIC NUISANCE

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

15 Belmont Ave. Fairfax, CA 94930 Lot 002 Block 212 Tract 04

YOUR ATTENTION IS HEREBY DIRECTED to the provisions of Chapter 1.12 of the Code of the Town of Fairfax on file in the office of the Town Clerk. Pursuant to the provisions of said Chapters, you are hereby notified to correct within 30 days of the date of this notice, on the property herein before described, the following public nuisances:

**§ 1.12.045 SUBSTANDARD OR DANGEROUS PROPERTY CONDITIONS.**

No occupant shall cause or allow any condition on its property, or on an adjacent sidewalk, which unreasonably increases the risks to public safety or public health, or which results in substantial detriment to the property of others in the immediate vicinity thereof. Such conditions include but are not limited to the following:

(D) A property **maintained so poorly** that it is out of conformity with community maintenance standards as set forth in this Code or otherwise by the town, and which substantially diminishes the use of neighboring properties.

(F) **An accumulation of litter, refuse, rubbish, lumber, debris, salvage materials which are visible from public or private property or otherwise in violation of this Code.**

(I) **Dead, decayed, diseased or hazardous trees, weeds or overgrown vegetation which is likely to harbor rats, vermin or other pests, or which protrudes over or across a city street or sidewalk so as to substantially obstruct the clear passage of vehicles or pedestrians.**

(K) The presence of **abandoned** dismantled, wrecked or **inoperable motor vehicles**, motorcycles, **recreational vehicles**, **trailers**, **campers**, boats or parts thereof, except when such vehicles are completely enclosed within a building in a lawful manner where they are not visible from the street or other public or private property.

**EXHIBIT # 5**

Should you fail to correct this violation by the deadline above, a hearing will be held before the Town Council on July 11, at 7:00 o'clock, in the Fairfax Women's Building, 46 Park Road, Fairfax, California.

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

Date June 1, 2012

Sincerely

Mark Lockaby
Building Official