

**2020 FUELS MANAGEMENT, ABATEMENT & ENFORCEMENT ORDINANCE  
OF THE FAIRVIEW FIRE PROTECTION DISTRICT**

Pursuant to the authority granted under Health and Safety Codes §§ 13861, 13879, and 14875, *et seq.* 14930, *et seq.*, and Government Code §§ 25845, 39501, and 39502, the Fairview Fire Protection District (“District”) ordains as follows (collectively, “Ordinance”):

**PURPOSE.** The purpose of this Ordinance is to protect lives and property from the threat of wildfire by providing for the District’s abatement of combustible vegetation and other flammable materials, which increases community safety and the level of protection for habitable structures.

**IN CASE OF CONFLICT.** Where this Ordinance differs or conflicts with prior resolutions or ordinances remaining in force and effect within the District, this Ordinance shall supersede any such differences and/or conflicts, unless otherwise stated herein.

**Section 1. INCORPORATION OF PRIOR “ORDINANCE 1”**

The District’s abatement activity under this Ordinance shall be to enforce the District’s Abatement Standards, previously adopted by the Governing Board as “Ordinance 1,” and fully incorporated herein.

**Section 2. DECLARATION OF PUBLIC NUISANCE VIA RESOLUTION**

- Whenever the Chief of the Fairview Fire Protection District or designee finds any indicia of insufficient abatement of weeds, grass, brush, and/or dead growth as described and defined by the District’s prior “Ordinance 1,” incorporated herein via Section 1 of this Ordinance, *supra*, whether it exists on any lot or premises, or upon any sidewalk, parking or street adjacent to such lot or premises, the Fire Chief or designee may seek for the governing board to make a resolution of a public nuisance.
- The resolution shall refer to the street, highway, or road upon which the nuisance exists, or upon which the sidewalks are located, or upon which the private property affected fronts or abuts or nearest to which the private property is located. If the private property fronts or abuts upon more than one street, highway, or road, it is only necessary to refer to one of the streets, highways, or roads.

**Section 3. POST OR MAIL NOTICE TO DESTROY WEEDS WITH HEARING DATE**

- Once the Governing Board formally declares that a public nuisance as herein defined

exists on any lot or premise, or upon any sidewalk, parking lot, parking area or adjacent to such lot or premise the Chief or designee will cause a notice to be issued to abate such nuisances (“Notice”).

- Such Notice will be headed: “NOTICE TO DESTROY WEEDS” in words not less than one inch in height.
- The Notice shall, in legible characters, direct the abatement of the nuisance and shall include a copy of the declaration of nuisance, per Section 2 *supra*, as well as this Ordinance for particulars.
- The following shall qualify as adequate language for the Notice, set forth in italics below solely for emphasis, **provided the District fills in the below brackets with appropriate information corresponding to the specific nuisance at issue:**

*“Notice is hereby given that on [DATE], the Chief of the Fairview Fire Protection District declared that a public nuisance which exists upon or in front of the property on, or nearest to [STREET/ROAD], in the Fairview Fire Protection District, and more particularly described in the declaration and that the public nuisance must be abated by its removal, otherwise they will be removed and the nuisance will be abated by the District authorities, in which case the cost of such removal shall be assessed upon the lots and lands from which or in front of which such weeds are removed, and such cost will constitute a lien upon such lots or lands until paid. Reference is hereby made to the declaration for further particulars. All property owners having any objections to the proposed removal of such weeds are hereby notified to attend a meeting of the Fairview First Protection District Governing Board, to be held [Day of Week of Meeting, Full Date of Meeting], when their objections will be heard and given due consideration.”*

- The Notice may be served in **either one of the following ways:**
- First, Notice may be served by BOTH conspicuously posting a copy of the Notice as described in this Section near the property on which the nuisance exists and additionally publishing the content of the same Notice once in a newspaper of general circulation printed and published in the District’s jurisdiction, not less than 10 days prior to the date of the hearing. “Near the property” requires posting a copy of the Notice in front of the property or, if it has no frontage, at the nearest point most likely to actually notify the owner.
  - When multiple copies of the Notice are posted for the same property, those copies should be not more than one hundred feet apart.
  - When Notice is issued to multiple lots or parcels of land, at least one notice must be posted for each lot or parcel.
- Second, as an alternative to posting and publication, it is sufficient that a copy of the

Notice be mailed via certified mail to the property owners as their names and addresses appear from the last equalized assessment role, or as they are known to the individual responsible for satisfying this requirement.

#### **Section 4. DISTRICT TO HOLD HEARING ON THE DESIGNATION OF A PUBLIC NUISANCE**

- At the time and place stated in the notice, the Governing Board or its designee shall hear and consider all relevant evidence, objections or protests and shall receive testimony of property owners, lessees, occupants, witnesses, District personnel, Chief or designee, and any and all other interested persons relative to such alleged public nuisance and to proposed abatement measures. The hearing may be continued from time to time by formal, public announcement of the District or designee.
- Upon the conclusion of this nuisance hearing, the Governing Board or designee shall allow or overrule any or all objections. After the hearing, if the Governing Board or designee finds by majority vote that a public nuisance does exist and that there is sufficient cause to abate the nuisance, the Governing Board or designee shall issue or direct to be issued a written order setting forth those findings and ordering abatement of the nuisance in the manner and by the means specifically set forth in the order (“Order”). The decision rendered shall be final.
- The Order shall state that, if the nuisance is not abated by the property owner at their own expense, it will be abated by the District. The Order shall also state that the cost of abatement will be assessed upon the property from which the nuisance is removed and, if left unpaid by the owner, may constitute a lien or special assessment upon the property until paid.
- The Order shall also set forth the time within which the work shall be commenced and completed.
- At the direction of Counsel, the Order shall include a formal request for the property owner’s consent for the Chief or designee with a vendor to enter the property to carry out abatement as Ordered. The consent request shall set forth a deadline to return the consent form, which deadline may be continued from time to time at the discretion of the Chief or District staff. The consent request shall inform the property owner that consent is not legally required but that any cost of warranted enforcement actually expended due to the owner’s withdrawal of consent shall be added to the final Demand for Payment.
- A copy of the Order shall be mailed to the owner(s) of the property via certified mail along with the request for consent.

## **Section 5. SEASONAL OR RECURRENT NUISANCES**

- Seasonal and recurrent nuisances shall initially be abated in accordance with the provisions of this Ordinance.
- The Governing Board or designee may also find where appropriate and declare upon the completion of a nuisance hearing that a nuisance is seasonal or recurrent. If the Governing Board or designee makes such a formal finding upon hearing, such seasonal or recurrent weeds shall be ordered abated every year without the necessity of any further hearing to declare a nuisance.
- For such recurring public nuisances, it shall be sufficient after compliance with the full process set forth in Section 4, *supra*, (complying only in the first instance after the initial declaration of nuisance) to each subsequent year mail a post card notice to the owner(s) of the property as they and their addresses appear upon the current assessment roll prior.
- Notice for any seasonal or recurrent public nuisance shall refer to and describe the property and shall state that weeds of a seasonal and recurrent nature are growing on or in front of the property, and that the same constitute a public nuisance which must be abated by the property owner, and that otherwise the nuisance will be abated by District authorities, in which case the cost of such removal shall be assessed upon the lot and lands from which or in front of which such weeds are removed and that such cost will constitute a lien upon such lots or lands until paid. This notice shall be accompanied by a consent request substantially similar to the request described in detail in Section 4, *supra*.

## **Section 6. PROPERTY OWNER ABATEMENT OF PUBLIC NUISANCE**

- The person(s) responsible for the property may, at their own expense, abate the nuisance as prescribed by the Order issued pursuant to Section 4, *supra*, prior to the expiration of the abatement period set forth in the Order, and thereafter notify the District of the abatement, at which point the Chief or designee shall request consent to enter and inspect the property to determine if adequate abatement has taken place.
- If the nuisance has been inspected by the Chief or designee and the inspection reveals that the property has been abated in accordance with the Order, the proceedings shall be terminated. Nevertheless, in any case in which an order to abate is issued, the District may in its discretion send a Demand for Payment limited to the costs incurred in enforcing abatement, including investigation, boundary determination, clerical costs, and other related costs.

## Section 7: WARRANTED ABATEMENT

- If a Noticed and Ordered abatement is not completed by the person(s) responsible for the property within the time prescribed in the Order, the Chief or designee is authorized to cause the nuisance to be abated by warranted entry onto the land by Chief, Chief's designee/staff, and private contractor, **subject to the issuance or a lawful administrative warrant obtained from a court of competent jurisdiction and all abating parties' compliance with the terms and limitations of the warrant, or as the only alternative to a lawful warrant, subject instead to the owner's prior written consent for entry as formally requested by the District per Section 4, supra.**
- A refusal by the property owner to grant entry is required by District policy prior to seeking an inspection warrant. During the inspection, consent, including written consent, may be revoked verbally at any time by the person granting consent. Reasons for revoking shall be documented by the District and shall not be presented as a condition for exiting the owner's property. If the Chief or designee is told to stop inspecting the property and leave the premises by the owner who has previously provided written consent, the Chief or designee shall stop immediately and leave the property. Revocation of consent shall constitute a refusal to inspect for the purposes of an inspection warrant.
- If consent is refused, Chief or designee shall work with District counsel or designee to apply to the Alameda County Superior Court Warrant Duty Judge, or other court of competent jurisdiction, for an inspection and/or abatement warrant, consistent with any applicable limitations and/or requirements codified in California Code of Civil Procedure, Section 1822.50 *et seq.*, and to address all relevant compliance requirements codified or otherwise set forth in applicable case law.

## Section 8. REPORT OF COSTS AND RECOVERY OF COSTS FROM OWNER

- Those abating a nuisance pursuant to an Order shall keep a detailed, written account of the cost of abatement, including photographs where appropriate, and shall render an itemized report in writing to the Governing Board or designee evidencing all costs actually expended to authorize, complete, and document the Ordered abatement.
- Costs for abatement shall include, but are not limited to, the actual costs to abate, any and all administrative costs, cost of mailing, personnel time, computer retrieval, investigation, boundary determination, measurement, any directly related costs actually incurred by contractors, and other related costs authorized in writing by the District or the Chief.

- Even if the abatement is conducted by the property owner, any costs incurred by the District pertinent to the issuance or enforcement of the Order may be recovered by the Governing Board from the property owner as provided in this Ordinance.
- A report of the proceedings and an accurate account of the cost of abatement shall be filed with the District's General Manager or designee, who shall then recover the amount from the property owner by mailing via certified mail to the property owner a Demand for Payment, entitled Demand for Payment of Costs Pursuant to District Authority to Order Abatement, with all appropriate documentation and an itemized account requesting the full cost amount. The Demand for Payment shall specify a date, or date(s) at the discretion of the General Manager, when all property owners seeking to contest any Demand for Payment of Costs Pursuant to District Authority to Order Abatement may contest the correctness and reasonableness of the account of the costs of abatement.
- At least five (5) days prior to the Demand for Payment hearing, copies of all itemized abatement reports pertaining to all Demands for Payment outstanding and unpaid shall be posted in a public place outside of the regular meeting place of the Governing Board and online, showing the date and time of the hearing. A copy of each report and notice of hearing date shall also be sent to the last known owner(s) of the parcel, as listed in the County Assessor's Office, at least five (5) days prior to the hearing.

**Section 9. SEASON-END HEARING ON UNPAID ABATEMENT DEMANDS**

- At the time fixed for receiving and considering all objections to outstanding and unpaid Demands for Payment, the Governing Board shall hear any objections of any of the property owners in the District liable to be assessed for the work of abatement.
- Thereupon, the Governing Board may make such revision, correction, or modifications as it deems necessary, after which, by order or resolution, each report shall be confirmed.
- The decision of the Governing Board on the costs of abatement to be assessed shall be final.
- Following the hearing date, a copy of each report, as confirmed, shall be billed directly to the responsible property owner. Unpaid bills shall constitute a lien on the unpaid property and shall be collected by the District, including as pursuant to Section 10 of this Ordinance.

## **Section 10. LIENS AND ABATEMENT COSTS LEVIED AGAINST UNPAID PROPERTY OWNER**

- A copy of the report, as confirmed, shall be turned over to Alameda County with a request that the respective assessments be entered against the respective parcels of land as they appear on the current assessment roll.
- The District shall complete all required documentation required by the county's tax collector to include the report as the assessment on bills for taxes levied against the respective lots and parcels of land.
- Thereafter the amounts of the assessments shall be requested to be collected at the same time and in the same manner as county taxes are collected and subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes.
- The amounts in the report shall constitute a lien, which shall attach upon recordation of a certified copy of the resolution of confirmation. The lien created shall have the same priority as a judgment lien on real property and continues in effect until released.
- The lien shall be subordinate to all fixed special assessment liens previously imposed upon the same property, but it shall have priority over all fixed special assessment liens which may thereafter be created against the property. Any re-assessments are deemed retroactively to have been made on the same date as the original assessment, but a supplemental assessment is considered a new assessment.
- The Governing Board may also assign their interest to a private corporation for collection. The assignee of said claim shall be authorized to sue for collection of money due. Upon collection on said lawsuit, the District shall receive the first monies up to what is owed to the District for services performed and, after the Fire District has been satisfied, the collection facility shall be paid for their work and then the assignees shall be paid.

## **Section 11. CONDITIONS OF CANCELLATION AND REFUNDS OF ABATEMENT COSTS**

- An assessment will only be canceled and/or refunded where:
  - The assessment was entered charged or paid more than once, through clerical error or mistake of the District, or in violation of any law; or
  - The property was acquired by a public entity.
- An order for refund shall only be entered if the assessment was subject to cancellation pursuant to this Section, or other applicable law, and the refund is verified by the person who paid the assessment, his guardian, executor, or administrator and filed within three years of the date payment was made to the District.

**Section 12. SEVERABILITY/VALIDITY.**

The Governing Board hereby declares that should any section, paragraph, sentence or word of this Ordinance referenced herein be declared for any reason to be invalid, it is the intent of this Board that it would have adopted all other portions of this Ordinance independent of the eliminations from any such portion as may be declared invalid.

**Section 13. DATE OF EFFECT**

The Secretary to the Board of Directors will certify the adoption of this Ordinance after a first reading and a second reading, in title only as permitted by law, each reading to take place at two separate regularly scheduled District board meetings and cause the same to be published in the manner required by the California Government Code. This Ordinance will take effect thirty (30) days after its final passage after a second reading.

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Date of First Reading December 2, 2019  
Date of Second Reading January 27, 2020

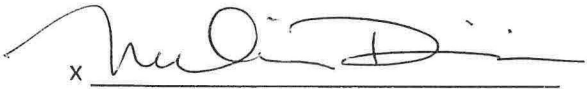
Said Ordinance was read a second time, adopted, and ordered published in the manner required by the California Government Code by the following roll call vote:

**AYES: Directors Dimic, Justice, McDaniel, Choi, and Clark (5)**

**NOES: None (0)**


**ABSENT: None (0)**

**ABSTAIN: None (0)**

  
x \_\_\_\_\_

Melissa Dimic  
President of the Board of Directors,  
Fairview Fire Protection District

Date of Final Signature 27 Jan 2020

Clerk Attestation   
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