

DEER SPRINGS FIRE PROTECTION DISTRICT ORDINANCE 2002-03

AN ORDINANCE OF THE DEER SPRINGS FIRE PROTECTION DISTRICT REPEALING ORDINANCE #99-03 AND ADDING NEW ORDINANCE #2002-03 DECLARING CERTAIN WASTE AND/OR VEGETATION (MATTER) A PUBLIC NUISANCE AND PROVIDING FOR THE ABATEMENT AND/OR REMOVAL THEREOF.

The Board of Directors of the Deer Springs Fire Protection District ordains as follows:

ARTICLE I: That the health and safety of the Deer Springs Fire Protection District and the residents thereof requires the incorporation of the following ordinance.

ARTICLE II: A majority of all native vegetation within the Deer Springs Fire Protection District constitutes a seasonal and recurrent nuisance pursuant to the Health and Safety Code Section 14900.5.

ARTICLE III: The enactment of this ordinance is pursuant to the authority of the Health and Safety Code Sections 13861(h); 13879; Division 12, Part 5, Sections 14930, et seq.; and Division 12, Part 6, Section 14930.

ARTICLE IV: Abatement of certain vegetation and waste matter:

Section 1: **Certain vegetation and other items declared a public nuisance.**

- (a) All vegetation growing upon the streets, sidewalks or upon private or public property within the Deer Springs Fire Protection District which by reason of their size, type, manner of growth, proximity to any building or improvements which will, with reasonable probability constitute a fire hazard. Said vegetation or other items are hereby declared to be a public nuisance and shall be abated to the satisfaction of the Fire Chief or his/her authorized representative.

- (b) Trash, rubbish, debris and other combustible materials which create a fire hazard must be removed from the property and properly disposed of.
- (c) Properties that are abutting improved properties, shall maintain a minimum of fifty (50') feet clearance at the property lines abutting the improved properties. Distance shall be measured on a horizontal plane.
- (d) Improved properties of one (1) acre or less shall be cleared in their entirety.
- (e) Properties of more than one (1) acre shall have a minimum clearance from structures of one hundred feet (100'). Distance shall be measured on a horizontal plane.
- (f) Roadways and/or driveways shall be cleared to a minimum clearance of ten feet (10') on each side of the roadway and/or driveway. When conditions exist that are impractical, exceptions may be considered. Vertical clearance shall be to a height of thirteen and one-half feet (13.5') and to the width of the roadway and/or driveway.
- (f) Clearance of properties shall be accomplished by methods that will not disturb native soil or root stock. Grading shall not be used to clear or abate the noted hazard.
- (g) Native chaparral may be thinned as approved by the Deer Springs Fire Protection District. Cuttings may be mulched and left atop of the soil to a maximum depth of six (6") inches or may be hauled to an approved County Landfill Site.
- (h) Mature trees must be trimmed to six (6') feet above the ground or as approved by the Deer Springs Fire Protection District and must be cut back at least ten feet (10') from chimneys.
- (i) Land owners who have been noticed of the existence of a rare, threatened or endangered plant on the property to be cleared must notify the State Dept. of Fish & Game at least ten(10) days in advance of undertaking the vegetation clearance. If the landowner is aware of any state or federal listed species on the property, then the U.S. Fish & Wildlife Service and the State Dept. of Fish & Game should be

notified prior to abatement. If a state or federal candidate or species is killed, injured and captured, the landowner shall report this information to the State Dept. of Fish & Game or the U.S. Fish & Wildlife Service. If Coastal Sage or Gnatcatcher habitat is on the property to be cleared a permit from the U.S. Fish & Wildlife Service is required prior to clearing and/or abating the fire hazard.

- (j) Persons owning, leasing, controlling, operating or maintaining buildings or structures in, upon or adjoining hazardous fire areas, and persons owning, leasing or controlling land adjacent to such buildings or structures shall maintain an effective fuel modification zone by removing and clearing flammable vegetation and combustible growth from areas within one hundred (100') feet measured on a horizontal plane of such buildings or structures. The fuel modification zone may be re-planted with either approved irrigated, fire-resistant planting material or approved non-irrigated, drought-tolerant, fire-resistant plant material. Re-planting of the fuel modification zone may be required for erosion control.

EXCEPTIONS:

- a. Agricultural crops, groves, nurseries, cultivated, useful grasses and pasture shall not be declared a public nuisance. However, the Fire Chief or his/her authorized representative shall determine if a hazard from fire exposure exists to adjacent improved property. Should said condition occur, an adequate fire break may be required.
- b. Trees, landscaping, family fruit gardens, ornamental shrubbery or similar plants used as ground covers, provided that they do not form a means of rapidly transmitting fire from the native growth to any structure.
- c. Grass and other natural vegetation located more than thirty (30') feet from buildings or structures and less than eighteen (18") inches in height above the ground need not be removed where necessary to stabilize the soil and prevent erosion.

Section 1.1: **Definition: Abatement**

Abatement pursuant to this Ordinance shall be defined as the removal of the hazard or nuisance as defined by this Ordinance.

It shall be the responsibility of the property owner to insure compliance with the requirements of this section particularly if the property is protected by an open space easement or is subject to protection under the sensitive lands ordinance of the County of San Diego or federal endangered species protection acts. Violations of the Sensitive Lands Ordinance of the County of San Diego or Federal Endangered Species Protection Act shall be subject to penalties as described therein.

Section 2: **Waste Matter Defined as a Public Nuisance**

Waste matter is hereinafter defined as matter, which by reason of its location and/or character, may hamper or interfere with the prevention or suppression of fire upon the premises or adjacent premises. The requirement to abate same as defined herein or by Section 1.1 is hereby declared a public nuisance.

Section 2.1: **Waste matter defined**

Waste matter is defined for this article as unused or discarded matter having no substantial value and which is exposed to the elements not enclosed in any structure or concealed from public view. These items consist, without limitation or exclusion by enumeration, of such matter and/or material as; rubble, asphalt, and any combustible non functioning material.

Section 3: **Notice to Abate Hazard**

If it is determined that a public nuisance as herein defined exists on any lot, premise, sidewalk, parking lot or street adjacent to such areas, the Fire Chief, upon discovery of such condition shall cause a notice to be issued to abate such nuisance. Such notice shall be headed: **“NOTICE TO ABATE HAZARD”** and shall, in legible characters, direct the abatement of the nuisance and refer to this article and section for particulars. Notices served by means other than posting as provided by this article shall contain a description

of the property reasonably sufficient to identify the property and location of the nuisance thereon.

Section 3.1:

Notice to Abate Seasonal and Recurrent Nuisances

In the case of weeds/vegetation which have previously been declared to constitute a seasonal and/or recurring nuisance, it is sufficient to mail a post card notice to the owners of the property as they and their addresses appear upon the current assessment tax roll. The notice shall refer to and describe the property and shall state "nuisance" or dangerous weeds of a seasonal and recurrent nature are growing on the property and that same constitutes a public nuisance which must be abated by removal. If not removed by the property owner, the Fire Chief, or his/her authorized representative shall cause the abatement by removal. The cost of such removal shall be assessed upon the lot and/or lands until paid or collected through tax assessment.

Section 4:

Service of Notice to Abate Hazard

The notice required by Section 3 and 3.1 of this ordinance may be served by one of the following:

1. By personal service on the owner, adult occupant or adult in charge or control of the property.
2. By regular mail addressed to the owner or person in charge and control of the property at the address shown on the last available assessment roll. Service shall be deemed completed upon the deposit of said notice, postage prepaid, in the United States mail.
3. By posting notice in a conspicuous place on the land or adjacent public right of way.

Section 5:

Appeal, right of, to the Board of Directors

Within ten days from the date of posting, mailing or personal service of the required notice, the owner or person occupying or controlling such lot or premises affected may appeal to the Deer Springs Fire Protection District Board of Directors. Such appeal shall be in writing and shall be filed with the Fire Marshal. At the regular or adjourned meeting of the board of directors, not less than five (5) days nor more than thirty (30) days after receipt of such appeal, the board shall proceed to hear such appeal, and the decision of the board of directors thereupon shall be final and conclusive.

An administration fee of twenty-five dollars (\$25.00) shall accompany any appeal filed. Said fee may be waived if financial inability can be reasonably shown. Application of waiver shall be in the form of a letter signed by the owner or their appropriate delegate.

If the appeal is not accompanied by the fee or application for waiver, and acceptance thereof by the Fire Chief, then the appeal will be administratively denied.

If the appeal is successful in reversing the prior demand for abatement then the above administration fee shall be refunded to the appellant.

Section 6: **Abatement of Nuisance by the Fire District**

If the owner fails or neglects to abate the nuisance as herein defined within the time specified (as defined by citing authority), the Fire Chief shall cause such nuisance to be removed and/or abated pursuant to Sections 14900 and 14901, of the Health & Safety Code. A report of the proceedings and an accurate account of the costs of abating the nuisance on each separate property shall be filed in the Fire Prevention Office.

Section 7: **Cost of Abatement and Removal**

Costs for abatement shall include any and all administrative costs including, but not limited to, costs of mailing, personnel time, computer retrieval, plus contractor's abatement charges.

Section 8: **Government Code Provisions Adopted and Collection Assessments**

The provisions of section 39580 through 39586 inclusive of the Government Code, and Section 14912 of the Health & Safety Code, of the State of California are incorporated by reference and made a part of this ordinance. The County Auditor shall enter each assessment in the County Tax Roll opposite the parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes; and if delinquent, the amount is subject to the same penalties and procedure of foreclosure and sale as provided for ordinary municipal taxes.

If the Deer Springs Fire Protection District determines that it is in the best interest of the district and its citizens, the District may contract out the abatement process.

Section 9:

Violation

The owner, occupant or agent of any lot or premise within the Deer Springs Fire Protection District who shall permit or allow the unlawful continuance of a fire hazard and or public nuisance as defined in Section 1 of this Ordinance upon any lot or premises owned, occupied or controlled by him/her, or who shall violate any of the provisions of this ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not more than five hundred dollars (\$500.00), or to imprisonment for a period not exceeding six (6) months, or both fine and imprisonment.

ARTICLE V:

That the Board of Directors hereby declares that facts exist pursuant to Section 25123 of the Government Code of the State of California constituting an urgency, to wit: That, in order to promote and protect the public health, safety and welfare of the citizens of the Deer Springs Fire Protection District by reason of certain vegetation and other items constituting a potential health and fire hazard requires immediate regulation and control by the Fire District; that the Board of Directors does hereby determine that such facts constitute an urgency; that the passage of this Ordinance is urgent due to the severity and frequency of vegetation fires within the District. Therefore, the ordinance shall take effect immediately upon adoption, pursuant to Section 25123 of the Government Code of the State of California.

ARTICLE VI:

The Board of Directors hereby declares that should any Section, Paragraph, Sentence or Word of this ordinance or of the Codes or Ordinances 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 elimination therefrom of any such portion as may be declared invalid.

Passed this 17th day of October, 2002 by the following vote:

AYES: 4

NOES: 0

ABSTAIN: 0

ABSENT: 1

Carol E. Fleisher
Carol E. Fleisher, Board Vice President

ATTEST: Robert Winje
Robert Winje, Board Secretary