



January 25, 2019

TO: LOCSD Board of Directors
FROM: Roy A. Hanley, General Counsel
SUBJECT: **Agenda Item 11I – 2/7/2019 Board Meeting**
Adopt On Second Reading by Title Only of an Ordinance
Regarding Abatement of Hazardous Vegetation

President
Marshall E. Ochylski

Vice President
Charles L. Cesena

Directors
Matthew D. Fourcroy
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Christine M. Womack

General Manager
Renee Osborne

District Accountant
Robert Stilts, CPA

Unit Chief
Scott M. Jalbert

Battalion Chief
Greg Alex

DESCRIPTION

Adoption of a Hazardous Vegetation Abatement Ordinance (Title 4) including enforcement of vacant lot vegetation abatement.

STAFF RECOMMENDATION

Staff recommends adoption of the ordinance as drafted and recommends that the Board adopt the following motion:

Motion: I move that the Board adopt, on second reading by title only, Ordinance 2019-01 Regarding Abatement of Hazardous Vegetation.

DISCUSSION

The Board discussed and conducted a first reading of an ordinance regarding the abatement of hazardous vegetation at its regular meeting on Thursday, January 10, 2019. Ordinances need two readings to be adopted and become effective 30 days after the second reading.

Attachment

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ORDINANCE NO. 2019-01

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT
REGARDING ABATEMENT OF HAZARDOUS VEGETATION**

WHEREAS, the Los Osos Community Services District ("District") is a community services district duly formed under Government Code Section 61000 et seq. to provide community services within the District's service area; and

WHEREAS, on December 5, 2013 the District adopted Ordinance No.2013-02 Title 4.02 which incorporates the California building Standards Code and Title 24 which incorporates the California Fire Code; and

WHEREAS, Government Code Section 61100(t) provides hazardous vegetation authority for community services districts that have such authority. Upon adoption of this hazardous vegetation ordinance, the District will have enforcement authority; and

WHEREAS, the District now adopts the following hazardous vegetation ordinance to reduce the risk of fire from hazardous vegetation to protect the health, safety, and welfare of the individuals within the District.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE LOS OSOS COMMUNITY SERVICES DISTRICT ORDAINS AS FOLLOWS:

SECTION 1. Authority, Intent and Purpose.

This Ordinance is adopted pursuant to Health & Safety Code sections 14875 through 14922. Pursuant to the authority of Government Code section 61100(t), the Board of Directors of the Los Osos Community Services District ("Board") finds and declares that it is necessary to establish a procedure for requiring of and providing for the removal of hazardous vegetation from privately owned vacant unimproved parcels and to provide for the cost of removal collected per Government Code section 61115 and Health and Safety Code sections 14915 through 14922.

SECTION 2. Definitions.

As used in this chapter:

"hazardous vegetation" means and includes the following plants growing upon unimproved vacant parcels within the district when the plants are within 100 feet of a structure:

- (a) Vegetation that bears seeds of a downy or wingy nature.
- (b) Vegetation that is not pruned or is otherwise neglected so as to attain such large growth as to become, when dry, a fire menace to adjacent improved property.
- (c) Vegetation that is otherwise noxious or dangerous.
- (d) Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health.
- (e) Dry grass, stubble, brush, litter, or other flammable material which endangers the public safety by creating a fire hazard in an urbanized portion of the district and is located upon an unimproved vacant parcel.

SECTION 3. Hazardous Vegetation Prohibited.

It shall be the duty of every owner of property located in the District to remove or destroy, or cause the removal or destruction of hazardous vegetation accumulating on the owner's unimproved vacant parcel. It shall be unlawful for an owner of property located within the District to cause or permit such accumulations of hazardous vegetation to remain on the property.

The District and/or the District's Fire Department shall not enforce the Hazardous Vegetation Abatement provisions of this Ordinance where enforcement would result in the taking of endangered, rare, or threatened plant or animal species or would result in significant erosion and sedimentation of surface waters. Written documentation from the United States Fish and Wildlife Service or other agency with jurisdiction, stating that enforcement will result in the taking of endangered, rare, or threatened plant or animal species, is required to qualify the property for this exemption. The District in consultation with the appropriate public agencies shall determine whether or not enforcement would cause significant erosion and sedimentation of surface waters.

SECTION 4. Declaration of Public Nuisance.

In accordance with Health and Safety Code sections 14876 through 14884, the Board may adopt a resolution identifying hazardous vegetation accumulating on an unimproved vacant parcel and declaring the hazardous vegetation to constitute a public nuisance ("Resolution"). The Resolution shall refer, by the name under which it is commonly known, to the street, or road 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, or road, it is necessary to refer to only one of the streets, or roads. The Resolution shall describe the property upon which the nuisance exists by describing the property by reference to the tract, block, lot, code area and parcel number as used in the records of the county assessor or in accordance with the map used in describing property for taxation purposes. No other description is necessary. Any number of parcels of private property may be included in one Resolution.

SECTION 5. Notice to Remove or Destroy Hazardous Vegetation.

For properties identified as public nuisances in the Resolution, the General Manager of the Los Osos Community Services District ("General Manager") finds shall notify the property owners of their obligations to remove or destroy the hazardous vegetation pursuant to the following procedures:

A. Notice to the affected property owners shall be prepared on District letterhead and entitled, "NOTICE TO REMOVE OR DESTROY HAZARDOUS VEGETATION" in words not less than one inch (1") in height, and the notice shall read substantially as follows:

NOTICE TO REMOVE OR DESTROY HAZARDOUS VEGETATION

Notice is hereby given that on the ___ day of _____, 20___, the Board of Directors of the Los Osos Community Services District adopted Resolution No. _____, a resolution declaring that noxious or dangerous hazardous vegetation were accumulating on property on or nearest to [Name of street] in the District, which property is more particularly described in the resolution, and that the hazardous vegetation constitute a public nuisance which must be abated by removal or destruction of the hazardous vegetation. Resolution No. ____ further provides that if the hazardous vegetation are not so abated, they will be removed or destroyed by the District, in which case the cost of removal or destruction shall be assessed upon the property on which the hazardous vegetation are located, and such cost will constitute a lien upon the property until paid. For further details, please refer to Resolution No. ____ copies of which are available during regular business hours from the District office at the address listed above.

All property owners having objections to the proposed removal or destruction of the hazardous vegetation described above are hereby notified to attend a Public Hearing of the Board of Directors of the Los Osos Community Services District, to be held at ___ p.m. on _____, 20___, at _____, California, at which time any objections will be heard and given due consideration.

Dated this ___ day of _____, 20___.

General Manager
Los Osos Community Services District

B. At least ten (10) days before the date of the hearing described in the notice, the General Manager shall post the notice conspicuously in front of the properties on which the declared public nuisances exists, or on the portions of the properties nearest to the street most likely to give actual notice to the properties' owners. The notices shall be posted not more than one hundred feet (100') apart, but at least one notice shall be posted on each property identified in the resolution.

C. The General Manager shall cause the notice to be published once in a newspaper of general circulation in the District not less than ten (10) days before the date of the hearing described in the notice.

D. As an alternative to posting and publishing the notice pursuant to subsections B and C of this section, the General Manager may mail the notice to the owners of the properties identified in the resolution, as the owners' names and addresses appear on San Luis Obispo County's latest equalized assessment roll, at least fifteen (15) days before the date of the hearing described in the notice.

SECTION 6. Public Hearing and Abatement Order.

A. At the time and date specified in the notice, the Board shall conduct a public hearing to hear and consider all objections (if any) to the proposed removal or destruction of vegetation identified in the resolution. The Board may continue the hearing, if necessary, upon discretion of the board. The board shall allow or overrule each objection, if any. The Board's decisions regarding the objections are final.

B. After the Board disposes of objections received by the board, or if no objections are received, the Board shall order the General Manager to proceed with abatement of the public nuisances identified in the resolution in accordance with this Ordinance.

SECTION 7. Abatement of Public Nuisance.

A. If the person (or persons) owning a property identified in the resolution fails or refuses to remove or destroy the hazardous vegetation on the property in accordance with the provisions of this Ordinance within ten (10) calendar days after the public hearing at which the Board issued an abatement order pursuant to Section 6 of this Ordinance, the General Manager shall remove or destroy, or cause to be removed or destroyed, the hazardous vegetation in accordance with this Ordinance.

B. When the "hazardous vegetation" as defined in Section 2 of this Ordinance, are not in plain view of the General Manager or his designee from a place that he lawfully has the right to be, the Fire Chief shall request the consent of the person or persons owning, occupying, leasing, managing or controlling the property before entering the property for purposes of inspection and abatement under this chapter. If consent is refused and if the persons owning, occupying, leasing, managing or controlling the property have a reasonable expectation of the privacy for the area where the District seeks to enter, the Fire Chief shall apply for an inspection/abatement warrant, as defined in Code of Civil Procedure section 1822.50, to enter the property for inspection and abatement purposes, and entry onto the property shall be made only pursuant to an inspection warrant applied for, issued and executed in accordance with Code of Civil Procedure sections 1822.51 through 1822.59. A warrant may authorize employees of the District access to property only to do one or more of the following:

1. Inspect to determine the presence of public nuisances that the District has the authority to abate.
2. Abate public nuisances, either directly or by giving notice to the property owner to abate the public nuisance.
3. Determine if a notice to abate a public nuisance has been complied with. If the person owning, occupying, leasing, managing or controlling the property has no reasonable expectation of privacy, employees of the District may enter the property without an abatement warrant for any of the reasons stated directly above.

C. It shall be unlawful for any person to interfere with, hinder or refuse to allow the General Manager's entry onto a property to abate public nuisances pursuant to this section.

D. Any person or persons owning, occupying, leasing, managing or controlling property identified in the resolution shall have the right to remove or destroy hazardous vegetation on their property, at their own expense, at any time before arrival of the Fire Chief for entry onto the property pursuant to this section; provided, however, that the costs of the District to enforce the abatement upon the subject property, including investigation, boundary determinations, measurement, clerical and other related costs, may be imposed as a special assessment and lien on such property pursuant to a resolution of the Board adopted pursuant to the provisions of this Ordinance.

SECTION 8. Abatement Costs. In any case in which the board issues an abatement order pursuant to Section 6 of this Ordinance, the Board may adopt a resolution ordering that a special assessment and lien be imposed on the property which the public nuisance is located in accordance with the following procedures:

A. When enforcing the abatement of, or abating, a public nuisance pursuant to this chapter, the Fire Chief shall keep a written account of the enforcement and abatement costs incurred for each property identified in the resolution, which may include costs incurred by the district for investigations, boundary determinations, measurement, abatement, and clerical work related to abatement of the public nuisance. Based on these accounts, the Fire Chief shall prepare a written report stating the enforcement and abatement costs incurred for each property. A statement shall be sent to each owner outlining the expenses incurred and the amount to pay to the District for the abatement.

B. Before the Fire Chief report is presented to the board, a copy of the report shall be posted outside the board's meeting room for at least three (3) days before the meeting at which the board will consider the report, along with a notice of the time and date of the meeting. Copies of the report and the notice also shall be mailed to the owner of each property identified in the report, using the owner's name and address as it appears on San Luis Obispo County's latest equalized assessment roll, at least fifteen (15) days before the meeting. At the meeting, the Board shall consider the report, along with any objections by owners of property identified in the report as subject to assessment for enforcement and abatement costs. After making any necessary modifications to the General Manager's report, the Board shall confirm the report by resolution.

C. Upon confirmation of the Fire Chief report by the board, the District shall submit certified copies of the Fire Chief report and the Board's resolution confirming the report to the San Luis Obispo County Clerk-Recorder's Office to be recorded. On or before the next August 10 following the board's confirmation of the General Manager's report, the District also shall file copies of the Fire Chief report and the board's resolution confirming the report with the San Luis Obispo County Auditor for entry of the assessments onto the San Luis Obispo County tax roll.

D. The amounts of the enforcement and abatement costs assessed to each property identified in the Fire Chief report shall constitute special assessments against the respective properties and create liens on the properties for those amounts. The special assessments shall be collected at the same time and in the same manner as property taxes of San Luis Obispo County, and delinquent amounts are subject to the same penalties and foreclosure sale procedures as are county property taxes.

SECTION 9. Removal Method.

The methods of removing hazardous vegetation from property as provided in this Ordinance shall not be an exclusive method, but shall be an alternative method, and such hazardous vegetation may be removed from such property pursuant to the provisions of any law of the state or of any ordinance of the District applicable thereto.

SECTION 10. Cancellation or Refund of Assessments.

Any portion of a special assessment, penalty or cost imposed pursuant to this Ordinance shall be canceled or refunded upon order of the Board if imposed improperly, erroneously or illegally, within the meaning of Health and Safety Code section 14920. For assessments that already have been paid, refunds shall be given upon order of the Board, provided that the recipient has filed a verified claim with the board within three (3) years after making the payment for which a refund is sought.

SECTION 11. Inconsistent Provisions.

To the extent that the provisions of this Ordinance may be inconsistent or in conflict with the terms and conditions of any prior District ordinance, resolution, rule or regulation governing the same subject, the provisions of this Ordinance shall prevail with respect to the subject matter thereof, and such inconsistent or conflicting terms or conditions of prior ordinances, resolutions, rules or regulations are hereby repealed.

SECTION 12. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The District Board hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

SECTION 13. Effective Date and Publication.

This Ordinance shall take effect thirty days after its adoption. A summary of this Ordinance shall be published in a newspaper of general circulation and a certified copy of the full text of the proposed Ordinance shall be posted in the office of the District at least five days prior to the meeting at which the proposed Ordinance is to be adopted. Within fifteen days after adoption of the Ordinance, the governing body shall publish a summary of the Ordinance with the names of those members voting for and against the ordinance and shall post in the office of the District a certified copy of the full text of the adopted Ordinance along with the names of those members voting for and against the Ordinance.

On the motion of Director _____, seconded by Director _____, and on the following roll call vote, to wit:

Ayes: _____
Nays: _____
Absent: _____
Conflicts: _____

The foregoing ordinance is hereby passed, approved, and adopted by the Board of Directors of the Los Osos Community Services District this 7th day of February 2019.

Marshall E. Ochylski
President, Board of Directors
Los Osos Community Services District

ATTEST:

APPROVED AS TO FORM:

Renee Osborne
General Manager and Secretary to the Board

Roy A. Hanley
District Legal Counsel