



September 3, 2020

TO: LOCSD Board of Directors

FROM: Ron Munds, General Manager

SUBJECT: Agenda Item 2B – 9/3/2020 Board of Directors Meeting
Adopt on Second Reading by Title only Ordinance 2020-03 of the Board of Directors amending and restating Chapter 4.04 of Title 4 of the District Code to correct the referenced Hearing Board membership sections of the code.

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DESCRIPTION

District Staff and legal Counsel have reviewed Chapter 4.04 of Title 4 of the District Code regarding Fire Hazard Abatement and are recommending a correction to the referenced Hearing Board membership from the Board of Supervisors to the Board of Directors. The ordinance was introduced at the August 6, 2020 Board meeting.

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 2020-03 amending and restating Chapter 4.04 of Title 4 of the District Code.

DISCUSSION

At the March Board meeting, the Board adopted revisions to Title 4 of the District's code. The change was to Chapter 4.04 which deals with fire hazard abatement. The primary modification to the code was how the District addresses weed abatement issues and the procedures for enforcement.

When reviewing the procedures during the current property owner notification period for fire hazard abatement, it was discovered that the language in the code references the membership to the Hearing Board as the Board of Supervisors instead of the Board of Directors. This inadvertent error needs to be corrected to ensure property owners that have concerns regarding any abatement enforcement action taken by the District have an appeal process available to them.

FINANCIAL IMPACT

There is no direct financial impact associated with the recommended action.

Attachments

-Ordinance 2020-03
-Exhibit A

**LOS OSOS COMMUNITY SERVICES DISTRICT
ORDINANCE NO. 2020-03**

**AN INTRODUCTION OF AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE LOS OSOS COMMUNITY SERVICES DISTRICT (DISTRICT)
AMENDING AND RESTATING CHAPTER 4.04 OF TITLE 4 OF THE DISTRICT CODE TO MODIFY HEARING
BOARD MEMBERSHIP**

WHEREAS, The District is organized under Government code section 61000 as a Community Service District and has the authority to provide its residents with water for beneficial purposes under Government code Section 61100 (a).; and

WHEREAS, The Board recognizes that providing revised language in Title 4 regarding to clarify the membership of Hearing Board in Chapter 4.04 of the District' code is necessary; and

WHEREAS, The Board will consider such amendments and the adoption of Ordinance at its September 3, 2020 Board meeting; and

WHEREAS, The Board of Directors has noticed this public meeting pursuant to Water Code § 375 and has considered the Staff Report and public testimony regarding the adoption of this Ordinance.

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

Section 1. Authority

This Ordinance is enacted pursuant to the California Government Code § 6100.

Section 2. Amendment and Restatement of Chapter 4.04

Chapter 4.04 of Title 4 of the District Code is hereby amended and restated as provided in Exhibit A, attached hereto and incorporated herein by reference.

Section 3. Environmental Review

The Board of Directors of the District finds that the adoption of the Amendment and Restatement of Section 4.04 of Title 4 of the District Code does not constitute a "project" under the California Environmental Quality Act ("CEQA") (Public Resources Code Section 21000 et. seq.) or its implementing Guidelines (14 California Code of Regulations Section 15000 et seq.) ("CEQA Guidelines"). The Board of Directors finds that the adoption of the Amendment and Restatement of Section 4.04 of Title 4 of the District Code constitutes "general policy and procedure making" described in Section 15378(b)(2) of the CEQA Guidelines which are deemed not to be "projects". Even if the adoption of the Amendment and Restatement of Section 4.04 of Title 4 of the District Code is a "project" for purposes of CEQA, the District Board finds that it is exempt from review pursuant to Section 15061(b)(3) which provides that an activity is not subject to CEQA review where it can be seen with certainty that there is no possibility that it may have a "significant effect on the environment." The District Board finds that it can be seen with certainty that there is no possibility that the adoption of the Amendment and Restatement of Section 4.04 of Title 4 of the District Code may have a significant effect on the environment.

The District General Manager is authorized to prepare, execute and file a notice of exemption, but is not required to do so.

Section 4. Findings

The Board of Directors hereby finds and determines as follows:

- a. The proposed changes in the District Code are necessary to grant fairness to property owners requesting an appeal a fire hazard abatement enforcement action.

Section 5. Repeal of Prior Ordinances and Resolutions

All Ordinances, sections of Ordinances and Resolutions that are inconsistent with Section 2 of this Ordinance are **hereby repealed**.

Section 6. Incorporations of Recitals

The Recitals are true and correct and incorporated here by this reference.

Section 7. Severance Clause

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 Governing Board of the District 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, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 8. Effect of Headings in Ordinance

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

Section 9. Effective Date

This Ordinance shall take effect thirty (30) days from date of its passage hereof. Before the expiration of fifteen (15) days after the adoption of this Ordinance, Exhibit A shall be published once with the names of the members of the Board of Directors voting for and against the Ordinance in a newspaper of general circulation within the District.

Introduced at its regular meeting of the Board of Directors held on August 6, 2020, and passed and adopted by the Board of Directors of the Los Osos Community Services District on the 3rd day of September 2020, by the following roll call vote, to wit:

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

AYES: _____
NOES: _____
ABSENT: _____
ABSTAIN: _____

Charles Cesena
President of the Board of Directors
Los Osos Community Services District

ATTEST:

APPROVED AS TO FORM:

Ron Munds
General Manager and Secretary to the Board

Jeff Minnery
District Legal Counsel

Chapter 4.04.000 FIRE HAZARDS ABATEMENT (amended 09/03/2020)

4.04.01 Legislative Authority

Pursuant to the authority granted to it by sections 14930 and 14931 of the Health and Safety Code of the State of California, the Board of Directors does enact this Chapter for the abatement of fire hazardous weeds and prohibited materials in the Los Osos Community Services District.

4.04.10 Policy

- (a) The purpose of this Chapter is to authorize the abatement of fire hazardous weeds and prohibited materials in the Los Osos Community Services District as a component of fire protection service provided by the County Fire Department.
- (b) The uncontrolled growth and/or accumulation of prohibited materials on parcel as defined in this chapter is hereby found to create a condition that is a fire hazard and potentially injurious to the health, safety, and general welfare of the public and first responders.

4.04.20 Effect

This Chapter is not the exclusive regulation of fire protection, including hazardous weeds and prohibited materials, for the Los Osos Community Services District. It shall supplement and be in addition to the provisions of Title 4 which incorporates the California Fire Code with local amendments, and the regulating statutes and ordinances heretofore or hereafter enacted by the State, the County, or any other legal entity or agency having jurisdiction.

4.04.30 Enforcement

- (a) Except as otherwise provided, this Chapter shall be administered and enforced by the fire code official, his/her deputies and employees in his/her department.
- (b) For the purpose of enforcing or administering this ordinance, the fire code official, his/her deputies and employees in his/her department may enter any real property for the purpose of inspecting the property or for summary abatement, after obtaining consent or obtaining an inspection warrant when required by law and as provided in Section 4.04.160 of this Chapter, or whenever the county fire official is informed or has reasonable cause to believe that hazardous vegetation or combustible material exists, constituting a condition dangerous or injurious to the health or

welfare of persons or to the public, including the environment, is a public nuisance or is otherwise in violation of this ordinance.

- (c) No person shall interfere with the entry of the fire code official, his/her deputies and employees in his/her department acting in the official course and scope of his/her duty.

4.04.40 Declaration of Nuisance

Weeds, grass, rank growths and combustible rubbish growing or accumulating upon private property within the Los Osos Community Services District, which do, or will when dry, create a fire hazard and which by virtue thereof constitute a danger to neighboring property or the health or welfare of residents of the vicinity are hereby declared to constitute a public nuisance which may be abated in accordance with the provisions of this Chapter.

4.04.50 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

- a) "Abatement costs" means both cost of administration and cost of abatement.
- b) "Cost of abatement" means any and all costs incurred by the Los Osos Community Services District to abate the hazardous weeds or combustible material on any property pursuant to this ordinance, including physical costs and any additional actual costs incurred by the San Luis Obispo County Fire Department for the abatement proceeding.
- c) "Cost of administration," means the cost to the Los Osos Community Services District of doing the acts required under this Chapter, except the actual cost of abatement. When a hearing is held to review the determination of the fire code official that a nuisance exists, the reviewing authority shall determine the actual cost of administration attributable to that parcel. When no request for a hearing is timely made, the fire code official shall determine the actual cost of administration. For the purpose of determining the cost of administration, all contiguous property owned by the same person or persons shall be deemed to be a single parcel, even though the contiguous property may be designated with more than one assessor's parcel number.
- d) "Defensible space" means the area around a structure within a 100-foot radius or to the property line, whichever is less, in which combustible vegetation and other prohibited materials must be treated, cleared, or reduced to slow the spread of fire to and from the structure.

- e) "Fire code official" means the fire chief of the San Luis Obispo County Fire Department or his/her designated representative.
- f) "Grass" means any herbaceous plant which is cultivated and which attains, when mature, if uncontrolled, such a height as to be a medium for the rapid spread of fire.
- g) "Prohibited materials" means combustible vegetation, green waste, rubbish, or weeds, readily flammable products.
- h) "Rank growth" or "hazardous vegetation" means a cover of vegetation of any type, cultivated or not, including trees, which has attained or will, if allowed to mature, attain such a height and density as to be a medium for the rapid spread of fire.
- i) "Weed" means any plant, whether herbaceous or woody and of whatever height, except a tree, which grows wild.

4.04.60 Duty to Maintain Defensible Space

Property owners shall service a defensible space as defined by this chapter. The following conditions within Los Osos Community Services District are declared to be nuisances and shall be abated by the owner of each parcel or property where such conditions exist, at the sole expense:

- (a) The presence of prohibited materials within the defensible space surrounding any structure.
- (b) The presence of prohibited materials on undeveloped parcels that are one acre or less in size within developed neighborhoods, tracts, developments.
- (c) The presence of prohibited materials that contribute to the fuel load or hinder the clearing of properties or delay firefighting operations on any parcel.
- (d) A portion of any tree that extends within ten feet of the outlet of any chimney or stovepipe.
- (e) The accumulation of dead or dying wood in any tree adjacent to or overhanging a structure.
- (f) The presence of prohibited materials on the roof or in the rain gutter of any structure.

04.04.70 Adjacent property owner's responsibilities

When a structure is less than one hundred feet from a property line and prohibited materials on an adjacent parcel present a fire hazard for the structure, the property owner of the adjacent parcel where the fire hazard exists shall be responsible for clearing the area on that owner's parcel that is within one hundred feet of the structure, so as to provide the necessary fire protection.

04.04.80 Notice of Nuisance and Order to Abate

Whenever the fire code official determines that a nuisance described in section 4.04.40 of this Chapter exists upon any private property within Los Osos Community Services District, the fire code official shall notify the owner of the existence of the nuisance.

4.04.90 Notice Contents

The Notice required by section 4.04.80 of this Chapter shall include the following information:

- (a) Identity of the owner of the private property upon which the nuisance exists, as the name appears on the records of the County Assessor or Clerk/Recorder.
- (b) A legal description and street address, assessor's parcel number, or other description sufficient to identify the premises affected.
- (c) A statement that a fire hazardous condition exists and that it has been determined by the fire code official to be a public nuisance described in section 4.04.40 of this Chapter.
- (d) A description of the corrective actions that are ordered, and an order that the property owners and persons in possession must abate the hazardous vegetation or combustible material within fifteen (15) days and that the failure to bring the real property into compliance with this ordinance could subject the owner or persons in possession to civil, administrative and criminal penalties.
- (e) A statement that unless the owner abates the fire hazardous nuisance or requests a hearing before the hearing board to appeal the determination of the fire code official, the fire code official will abate the nuisance not less than thirty (30) days after the date said notice was mailed or personally delivered. It shall also state that the abatement costs may be made a special assessment and added to the County assessment roll and become a lien on the real property, or placed on the unsecured tax roll. Special assessments are subject to the same penalties, interest and

procedures of foreclosure and sale in the case of delinquency as is provided for ordinary county taxes.

4.04.100 Notice; Mailing; Personal Delivery; Posting

The Notice required by section 4.04.80 of this Chapter shall be served by delivering it personally to the owner and the person in possession of the property, or by mailing it to all known persons to be in possession and to the property owner as such person's name and address appears on the last County equalized assessment roll. If the address is unknown, that fact shall be so stated and the notice shall be addressed to the person at the county seat and posted in a conspicuous place at or near the entrance to the property. Service by mail shall be deemed complete at the time of deposit in the U.S. Mail. The failure of any person in possession or owner of the property to receive such notice shall not affect the validity of these proceedings.

4.04.110 Establishment of Hearing Board

A hearing board is hereby established in order to conduct hearings pursuant to this Chapter. The hearing board shall be comprised of three (3) persons as follows: one (1) member shall be an officer of the department of the issuing agency selected by the department head, but not the issuing officer; and two (2) members shall be selected by the Board of Directors. Members shall serve at the pleasure of the Board of Directors.

4.04.120 Hearing Request; Notice

Any person who is adversely affected by the Notice required by section 4.04.80 may appeal the Notice and order therein by filing a written request for a hearing with the fire code official within fifteen (15) calendar days following the date of mailing of the notice or the date on which the notice was personally delivered. The request shall identify the subject property by address and assessor's parcel number and shall identify the owner of the property. The clerk of the hearing board shall set a date and time for such a hearing and shall send a notice thereof by regular mail at least ten (10) calendar days before such date to the owner and/or the person who submitted the request for hearing, at the address set forth on the request and shall notify the fire code official of such hearing date. Timely appeal shall stay any further action for abatement until the date set for hearing. If no request for a hearing is timely made, the Board of Directors declares that abatement of the nuisance shall have been deemed ordered by the Board of Directors as of the date of the postmark of the Notice.

4.04.130 Hearing

At the date and time set, a hearing shall be held by the hearing board. The hearing shall be open to the public. The owner and/or any persons affected by the Notice may be represented by counsel. The hearing board shall hear all

pertinent evidence offered by all interested persons. The technical rules of evidence shall not be applicable to the hearing, except that the hearing board's decision may not be based wholly on hearsay evidence. All persons giving evidence shall be sworn before testifying. The hearing shall be recorded.

4.04.140 Hearing Decision

At the conclusion of the hearing, the hearing board shall issue a recommended decision ("Recommended Decision"). The hearing board may determine:

- (a) That no public nuisance exists.
- (b) That a public nuisance exists which should be abated in accordance with section 4.04.160 of this Chapter, in which case the nuisance shall be abated no sooner than the fifth business day following the mailing of notice of the Board of Director's adoption of the hearing board's Recommended Decision.
- (c) That a public nuisance exists which may be removed by some procedure proposed by the owner other than destruction of the fire hazardous plants or materials. If the Hearing Board determines that another procedure proposed by the owners may be employed to remove the public nuisance, it shall set a reasonable time within which the owner must complete that procedure. If the owner fails to complete the procedure proposed within the time limit set by the hearing board, the fire code official may, upon five (5) business days notice of the Board of Director's adoption of the hearing board's Recommended Decision sent by the Clerk of the Board to the owner by regular mail, commence abatement in accordance with section 4.04.160 of this Chapter. At any hearing in which it is determined that a public nuisance exists, whether abatement or implementation of an alternate procedure proposed by the owner is ordered, the hearing board shall also determine the cost of administration incurred. The owner or any person affected by the Notice shall be entitled to be heard on the question of such cost of administration. The hearing board shall make its Recommended Decision at the conclusion of the hearing and shall transmit such Recommended Decision to the property owner and persons in possession of the property and to the Board of Directors for adoption by resolution. The Board of Directors may adopt the Recommended Decision on the consent agenda without further notice or hearing, or may set the matter for a de novo hearing before the Board of Directors as set forth in Government Code section 25845.

4.04.150 Abatement by Owner

Any owner or person in possession of the property, may remove or cause to be removed a nuisance described in section 4.04.40 of this Chapter at any time prior to commencement of abatement by, or at the direction of, the fire code official.

4.04.160 Abatement by Fire Code Official

- (a) If, at the end of the time allowed for compliance in the Notice issued pursuant to section 4.04.80, or following adoption by the Board of Directors of the Hearing Board's decision (or upon order of the Board of Directors following a de novo hearing) and if the owner has not earlier removed the nuisance, the fire code official shall acquire jurisdiction to cause the nuisance to be abated. The fire code official, his deputies, the employees of his department and independent contractors hired by him may enter upon private property on which a nuisance described in section 4.04.40 of this Chapter exists for the purpose of abating that nuisance.
- (b) When required by law, the fire code official shall request the consent of the person or persons owning, occupying or controlling the property before entering the property for purposes of inspection and abatement under this Ordinance. If consent is refused, the fire code official 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.
- (c) In addition to the authority granted by law to the fire code official in exigent situations, the fire code official is authorized to enter real property and summarily abate any public nuisance determined by the fire code official to constitute an immediate threat to public health or safety without prior notice or hearing.

4.04.170 Abatement Cost Recovery

As set forth in Government Code section 25845, the owner and any person in possession of the real property upon which the nuisance is found to exist shall be jointly and severally liable for all abatement costs incurred by the Los Osos Community Services District without any further hearing.

4.04.180 Notice of Abatement Costs

The fire code official shall keep a written account of the abatement costs, itemized by parcel, showing the cost of abatement and the cost of administration as declared in subsection (e) of section 4.04.50 of this Chapter, or as determined by the hearing board pursuant to section 4.04.140 of this Chapter, for each parcel. The fire code official shall issue a bill for the abatement costs to the owner and person in possession of the property. The bill shall demand payment to the Los Osos Community Services District within fifteen (15) calendar days of its mailing.

4.04.190 Special Assessment and Lien

If the amount set forth in the bill for abatement costs is not paid upon demand, the abatement costs shall be placed upon the County tax roll by the County auditor as special assessments against the respective parcels of land, or placed on the unsecured roll, pursuant to section 25845 of the California Government Code; provided, however, that the abatement costs shall not be placed on the tax roll if paid in full prior to entry of said costs on the tax roll. The fire code official shall prepare and have a notice of lien recorded in the office of the County Recorder. Upon the recordation of the notice of lien, the amount claimed shall constitute a lien upon the subject property, in compliance with Government Code section 25845. After recordation, the Notice of Lien shall be delivered to the County Auditor, who will enter the amount of the lien on the assessment roll as a special assessment. Thereafter, the amount set forth shall be collected at the same time and in the same manner as ordinary county taxes, and is subject to the same penalties and interest, and to the same procedures for foreclosure and sale in case of delinquency, as are provided for ordinary county taxes; all laws applicable to the levy, collection and enforcement of county taxes are hereby made applicable to the assessment.

4.04.200 Violation; Penalty

- (a) The maintenance on private property of a public nuisance in violation of this Chapter shall constitute a misdemeanor, provided, however, that the offense shall be an infraction in the following events:
 - 1. The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he is arraigned, after being informed of his rights, elects to have the case proceed as a misdemeanor, or;
 - 2. The court, with the consent of the defendant, determines that the offense is an infraction, in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

- (b) Each separate day on which a violation of this title exists shall constitute a separate offense.
- (c) Any person convicted of a misdemeanor under this Chapter shall be punished by imprisonment in the county jail for a period not exceeding six months, or by a fine not exceeding one thousand dollars, or by both.
- (d) Any person convicted of an infraction under this title shall be punished by a fine not exceeding one hundred dollars for the first violation; by a fine not exceeding two hundred dollars for a second violation of the same ordinance within one year; and by a fine not exceeding five hundred dollars for each additional violation of the same ordinance committed by that person within one year.
- (e) Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition which violates any provision of this Chapter.

4.04.210 Issuance of Citation

Nothing in this Chapter shall preclude the fire code official from electing any means of enforcement as authorized by law in the enforcement of the provisions of this Chapter, including but not limited to, the election to issue Citations in the manner proscribed by law.