



Moraga-Orinda Fire District
BOARD OF DIRECTORS
SPECIAL BOARD MEETING MINUTES
September 7, 2022,
(APPROVED SEPTEMBER 21, 2022)

1. OPENING CEREMONIES

The Board of Directors convened a teleconference Open Session at **5:00 p.m.** on **September 7, 2022**, via the Zoom application <https://us02web.zoom.us/j/81534770565>, webinar id 81534770565 and by phone 669-900-6833. This meeting was conducted by webinar and teleconference only in accordance with AB 361. The meeting was not available for in-person attendance.

President Donner called the meeting to order and requested an attendance roll call. Fire Chief Winnacker led the pledge of allegiance.

President Donner	Director Jex	Gloriann Sasser, Admin. Services Director
Director Baitx	Director Jorgens	Michael Cohen, District Counsel Associate
Director Danziger	Dave Winnacker, Fire Chief	Marcia Holbrook, District Clerk

2. PUBLIC COMMENT – ITEMS NOT ON THE AGENDA (audio 1:28)

President Donner opened Public Comment on the closed session items. There were no requests to address the Board. President Donner closed Public Comment.

3. SPECIAL AGENDA

3.1 Reviewing MOFD Administrative Citation Process for Vegetation Abatement on Land Abutting Public Rights of Way (audio 1:45)

District Counsel Cohen provided the report and reviewed the administrative citation process for non-compliance with the fire code on lands abutting public rights of way. Part of the administrative citation process involves identifying the party responsible for violating the fire code. The process is straightforward under most circumstances, but officially verifying the correct landowner is highly resource-intensive because it requires retrieving documentation and retaining a survey for every violation. District Counsel Cohen explained that the law creates a presumption found in the civil code. The Civil Code provides that "[a]n owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown." (Civ. Code § 831.) For roadside vegetation abatement purposes, MOFD presumes that landowners own up to the center of the abutting road or street. In situations where a landowner can establish through documentation that they are not the land owner maintained in violation of the Fire Code, MOFD revises or cancels the Administrative Citation and reissues the citation to the identified responsible party or landowner as appropriate.

District Counsel Cohen pointed out that certain land abutting public rights of way belong to Contra Costa County, City of Orinda, Town of Moraga, a local HOA, or another entity and not the abutting landowner. Some entities have adopted ordinances, rules, or regulations that place the responsibility for roadside vegetation management on the abutting landowner. MOFD is not authorized to establish the correct interpretation of these ordinances, rules, or regulations enacted by other municipal entities. Accordingly, MOFD does not revise or cancel Administrative Citations on the grounds that a separate entity's ordinance, rule, or regulation might shift responsibility for a Fire Code violation. Staff recommended considering MOFD's practice of (1) presuming an adjacent landowner's responsibility for land abutting a public right of way for purposes of enforcing the Fire Code, consistent with the civil code, and (2) issuing Administrative Citations to the owners of land maintained in violation of the Fire Code regardless of the ordinances, rules, or regulations of separate entities.

Director Jorgens stated that per an Orinda City Official, when the County gave all of the Orinda public roads to the City, those by definition are owned by the City. All the public roads in Orinda are paved and maintained by the City, and the City has a map that shows all the public roads they own. The presumption that the roads are owned to the center of the road is not valid for the City of Orinda.

Fire Chief Winnacker stated the legal challenge lies with where the line is, which varies by parcel. The practical challenge for the City of Orinda is that the ownership of the roadside is poorly understood. Depending on the degree of landscaping done by an individual property owner, the response to discovering someone cutting that vegetation will vary, depending on whether or not it is in front of their house, landscaped, etc. Suppose the City of Orinda acknowledges that the City owns all of the public roads in Orinda. In that case, Staff can obtain the map layer from the City illustrating the roads that the City believes they own. The citations would then be issued directly to the City. The enforcement of any City ordinances

would not involve the Fire District. Director Jorgens responded that one of the challenges is the City's Trim Ordinance which does not go as far into the property and only covers the 3' and 15' requirements. Having the City enforce its ordinance would not get us there.

Fire Chief Winnacker explained that the City has the authority to enforce the Trim Notice for roadside maintenance on private property not owned by the City. As a general statement, the city issues Trim Notices infrequently. Fire Chief Winnacker stated the fire code requires property owners to maintain their property in accordance with the fire code. There are times specific to the 3' and 15' requirements where the City of Orinda's Trim Notice and the Fire Code requirements overlap. There is an additional City of Orinda Ordinance that was passed in 2014 stating the adjacent property owner is responsible for roadside maintenance. Fire Chief Winnacker deferred to the City of Orinda to define the ordinance but believes it can be accurately summarized as creating an obligation of an adjacent property owner to maintain the City of Orinda's property on the roadside. Fire Chief Winnacker clarified that the Trim Notice and the 2014 Ordinance are two different regulations. The 2014 Ordinance has to do with the obligation of a private parcel owner to maintain the City's property. The City could enforce its ordinance (which is not the Trim Notice) regarding maintenance and the neighboring property owner's responsibility for maintaining the City-owned land to achieve compliance with the Fire Code.

Director Jorgens inquired if Staff has looked into establishing a joint enforcement agreement with the City of Orinda. Fire Chief Winnacker answered no action had been taken pending board direction. The Board's direction from the August 17, 2022, meeting was that the District could not issue a citation to a resident to maintain someone else's property. In the case where the City owns the public roads, the public roads include a boundary that exceeds the paved surface. The District could issue a citation stating that the violation must be cleared from the responsible party's side of the property line to comply with the Fire Code. Then the City could issue a parallel notice informing the resident of their requirement under the City Ordinance to maintain the City-owned land alongside the road.

Director Jorgens asked if the City of Orinda could hire District staff to issue the City's citations. Fire Chief Winnacker stated Staff could explore the options; however, he understood that an agency is only capable of enforcing its own ordinance and deferred to Counsel. The question for consideration is will a resident appeal to the MOFD Board of Directors or the Orinda City Council? Fire Chief Winnacker expressed concern about the appeals process and potential complications.

Director Jorgens stated that the City of Orinda hires the County Sheriff to enforce its ordinances. Fire Chief Winnacker explained the Sheriff is acting as the City of Orinda Police Department. Director Jorgens responded that MOFD staff would be acting as an agent of the City of Orinda. Director Jorgens supported exploring the concept as it could save time and effort. The objective is to clear the fire code hazards. Fire Chief Winnacker stated the previous Board's direction was clear if the property owner does not own the property and the City or Town owns the land, it is the City or Town's obligation to enforce. The District is not in a position to force the adjacent property owner to mitigate on the City or Town's land. Director Jorgens stated the District could enforce if under contract.

Director Jex asked if the Town of Moraga has a similar ordinance. Fire Chief Winnacker answered yes, however, it is complicated by sidewalks, and an amendment may be forthcoming in November 2022. Director Jorgens suggested that the City of Orinda and the Town of Moraga could issue ordinances stating that the adjacent property owner has to meet the Fire Code. As the Staff is issuing a citation to the adjacent property owner, a joint citation can be issued that states everything to the edge of the road has to be cleared. Fire Chief Winnacker responded that Staff could engage in conversations with the City and Town Staff, discuss during a 2x2 subcommittee meeting, and then potentially have a three-way meeting with the Town of Moraga, City of Orinda, and County Board of Supervisors representative to devise a single uniform solution.

President Donner shared a situation regarding 3 feet in front of his property that the City would not repave because they declared it was not the City's property. The City of Orinda has a clear distinction on property lines. Director Jorgens confirmed that the City knows which roads are private and which ones are the public responsibility. President Donner stated that the City of Orinda and the Town of Moraga know exactly where the property lines are pertaining to the roads.

Director Jorgens inquired if the Board was deliberating a policy and not a particular situation. President Donner answered that the particular situation would bring about a policy. Director Jorgens stated short of discussing mutual enforcement with the City of Orinda and the Town of Moraga, that he opposed the District issuing citations to people who do not own the property. The District can issue the citations to the City and Town. The City and Town can determine how to enforce their regulations, which might prompt them to find a more creative solution that involves the District, like issuing joint citations.

Director Danziger asked when the District presumes the landowner's responsibility when issuing a citation, would it be the landowner's responsibility to provide the District with legal documentation or other information that the property is not their responsibility? Fire Chief Winnacker confirmed. Director Jorgens stated the District could solve the issue by confirming that the City owns all the public roads.

Director Danziger added that the District has to consider the unincorporated areas of Canyon and Bollinger Canyon and sees them as an issue in Canyon unless the area adjacent to those roads is East Bay Municipal Utility District or East Bay Park District. Director Jorgens suggested that it would be easy to set the bar low to prove that the landowner is not the responsible party. Director Jorgens provided an example that developers have approved plans that often define the roads and responsibility. Director Jorgens recommended Staff issue the citations but allow an easy way to prove that the landowners are not the responsible party. The burden goes back to the City or the Town, which could lead to a dialogue and coordination with the District.

President Donner requested that an easy way be defined. Director Jorgens provided the example of when the City of Orinda became a City, and the County gave them all the public roads; there is probably documentation that supports that statement. Director Jex stated both the City of Orinda and the Town of Moraga were incorporated about the same time and assumed that a similar approach occurred in both cities. President Donner said the end goal is to get the residents in the District as safe as possible, provide the Fire Chief with the tools that are fair to the constituents, and enable Staff to proceed with code enforcement. Director Danziger agreed.

At 5:23:46 p.m., Director Jorgens experienced a brief technical computer issue and requested President Donner repeat his statement. President Donner restated support for the Fire Chief and making as many residents as compliant with the Fire Code as possible. Directors Jorgens and Jex agreed. President Donner asked how the Board could effectively get as many residents compliant as possible without increasing and creating more burden on Staff.

Director Baitx agreed with President Donner's comments and inquired if the meetings with the Town of Moraga, the City of Orinda, and the County to determine responsibility would create additional work for Staff or if Staff already had the direction needed with the current ordinance as written. Fire Chief Winnacker explained it would mean dismissing over 300 open citations for roadside vegetation and reissuing those to the City of Orinda and the Town of Moraga. Additional work would be required on private roads as Staff is unaware of a repository containing private road information. There would also be a reduction in staff burden as the obligation for enforcement would shift to the City and Town. Civ. Code § 831 provides the ability to presume that the adjacent property owner is responsible unless proven otherwise. In the case of 118 David Drive, the District did not have a legal mechanism to move forward and dismissed those citations. Concurrently, the District issued pre-citations to the Town of Moraga for the maintenance obligation of land along the roadside. President Donner asked how many of the 300 citations issued are being contested. District Clerk Holbrook answered two. Fire Chief Winnacker commented that the number of hearing requests may increase now that the situation is better understood.

Director Jorgens commented that the property owner would be held responsible for mitigating the area, whether enforced by the District, City, or Town. Fire Chief Winnacker concurred. President Donner asked if the District had the right to issue fire code citations under Civil Code 831. District Counsel Cohen confirmed. Director Jorgens stated the presumption is only valid if you think it is true. It is not valid if the City of Orinda confirms they own the public roads. District Counsel Cohen confirmed. If there is reason to believe the presumptions do not apply, that raises different issues that Counsel would explore regarding the validity. Fire Chief Winnacker added it also raises the issue of private roads. In some isolated situations where the adjacent property owner owns to the center of the road or others do not, it is a somewhat opaque structure to determine what entity owns those private roads. Director Jorgens stated Staff could rely on that presumption because nobody knows differently.

Director Danziger asked if it would be a solution if the Board directed Staff to enforce ordinances 20-01 and 21-01 as written and open discussions with the Town of Moraga, the City of Orinda, and the County. Fire Chief Winnacker answered yes. The status quo has been to assume the adjacent property owner is the responsible party, as the law allows. The new element is that if the property owner can prove otherwise the citation will be dismissed. Alternatively, the direction is to presume that the adjacent property owner is not responsible for all publicly owned roads. Staff would withdraw those citations, attempt to obtain or create a map layer showing road ownership (public or private), then identify which of the public roads had citations for roadside vegetation issued to the abutting landowner. Staff would dismiss citations and reissue them to the City of Orinda or the Town of Moraga. Fire Chief Winnacker requested Board direction on the two proposed outcomes in the staff report. At 5:33:27 p.m., President Donner had to briefly step away from the meeting. Around 5:34 p.m., President Donner returned to the meeting.

Director Jorgens supported a Special meeting with the Orinda City Council to discuss the alternatives and possible agreement allowing a joint enforcement capability. Fire Chief Winnacker stated it would involve all four government entities and reviewed the complexity of a four-way agreement regarding joint enforcement. Director Jorgens questioned the four-way agreement. Fire Chief Winnacker stated the agreement would involve the City of Orinda, Town of Moraga, County Board of Supervisors, and MOFD. Director Jorgens inquired about the County's involvement. Fire Chief Winnacker answered it is because of the unincorporated county lands. Director Jorgens suggested not doing those areas, and instead of a four-way agreement, have three one-way agreements. Fire Chief Winnacker stated one-way agreements might make it more complex.

Director Jex commented that the District is two to three months in to the process. It would be difficult to stop the current process and cause a delay. Director Jex recommended proceeding with the current process and working with the City of Orinda, Town of Moraga, and County for the following year. President Donner agreed. The appeals are down to two, less than 1% of the 300 citations. Staff should proceed and try to get the bulk of the work done on the evacuation routes, which is of the utmost importance with only a few arteries available for evacuation. Director Baitx supported continuing as is and working with the City of Orinda, Town of Moraga, and County for next year. Director Jorgens stated Staff could not issue new citations. Director Danziger supported continuing the process pursuant to ordinances 20-01 and 21-01. Fire Chief Winnacker concurred.

President Donner opened Public Comment. There were no requests to address the Board. President Donner closed Public Comment.

Director Baitx asked the Fire Chief to clarify the direction provided by the Board. Fire Chief Winnacker summarized to continue the enforcement of the existing citations that have been issued. A resident may prove that they are not the responsible party. In these cases, Staff would determine the appropriate owner and reissue the citation to that newly identified owner. Under Civil Code § 831, if a resident asserts that they are not the responsible party, they must show who the responsible party is, simplifying the reassignment of the citation. Staff would refund paid fines accordingly. Concurrently, Staff will begin engagement with the City of Orinda, Town of Moraga, and County Board of Supervisors Representative. Joint meetings will be scheduled to identify the appropriate way to move forward and explore joint enforcement or contracting enforcement opportunities for the 2023 fire season. No further discussion by the Board.

3.2 Approval of Side Letter of Agreement Between Moraga-Orinda Fire Protection District and Moraga-Orinda Fire Chief Officers Association to Amend Section IIIC Retiree Health Savings Account Provisions to Provide Additional Retiree Health Savings Account Provision (audio 40:01)

Fire Chief Winnacker announced the item was agendized out of order per the MOFD Rules of Procedure, Section 8.4. Items that result in a tie vote occurring when less than all board members are present, the matter shall automatically be continued to the agenda of the next regular meeting of the District Board unless otherwise ordered by the District Board. Fire Chief Winnacker recommended the item be pulled and placed on the agenda for the regular meeting on September 21, 2022. All Directors agreed.

Public Comment was not opened since the item was deferred to the September regular meeting. No further discussion by the Board.

4. ADJOURNMENT

At 5:42 p.m., Director Jorgens motion and seconded by Director Jex, to adjourn the meeting. Said motion carried a 5-0 roll call vote (Ayes Baitx, Danziger, Jex, Jorgens, and Donner; Noes None; Absent None; Abstain None).

Marcia Holbrook,

District Secretary/District Clerk

For an audio recording of this and other Board meetings, please visit the MOFD District Board Meeting at www.mofd.org/agendas.