

**ORDINANCE NO. 23-06**

**AN ORDINANCE OF THE MORAGA-ORINDA FIRE DISTRICT  
OF CONTRA COSTA COUNTY, CALIFORNIA DECLARING CERTAIN HAZARDOUS  
VEGETATION AND COMBUSTIBLE MATERIAL A PUBLIC NUISANCE AND  
PROVIDING FOR THE ABATEMENT AND/OR REMOVAL THEREOF.**

The Board of Directors (“Board”), as the governing body of the Moraga-Orinda Fire District (“Fire District”), does ordain as follows:

**SECTION 1. AUTHORITY**

This Ordinance is enacted pursuant to the authority of Health and Safety Code sections 13861, subsection (h); 13870, 13879, and 14875 *et. seq.*

**SECTION 2. FINDINGS**

The Board of Directors of the Moraga-Orinda Fire District finds and determines that accumulation of combustible vegetation, including but not limited to seasonal and recurrent grasses, weeds, stubble, brush, dry needles, dead, dying, bark, mulch, or diseased trees, and rubbish endanger the health, safety and welfare of District residents and are dangerous to property. Enacting this Ordinance is in the District’s best interest by reducing the risk of fire.

**SECTION 3. CEQA**

This ordinance is exempt from the California Environmental Quality Act pursuant to 14 C.C.R. § 15304 because it requires minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees and fuel management activities to reduce the volume of flammable vegetation.

**SECTION 4. DEFINITIONS.**

The following definitions apply to this Ordinance:

- A. **ABATEMENT.** Any action the Fire District may take on public or private property and any adjacent property as may be necessary to remove or alleviate a nuisance, including but not limited to demolition, removal, repair, boarding and securing or replacement of property.
- B. **COMBUSTIBLE MATERIAL.** Rubbish, litter, or material of any kind other than Hazardous Vegetation, that is combustible and endangers the public safety by creating a fire hazard as determined by the Fire Code Official.
- C. **HAZARDOUS VEGETATION.** Vegetation that is combustible and endangers the public safety by creating a Fire Hazard, including but not limited to bark, mulch, seasonal and recurrent grasses, weeds, stubble, non-irrigated brush, dry leaves, dry needles, dead, dying and diseased trees, or any other vegetation identified by the Fire Official.

- D. **LEGAL INTEREST.** Any interest that is represented by a document such as a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien or other similar instrument which is recorded with the county recorder.
- E. **PERSON.** Any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, trust, organization or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties, including any public entity.
- F. **PROPERTY OWNER.** The record owner of real property based on the county assessor's records.
- G. **RESPONSIBLE PERSON.** A person who is determined by the Fire Chief or his/her designee, to be responsible for causing or maintaining a public nuisance. The term "responsible person" includes but is not limited to a property owner, tenant, person with a legal interest in real property or person in possession of real property.

#### **SECTION 5. DECLARATION OF NUISANCE**

- A. Any Hazardous Vegetation is hereby declared to be a seasonal and recurring public nuisance and shall be abated to the satisfaction of the Fire Chief or his/her designee.
- B. Combustible Rubbish is hereby declared to be a public nuisance and shall be abated to the satisfaction of the Fire Chief or his/her designee.

#### **SECTION 6. ABATEMENT OF NUISANCE**

The Fire Chief or his/her designee is hereby authorized to abate nuisances as described in this Ordinance.

#### **SECTION 7. NOTICE TO ABATEMENT NUISANCE**

When the Fire Chief or his/her designee determines that a public nuisance exists on any lot, premises, sidewalk, parking lot or street adjacent areas, the Fire Chief or his/her designee shall cause a notice to be issued to abate such nuisance. The abatement notice shall:

- A. Be headed "Notice to Abate Public Nuisance/Hazardous Vegetation."
- B. Contain a description of the property on which the public nuisance is located in general terms reasonably sufficient to identify the property.
- C. Refer to this Ordinance, and to applicable state laws or regulations, which render the property a public nuisance.
- D. Describe the action required to abate the public nuisance, which may include without limitation correction, repair, removal, obtaining the necessary permits, or other appropriate action and provide the time frames by which each action must occur.

- E. Explain the consequences should the responsible person fail to comply with the terms of the notice, including that the nuisance will be abated by the District, the cost of the abatement will be charged to the responsible persons, and the cost will constitute a lien upon the property until paid.
- F. Identify all applicable hearing and appeal rights and the date by which an appeal must be filed.

#### **SECTION 8. SERVICE OF NOTICE OF ABATEMENT**

- A. The Notice of Abatement required in Section 7 may be served by any of the following methods:
  - 1. By first class mail to the property owners as their names and addresses appear on the current assessment role of the Contra Costa County assessor or
  - 2. By personal service to the property owner or responsible person.
- B. Failure of the property owner or responsible person to actually receive notice regularly made in conformity with this Section shall not affect the validity of the notice or the proceedings.

#### **SECTION 9. TIME LIMIT FOR REMOVAL OF NUISANCE**

It is the duty of the property owner or responsible person in possession of any parcel or premises within the Moraga-Orinda Fire District to abate the nuisance as stated withing ten calendar days from the date of Notice of Abatement unless the property owner or responsible person files an appeal. In the event of an appeal, the nuisance must be abated 10 calendar days from the District Board of Directors' decision, unless the appeal is sustained.

#### **SECTION 10. APPEAL**

- A. Within ten calendar days from Service of the Notice of Abatement, the property owner or responsible person may appeal to the Board of Directors. Such appeal must be in writing and filed with the Fire Chief.
- B. At a regular or special meeting of the Board of Directors not less than five days or more than thirty days after receipt of an appeal, the Board of Directors shall hear the appeal. The Board of Directors may continue the hearing.
- C. Upon conclusion of the hearing, the Board shall issue a decision ordering or denying the abatement of the nuisance.
- D. The decision of the Board of Directors is final.

## **SECTION 11. ABATEMENT**

- A. If the property owner fails to abate the nuisance within the time specified, the Fire Chief shall cause the nuisance to be abated at the property owner's expense.
- B. The Fire Chief, deputies, assistants, employees of the District, and contracting agents may enter upon private property for the purpose of abating a nuisance.

## **SECTION 12. COSTS OF ABATEMENT.**

- A. The Fire Chief shall prepare a Cost Report for approval by the Board of Directors of the costs of abating the nuisance on each separate property. Costs of abatement may include the costs incurred by the District in enforcing abatement, including costs of mailing, District personnel time in investigation, clerical and administrative costs, and costs of enforcement, including, but not limited to, attorneys' fees.
- B. The District shall serve, as provided in Section 8 above, a copy of the report and notice of the hearing date to the Property Owner at least seven days prior to the hearing on the report.
- C. At the specified date and time, the Board will receive the report. The Board will hear any objections of the property owners, if any, to be assessed for the costs of abatement. The Board may make modifications to the report as it deems necessary, after which, the Board shall confirm the report.
- D. After the Board has confirmed the report, the District will seek cost recovery from the property owner as provided in Section 13.

## **SECTION 13. SPECIAL ASSESSMENT AND LIEN.**

- A. After confirmation of the Cost Report, the District shall send a written bill to the property owner. If complete payment is not made within 30 days of the date the bill was made, the District shall certify to the Contra Costa Assessor-Recorder that the bill remains unpaid.
- B. The provisions of Health and Safety Code section 14912 are incorporated by reference and are made a part of this Ordinance. The costs for abating the nuisance shall constitute special assessments against the respective parcels of land and are a lien on the property. Upon confirmation by the Board of Directors, the Fire Chief shall provide the Cost Report to the Contra Costa Assessor-Recorder to be collected in the same time and manner as County taxes are paid.

## **SECTION 14. VIOLATION**

Any property owner, responsible person who permits or allows the unlawful continuance of a public nuisance as defined in this Ordinance or who has violated any provision of this Ordinance shall be guilty of a misdemeanor and shall be subject to an Administrative Penalty of no more than \$1,000 per day of violation.

**SECTION 15. SEVERABILITY**

If any section, subsection, paragraph, sentence, or clause of this Ordinance is determined in a final ruling by a court of competent jurisdiction to be invalid or unenforceable, such finding shall not invalidate any remaining portions of the Ordinance. The Board hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, or clause thereof, irrespective of the fact that any portion of the Ordinance be declared invalid.

**SECTION 16. DATE OF EFFECT**

This ordinance shall become effective on July 22, 2023, and within fifteen (15) days of passage shall be published once with the names of the Directors voting for and against it, in the Contra Costa Times, a newspaper of general circulation in this District.

PASSED, APPROVED, and ADOPTED this 21<sup>st</sup> day of June 2023 at the regular meeting of the District Board of Directors held at 22 Orinda Way, Orinda, California 94563 on June 21, 2023, on a motion made by Director Danziger and seconded by Director Jorgens and duly carried with the following roll call vote:

AYES: DIRECTORS DANZIGER, HASLER, JORGENS, ROEMER, AND JEX


NOES: NONE

ABSENT: NONE

ABSTAIN: NONE


**ORDINANCE NO: 23-06**

ATTEST:


  
\_\_\_\_\_  
John Jex, President  
Board of Directors

I certify that this is a full, true, and correct copy of the original document, which is on file in my office, was passed and adopted by the Moraga-Orinda Fire District on the date shown.

ATTEST:

  
\_\_\_\_\_  
Marcia Holbrook  
District Secretary/District Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jonathan V. Holtzman  
District Counsel