

ORDINANCE NO. 23-07

AN ORDINANCE OF THE MORAGA-ORINDA FIRE DISTRICT OF CONTRA COSTA COUNTY, CALIFORNIA, REPEALING ORDINANCE NO. 21-01, AND ADOPTING AN AMENDED ADMINISTRATIVE CITATION PROGRAM.

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

SECTION 1. Authority.

This Ordinance is enacted pursuant to the authority of Health & Safety Code sections 13871, 13872, and Government Code sections 25132 and 53069.4.

SECTION 2. Findings.

- (a) The Moraga-Orinda Fire Protection District ("District") is an independent fire protection district established under the Fire Protection District Law of 1987. (Health and Safety Code§ 13800 *et. seq.*)
- (b) The District is empowered to provide fire protection services and to enforce violations of the California Fire Code, as adopted and amended by the District, California Health and Safety Code, the regulations of the State Fire Marshal, and all District ordinances.
- (c) Under state law, the Fire Chief and his designees may issue written orders to eliminate fire or life hazards, issue administrative citations for misdemeanor violations and infractions, and order dangerous conditions abated.
- (d) A comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to ensure that the District can protect the public's health, safety, and quality of life.

SECTION 3. CEQA

This ordinance is exempt under the California Environmental Quality Act pursuant to 14 C.C.R. section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of the Ordinance would have a significant effect on the environment. The Ordinance sets procedures for ensuring compliance with the Fire Code and other District ordinances. The adoption of the Ordinance did not entitle new development or any changes to the physical environment.

SECTION 4. Repeal of Ordinance No. 21-01.

The Board of Directors hereby repeals Ordinance No. 21-01, Adopting an Administrative Citation Program effective upon the date this Ordinance No. 23-07 is effective.

SECTION 5. Applicability.

This Ordinance provides for Administrative Citations, which are in addition to all other legal remedies, criminal or civil, that the District may pursue to address a violation of a District ordinance, including the Fire Code, as adopted and amended by the Moraga-Orinda Fire District, or other public nuisance. Use of this Ordinance is at the sole discretion of the District. This Ordinance is authorized under California Government Code Sections 53069.4 and California Health and Safety Code Section 13861(h) and (i).

SECTION 6. Definitions.

- (a) "Administrative Citation" means a citation issued by a Fire Official for a violation of the Code.
- (b) "Board" means the Board of Directors of the Moraga-Orinda Fire District.
- (c) "Code" means the California State Fire Code, as adopted and amended by the District, the California Health and Safety Code, the regulations of the State Fire Marshal, or any District ordinance.
- (d) "District" means the Moraga-Orinda Fire District.
- (e) "Fire Chief" means an employee of the District who is designated by the Board as such and who supervises the other Fire Officials.
- (f) "Fire Marshal" means an employee of the District so designated by the Fire Chief.
- (g) "Fire Official" means the Fire Chief, the Fire Marshal, and any agents or representatives that they may designate to enforce the Code, including but not limited to Battalion Chiefs, the Fuels Mitigation Program Manager, Fuels Mitigation Specialists, or other employees of the District.
- (h) "Pre-Citation Notice" means the written notice provided to a Responsible Person of a violation of the Code that does not create an immediate danger to health or safety.
- (i) "Responsible Person" means the owner, tenant, operator, or person or entity otherwise in charge and control of property that is the subject of a violation, or who is otherwise causing, permitting, or aiding and abetting in any violation of the Code.
- (j) "Violation" means a violation of the Code for which the Fire Official has authority to issue an Administrative Citation or Pre-Citation Notice.

SECTION 7. Pre-Citation Notice and Administrative Citation.

- (a) **Pre-Citation Notice.** Except as provided in subsection (b) below, prior to issuing an Administrative Citation for a Violation of the Code, the Fire Official shall serve a Pre-Citation Notice on the Responsible Person containing the following information:

- i. The date the Violation was observed;
- ii. The address or definite description of the location where the Violation was observed;
- iii. The section of the Code violated and a description of the Violation;
- iv. The compliance date by which the Violation must be corrected or otherwise remedied, which shall be a reasonable period of no less than fifteen (15) days and no more than sixty (60) days from the date of the Pre-Citation Notice as determined by the Fire Official;
- v. A statement that if the Violation is not corrected by the specified compliance date, an Administrative Citation will be issued that imposes a fine, the amount of which shall be specified; and
- vi. The name, title, and signature of the Fire Official issuing the Pre-Citation Notice.

(b) Exceptions from Pre-Citation Notice Requirement.

- i. If the Violation of the Code constitutes an immediate danger to health or safety, the Fire Official may issue an Administrative Citation without first issuing a Pre-Citation Notice.
- ii. If the Fire Official issued an Administrative Citation to the Responsible Person for a violation of the Code in the immediately preceding calendar year, and the Responsible Person has violated the same provision of the Code, the Fire Official may issue an Administrative Citation without first issuing a Pre-Citation Notice.

(c) Reinspection. Upon or after the compliance date set forth in the Pre-Citation Notice, the Fire Official shall inspect the property and determine if the Violation has been corrected.

- i. If the Violation has been corrected, the Fire Official shall serve on the Responsible Person a notice that the Violation has been corrected.
- ii. If the Violation has not been corrected, or if the Violation has recurred, the Fire Official shall serve on the Responsible Person an Administrative Citation as set forth in Section 4(c) of this Ordinance.

(d) Administrative Citation. Whenever a Fire Official determines that a Violation has occurred, the Fire Official shall have the authority to issue an Administrative Citation to any person responsible for the Violation, subject to the limitations contained in Subsection 7(a) of this Ordinance.

(e) Contents of Administrative Citation. Each Administrative Citation shall

contain the following information:

- i. The date of the Violation;
- ii. The address or a definite description of the location where the Violation occurred;
- iii. The section of the Code violated and a brief description of the Violation;
- iv. The amount of the fine for the Violation;
- v. A description of the fine payment process, including a description of the time within which and the place where the fine shall be paid;
- vi. An order prohibiting the continuation or repeated occurrence of the Violation described in the Administrative Citation;
- vii. A description of the Administrative Citation review process, including the 30-day deadline for requesting a hearing to contest the Citation under Section 10(a) of this Ordinance and the 10-day deadline for seeking an Advance Deposit Hardship Waiver under Section 8(b) of this Ordinance, the procedure for obtaining from the District Clerk a request for hearing form to contest the Administrative Citation, and notice that failure to contest the Administrative Citation will make the Citation a final action by the District for which there is no further administrative review and no judicial review;
- viii. A statement explaining that each day the Violation occurs or continues may constitute a separate Violation; and the name, title, and signature of the citing Fire Official.

SECTION 8. Amounts of Fines, Late Payment Charges, and Interest.

- (a) Fine Amounts. The amount of the fine for Violations shall be, per Violation:
 - i. A fine not exceeding one hundred dollars (\$100) for a first Violation;
 - ii. A fine not exceeding two hundred dollars (\$200) for a second Violation of the same Code provision within one year; and
 - iii. A fine not exceeding five hundred dollars (\$500) for each additional Violation of the same Code provision within one year.
- (b) For purposes of this section, each day the violation occurs constitutes a separate violation.
- (c) Late Payment Charges and Interest. A fine that remains unpaid 30 days after the due date under Section 9(a), 11(f), or 13(b) of this Ordinance shall be subject to a late payment penalty of 10 percent, plus interest at the rate of 1 percent

per month on the outstanding balance, which shall be added to the penalty amount from the date that payment is due.

- (d) Discretion of Board to Establish Fine. The Board has the discretion to waive the fine or to set the fine lower than the amount set in Section 8(a) based on one or more of the following factors:
- (a) The duration of the Violation;
 - (b) The frequency, recurrence, and number of Violations by the Responsible Person;
 - (c) The seriousness of the Violation;
 - (d) The bona fide efforts of the Responsible Person to come into compliance;
 - (e) The financial burden of the fine on the Responsible Person;
 - (f) The impact of the Violation on the community health and safety; and
 - (g) Such other factors as justice requires.

SECTION 9. Payment of the Fine.

- (a) Due Date. The fine shall be paid to the District within thirty (30) days following the date of the Administrative Citation. The Fire Chief or designee may, but shall not be obligated to, suspend the imposition of a fine for any period during which the Responsible Person has filed for permits that are necessary to achieve compliance, and the permit applications are pending before the appropriate governmental agency.
- (b) Further Violations Not Excused. Payment of a fine under this Ordinance shall not excuse or discharge any continuation or repeated occurrence of the Violation.

SECTION 10. Request for Hearing; Dismissal of Citation.

- (a) Hearing Request. A person who receives an Administrative Citation may contest the Citation on the basis that there was no Violation or that he or she is not the Responsible Person, or may seek a reduction in the amount of a fine imposed for a repeat Violation on the ground that he or she made a bona fide effort to comply after the first Violation and that payment of the full amount of the fine would impose an undue financial burden. To contest the Administrative Citation or seek a reduction of the fine imposed for a repeat violation, the person shall submit a request for a hearing to the District Clerk within thirty (30) days following the date of the Administrative Citation. The request form may be obtained from the Administrative Office of the District. The completed request

must be submitted together with either an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed under Section 11 of this Ordinance.

- (b) Dismissal of Citation. At any time before the hearing, if the Fire Chief or designee determines that there was no Violation as charged in the Administrative Citation, that the Violation has been remedied, or that the Administrative Citation should be dismissed in the interest of justice, the Fire Chief or designee shall dismiss the Administrative Citation, cancel the hearing, and refund any Administrative Citation fine deposited.

SECTION 11. Advance Deposit Hardship Waiver.

- (a) Request for Waiver. A person who intends to contest an Administrative Citation under Section 10 of this Ordinance and who is financially unable to make the required advance deposit of the fine may file a request for an advance deposit hardship waiver.
- (b) Filing. An advance deposit hardship waiver shall be filed with the District Clerk on a form provided by the District. The application submitted shall include an affidavit, together with any supporting documents or materials, demonstrating the person's actual financial inability to deposit with the District the full amount of the fine. The waiver form shall be filed within ten (10) calendar days following the date of the Administrative Citation.
- (c) Deposit Requirement Stayed. The requirement of advance deposit of the fine shall be stayed until the District issues a determination on the application for an advance deposit hardship waiver.
- (d) Standard for Waiver. The Fire Chief or designee may waive the requirement of an advance deposit under Section 10 of this Ordinance and issue the waiver only if the evidence submitted demonstrates to the satisfaction of the Fire Chief or designee the person's actual financial inability to deposit with the District the full amount of the fine in advance of the hearing.
- (e) Written Determination. The Fire Chief or designee shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the Fire Chief or designee is final.
- (f) Deposit Required If Waiver Denied. If the Fire Chief or designee determines not to issue a waiver, the person cited shall deposit the fine with the District Clerk within ten (10) days following the date of that decision, or thirty (30) days following the date of the Administrative Citation, whichever is later.

SECTION 12. Hearing Procedure.

- (a) Setting the Hearing. In response to a request for a hearing under Section 7 of this Ordinance, the Fire Chief or designee shall set a hearing before the Board to be held during a regular or special Board meeting on a date that is not less than fifteen (15) days nor more than sixty (60) days following the date that the request for hearing is filed, unless agreed to by the Fire Chief or designee and the person seeking the hearing. The person requesting the hearing shall be notified of the time and place set for the hearing as soon as it is set, and at least ten (10) days before the hearing. If the Fire Official submits a supplemental report concerning the Administrative Citation to the Board for consideration at the hearing, a copy of the report shall be served on the person requesting the hearing at least five (5) days before the hearing. No hearing shall be held unless the fine has been deposited in advance, under Section 10 of this Ordinance, or an advance deposit hardship waiver has been issued under Section 11 of this Ordinance.

- (b) Failure to Appear. The failure of the person requesting the hearing to appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust his or her administrative remedies.

- (c) Hearing. The Administrative Citation and any supplemental report submitted by the Fire Official shall constitute prima facie evidence of the respective facts contained in those documents. At the hearing, the party contesting the Administrative Citation shall be given the opportunity to testify and to present evidence concerning the Administrative Citation. Formal rules of evidence shall not govern the hearing. The Board may accept testimony by declaration relating to the Administrative Citation from any party.

- (d) Continuance. The Board may continue the hearing from time to time and may request additional information from the Fire Official or the person requesting the hearing before issuing its decision.

SECTION 13. Board's Decision.

- (a) Decision. After considering the testimony and evidence presented at the hearing, the Board shall issue a written decision by resolution, supported by findings, to uphold, dismiss, or modify the Administrative Citation, and setting the amount of the fine, if any. The Board Clerk shall deliver a copy of the resolution to the person requesting the hearing. The Board's resolution shall constitute the District's final administrative decision. The resolution shall state that the time for judicial review of the Board's decision is governed by Government Code Section 53069.4.

- (b) Status of Fine. If the Board upholds the Administrative Citation and the fine, the fine amount on deposit with the District shall be retained by the District.

If the Board upholds the Administrative Citation but reduces or eliminates fine imposed, the District shall promptly refund the excess amount of the fine deposited. If the Board upholds the Administrative Citation and the fine, and the fine has not been deposited, the Board shall set forth in the decision a payment schedule for the fine and any additional charges, which shall not extend more than one hundred and eighty (180) days from the date of the decision. If the Board dismisses the Administrative Citation, the District shall promptly refund any fine deposited, together with interest at the average rate earned on the District's portfolio for the period of time that the fine was held by the District.

SECTION 14. Recovery of Fines, Late Charges, and Interest.

The District may collect any past due fines, late payment charges, and interest imposed under this Ordinance by filing a civil action or by pursuing any other legal remedies. The District also may recover its collection costs, including reasonable attorneys' fees, in any civil action brought to collect Administrative Citation fines, late payment charges, and interest.

SECTION 15. Right to Judicial Review.

Any person aggrieved by the decision of the Board on an Administrative Citation under this Ordinance may obtain review of the decision by filing a notice of appeal with the Contra Costa Superior Court within twenty (20) days of the service of the Board's decision in accordance with the provisions of California Government Code Section 53069.4.

SECTION 16. Notices.

- (a) Method of Service. Any Pre-Citation Notice, Administrative Citation, notice of hearing, written determination on application for advance deposit hardship waiver, supplemental report, Board's decision, and any other notice or document required to be given by the District or the Board pursuant to this Ordinance shall be served either by:
- i. Personal service on the Responsible Person or the person requesting the hearing; or
 - ii. By deposit in the United States Mail first class, in a sealed envelope postage prepaid, addressed to the Responsible Person or the person requesting the hearing at that person's last known address, or at the address that has been provided to the District in any public record or other records pertaining to the Violation.
- (b) Service shall include a declaration under penalty of perjury setting forth the date of personal delivery or, for service by mail, the date of deposit in the mail. Service by personal delivery shall be deemed complete on the date of the delivery. Service by mail shall be deemed complete on the date of deposit in the mail.

- (c) Real Property. When real property is involved in the Violation, and the Responsible Person is not the property owner, any Pre-Citation Notice, the Administrative Citation and all notices and documents required to be given by this Ordinance shall be served on the property owner at the property owner's address as shown on the last equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of any Pre-Citation Notice, Administrative Citation, and all other notices and documents required under this Ordinance shall be conspicuously posted at the property that is the subject of the Violation. The District also may, in its discretion, serve notices and other documents on a tenant, a mortgagor, or any other person having an interest in the property.

- (d) Failure to Receive Notice. The failure of the Responsible Person or other person to receive a required notice or document served in accordance with this Section of the Ordinance shall not affect the validity of any proceedings taken under this Ordinance.

SECTION 17. 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 18. Date of Effect.

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

PASSED, APPROVED, and ADOPTED this ____ day of _____, 2023 at the regular meeting of the District Board of Directors held at 22 Orinda Way, Orinda, California 94563 on _____, 2023 on a motion made by Director _____ and seconded by Director _____ and duly carried with the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

- (c) Real Property. When real property is involved in the Violation, and the Responsible Person is not the property owner, any Pre-Citation Notice, the Administrative Citation and all notices and documents required to be given by this Ordinance shall be served on the property owner at the property owner's address as shown on the last equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of any Pre-Citation Notice, Administrative Citation, and all other notices and documents required under this Ordinance shall be conspicuously posted at the property that is the subject of the Violation. The District also may, in its discretion, serve notices and other documents on a tenant, a mortgagor, or any other person having an interest in the property.
- (d) Failure to Receive Notice. The failure of the Responsible Person or other person to receive a required notice or document served in accordance with this Section of the Ordinance shall not affect the validity of any proceedings taken under this Ordinance.

SECTION 17. 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 18. 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, in the Contra Costa Times, a newspaper of general circulation in the District.

PASSED, APPROVED, and ADOPTED this 21st 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

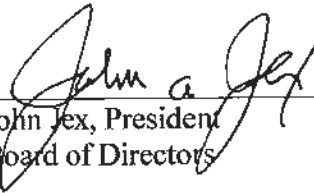
NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

ORDINANCE NO: 23-07


ATTEST:



John Jex, President
Board of Directors

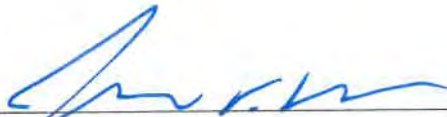
I certify that this is a full, true, and correct copy of the original document, which is on file in my office, was passed and adopted by the Moraga-Orinda Fire District on the date shown.

ATTEST:



Marcia Holbrook
District Secretary/District Clerk

APPROVED AS TO FORM:



Jonathan V. Holtzman
District Counsel