

# Ordinance 2014-1

*An Ordinance of the  
San Miguel Consolidated Fire Protection District  
Relating to the Declaration of  
Certain Waste Matter and/or Vegetation Matter as a  
Public Nuisance and Providing for the  
Abatement and/or Removal Thereof and  
Replacing Ordinance #94-3*

The Board of Directors of the San Miguel Consolidated Fire Protection District ordains as follows:

**ARTICLE I:** The health and safety of the San Miguel Consolidated Fire Protection District and the residents thereof, requires the incorporation of the following amended Ordinance.

**ARTICLE II:** Certain vegetation within the San Miguel Consolidated Fire Protection District may constitute a seasonal and recurrent nuisance pursuant to the Health and Safety Code Section 14900.5.

**ARTICLE III:** The enactment of this Ordinance is pursuant to the authority of the Health and Safety Code Sections 13861 (h), 13879 Division 12, Part 5, Sections 14875, et seq., and Division 12, Part 6, Sections 14930.

**ARTICLE IV:** ABATEMENT OF CERTAIN VEGETATION AND WASTE MATTER:

**Section I Certain Vegetation and Other Items Declared a Public Nuisance.**

(a) Any vegetation growing upon the streets, sidewalks or upon private or public property within the San Miguel Consolidated Fire Protection District, which by reason of its size, type, manner of growth, proximity to any building, or improvements which, when dry, will with reasonable probability constitute a fire hazard, said vegetation or other items are hereby declared to be a public nuisance and shall be abated in accordance with the Standards of the San Miguel Consolidated Fire Protection District, and to the satisfaction of the Fire Chief or his authorized representative.

(b) Cultivated and useful grasses and pasture shall not be declared a public nuisance. However, if the Fire Chief or his authorized representative shall determine a hazard exists adjacent to improved property from fire exposure, should said conditions occur, an adequate firebreak may be required.

(c) It shall be the responsibility of the property owner to insure compliance with the requirements of this Ordinance, particularly if the property is within a protected open space easement or is subject to protection under the Resource Protection Ordinance of the County of San Diego, a Multiple Species Conservation Plan, Biological Mitigation Ordinance, or Federal or State Endangered Species Acts. Violations of Ordinances of the County of San Diego, or Endangered Species Acts shall be subject to penalties as described therein.

### **Section 1.1 Definitions – Abatement**

Abatement pursuant to this Ordinance shall be defined as the removal of the hazard or nuisance as defined by this Ordinance.

## **Section 2 Waste Matter Declared a Public Nuisance**

Waste matter is hereinafter defined as matter, which by reason of its location and/or character may hamper or interfere with the prevention or suppression of fire upon the premises or adjacent premises. The requirement to abate same as defined herein or by Section I.I is hereby declared a public nuisance.

### **Section 2.1 Waste Matter Defined**

Waste matter is defined for this article as unused or discarded matter having no substantial value, and which is exposed to the elements not enclosed in any structure or concealed from public view. These items consist (without limitation or exclusion by enumeration) of such matter and/or material as: rubble, asphalt, and any combustible non-functioning material.

## **Section 3 Notice to Abate Hazard**

If it is determined that a public nuisance as herein defined exists on any lot, premise, sidewalk, parking lot or street adjacent areas, the Fire Chief of the Fire District upon discovery shall cause a notice to be issued to abate such nuisance. Such notice shall be headed: “**NOTICE TO ABATE HAZARD**” and shall, in legible characters, direct the abatement of the nuisance and refer to this Article and Section for particulars. Notices served by means other than posting as provided by this Article shall contain a description of the property reasonably sufficient to identify the location of the property and location of the nuisance thereon.

### **Section 3.1 Notice to Abate Seasonal and Recurrent Nuisances**

In the case of weeds/vegetation which have previously been declared to constitute a seasonal and/or recurring nuisance, it is sufficient to mail a post card or letter notice to the owners of the property as they and their addresses appear upon the current assessment roll.

The notice shall refer to and describe the property and shall state “nuisance” or dangerous weeds of a seasonal and recurrent nature are growing on the property and that the same constitute a public nuisance which must be abated by removal. If not removed by the property owner, the Fire Chief or his authorized representative shall cause the abatement by removal. The cost of such removal shall be assessed upon the lot and/or lands from which the nuisance is removed.

Such assistance will constitute a lien upon such lots or lands until paid or collected through tax assessment.

#### **Section 4      Service of Notice to Abate Hazard**

The notice required by Section 3 and 3.1 of this Ordinance may be served by one of the following:

(a) By personal service on the owner, adult occupant or adult in charge of the property.

OR

(b) By regular mail addressed to the owner or person in charge and control of the property at the address shown on the last available assessment roll or as otherwise known. Last and final notice shall be served through registered mail.

OR

(c) By posting in a conspicuous place on the land or adjacent public right of way a notice in conformance with Sections 14891 and similar to Section 14892 of the Health and Safety Code, not more than 100 feet in distance apart, along such right of way with at least one notice posted on each lot or parcel.

#### **Section 5      Appeal to the Board of Directors**

At any time after the receipt of the abatement notice and up to seven days prior to the final clearance date as specified on the notice, the owner or person occupying or controlling said lot or premise may appeal to the San Miguel Consolidated Fire Protection District Board of Directors. Such appeal shall be in writing and shall be filed with the Fire Marshal. At the regular or adjourned meeting of the Board of Directors not less than five (5) days nor more than thirty (30) days after receipt of such appeal, the Board shall proceed to hear such appeal and the decision of the Board of Directors thereupon shall be final and conclusive.

An administrative fee of twenty-five dollars (\$25.00) shall accompany any appeal filed. Said fee may be waived if financial inability can be reasonably shown. Application of waiver shall be in the form of a letter signed by the owner or their appropriate delegate.

If the appeal is not accompanied by the fee or application for waiver, (and acceptance thereof by the Fire Marshal) then the appeal will be administratively denied.

If the appeal is successful in reversing the prior demand for abatement then the above administrative fee shall be refunded to the appellant

## **Section 6      Abatement of Nuisance by the Fire Chief**

If the owner fails or neglects to abate the nuisance as herein defined within the time specified, the Fire Chief shall cause such nuisance to be removed and/or abated pursuant to Sections 14900 and 14901 of the Health and Safety Code. A report of the proceedings and an accurate account of the costs of abating the nuisance on each separate property shall be filed in the Fire Prevention Bureau.

## **Section 7      Cost of Abatement and Removal**

Costs for abatement shall include any and all administrative costs including, but not limited to, cost of mailing, Fire District personnel's time, computer retrieval, plus contractors actual abatement costs.

## **Section 8      Government Code Provisions Adopted and Collection Assessments**

The provisions of Section 39580 through 39586 inclusive of the Government Code and Section 14912 of the Health and Safety Code of the State of California are incorporated by reference and made a part of this Ordinance. The County Auditor shall enter each assessment in the County Tax Roll opposite the parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary, municipal taxes; and if delinquent, the amount is subject to the same penalties and procedure of foreclosure and sale as provided for ordinary municipal taxes.

If the Fire District determines that it is in the best interest of the District and its citizens, the Fire District may contract out the abatement process.

In order to facilitate this process, it is decreed that should a noticed party (per Section 4 herein) not comply to the satisfaction of the District, the owner of said parcel at that time is decreed to have authorized and/or accosted that. The Fire District may abate the problem on behalf of the land owner. Upon said abatement the District may assess all related costs. Upon completion of the work, the District may lien the property as described in the prior paragraph or assign their interest to the private corporation as payment for the work provided.

The assignee of said claim shall be authorized to sue for collection of monies due. Upon collection on said lawsuit the Fire District shall receive the first monies up to what is owed to the District for services performed; after the Fire District has been satisfied, the collection facility shall be paid for their work and then the assignee shall be paid.

## **Section 9      Violation**

The owner, occupant or agent of any lot or premises within the San Miguel Consolidated Fire Protection District who shall permit or allow the unlawful continuance of a fire hazard and/or public nuisance as defined in Section 1.1 of this Ordinance upon any lot or premises owned, occupied or controlled by him/her, or who shall violate any of the provisions of this Ordinance, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not

more than five hundred dollars (\$500.00), or, to imprisonment for a period not exceeding six (6) months, or both such fine and imprisonment.

**ARTICLE V:** The Board of Directors hereby declares that facts exist pursuant to Section 36937 of the Government Code of the State of California constituting an urgency, to wit: That in order to promote and protect the public health, safety and welfare of the citizens of the San Miguel Consolidated Fire Protection District by reason of certain vegetation and other items constituting a potential health and fire hazard requiring immediate regulation and control by the Fire District; that the Board of Directors does hereby determine that such facts constitute an urgency, that the passage of this Ordinance is urgent due to the severity and frequency of annual vegetation fires within the District, and shall take effect immediately upon adoption pursuant to Section 36937 of the Government Code of the State of California.

**ARTICLE VI:** The Board of Directors hereby declares that should any section, paragraph, sentence or word of this Ordinance or the Codes or Ordinances referenced herein be declared for any reason to be invalid, it is the intent of this Board that it would have adopted all other portions of this Ordinance independent of the eliminations therefrom of any such portion as may be declared invalid.

**PASSED** this 14<sup>th</sup> day of May, 2014, by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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Recording Secretary

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David K. Rickards, Board President