

ORDINANCE NO. 40

AN ORDINANCE OF THE APPLE VALLEY FIRE PROTECTION DISTRICT ADOPTING STANDARDS FOR THE DETERMINATION, ENFORCEMENT AND ABATEMENT OF FIRE HAZARDS

BE IT ORDAINED by the Board of Directors of the Apple Valley Fire Protection District:

SEC. 1 DUTY TO ABATE FIRE HAZARDS

Every owner, occupant and person in control of any land or interest therein within the boundaries of the Apple Valley Fire Protection District must abate all fire hazards from such land and from all sidewalks, parkways, and easements on such land. All such fire hazards are declared to be a public nuisance for which the cost of abatement may be specially assessed pursuant to Government Code Section 25845.

SEC. 2 DEFINITIONS:

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) Fire District means the Apple Valley Fire Protection District.
- (b) Fire Chief means the Chief of the Apple Valley Fire Protection District or his/her designee.
- (c) The Board means the Board of Directors of the Apple Valley Fire Protection District.
- (d) Combustible vegetation means:
 - (1) Tumbleweeds (Russian Thistle).
 - (2) Dead limbs and debris of plants.
 - (3) Dry grasses over four (4) inches in height.
- (e) Fire hazard means:
 - (1) Combustible vegetation within thirty (30) feet of all structures, including that portion of the property within thirty (30) feet of structures on adjacent property, and vegetation within ten (10) feet of a roadway.
 - (2) Tumbleweeds, regardless of distance from structures.
 - (3) Combustible rubbish is combustible and flammable wastes such as furniture, paper, wrappings, cardboard, yard clippings, leaves, dead trees, tree trimmings, unstacked wood or lumber, tires, construction and demolition debris such as timbers, roofing material which if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

SEC. 3 ENFORCEMENT

The Fire Chief may designate any employee of the Apple Valley Fire Protection District as his or her deputy in the performance of the duties enjoined upon him or her by this Ordinance.

SEC. 4 NOTICE TO ABATE

- (a) It shall be the duty of the Fire Chief or his/her designated person, whenever such office deems necessary to enforce the provisions of this Ordinance, to issue a Notice to Abate Fire Hazard by any or all of the following methods:
 - (1) By mailing a Notice to the owner at the address shown on the latest tax roll.
 - (2) By personally serving the owner of the property shown on the latest tax roll.
 - (3) By posting the property.
 - (4) The failure of the owner to receive such Notice shall not affect the power of the Fire District to proceed as provided in this part, nor shall it invalidate the assessment against the subject property.
- (b) The form "Notice and Order to Abate Fire Hazard" shall include, at a minimum, the following information:
 - (1) List of hazards.
 - (2) List of location(s), and parcel number(s) of affected property.
 - (3) Due date by which abatement must be completed.
 - (4) Appeal rights.
 - (5) Landowner's name and address (assessor parcel and/or site address)
- (c) If said items are not removed or abated by the specified time (normally 30 days), a duly designated officer may order said items removed or abated. If the Fire District has the above said items removed or abated, the actual cost plus an administrative charges shall be levied and assessed against the property as a special assessment lien.

SEC. 5 IMMEDIATE HAZARD

When, in the opinion of the Fire Chief or his designee, an extreme fire hazard exists which constitutes an immediate threat to public health, safety, and welfare, and it is deemed necessary by the Fire Chief or his designee to abate such hazard as promptly as possible, said items shall be removed within 72 hours.

SEC. 6 APPEAL PROCEDURE

- (a) Any person who is affected by the Notice may appeal the existence of a fire hazard or the assessed fees relative to the abatement of a hazard to the Board of Appeals, as defined in Subdivision (c) of this section, within the time for compliance with the order, by submitting the appeal in writing to the Fire District.
- (b) The appeal must be accompanied by a fee for the cost of the appeal as established by a resolution of the Apple Valley Fire Protection District Resolution. Said fees are refundable should the appellant prevail.

- (c) The Board of Appeals shall consist of three (3) persons: one member shall be a designee of the Fire Chief; one member shall be a member of the public appointed by the Board of Directors of the Apple Valley Fire Protection District; one member shall be a designee of the Manager of the Town of Apple Valley.
- (d) A timely appeal shall stay any further action until the appeal is determined.
- (e) The Fire District shall set the matter for hearing before the Board of Appeals and shall notify the appellant of the date set for hearing at least fifteen (15) days prior to such date.
- (f) The Board of Appeals shall act on the appeal and its determination shall be final.

SEC. 7 REMOVAL OF FIRE HAZARD BY PRIVATE CONTRACTOR

- (a) If, at the end of the time allowed for compliance in the original Notice, compliance has not been accomplished, the Fire District shall order the fire hazard to be removed by a private contractor selected and approved by the Fire District, in the manner and under the terms specified by this Ordinance. When notification for the abatement has been requested by the Fire District and the owner/agent of said parcel abated **after** the time allowed for the compliance in the original Notice, a fee shall be certified to the San Bernardino County Auditor as identified by Resolution.
- (b) Abatement by Fire District. A representative of the Fire District may enter upon any private property and abate any hazard found thereon, after Notice of such hazard has been issued as required by this Ordinance, if no person has filed a written statement of objections as provided in the Return Action card. In the event objections have been duly filed, and overruled by the Board of Appeals, such officer may enter upon private property and abate any hazard found thereon, in accordance with this Ordinance.
- (c) Performance of Abatement by Contract, Bids, Itemized Written Reports. Abatement of the hazard may, at the discretion of the Fire District, be performed by contract awarded by the Fire District on the basis of competitive bids let to the lowest responsible bidder pursuant to Sections 37903, 37904, 37905, and 37931 to 37935 inclusive of the California Government Code. The contractor shall keep and submit an itemized written report for each separate parcel of land as required by Section 39574.

SEC. 8 TIME EXTENSION

An extension of time may be requested by the owner/agent of a parcel. A designated officer of the Fire District may grant an extension on a case-by-case basis. An extension period of 15 days will start after the specified due date on the Notice. Each extension of time shall generate a fee as identified by the resolution until abatement has been completed.

SEC. 9 PAYMENT FOR ABATEMENT OF FIRE HAZARD

- (a) Billing. When the abatement has been completed in accordance with Section 7 of this Ordinance, the Fire District shall cause a bill to be sent to the responsible party for the cost of the abatement plus all associated costs incurred by the District. Such bill shall be due and payable to the Fire District within 30 days after the billing date. If payment is not received within the allotted time, the Fire District will assess the amount of the cost of the bill, plus any additional fees to the San Bernardino County Auditor as identified in the Resolution.

- (b) Tax lien for payment. If the payment is not made by or on behalf of the owner by June 30th of each year, the Fire District shall certify to the San Bernardino County Auditor the demands remaining unpaid, together with the information required by law in such cases. The San Bernardino County Auditor shall cause the amount of the demand to be entered upon the tax roll for the property from which the removal was accomplished, and said special assessment shall be included upon the next succeeding tax statement. Thereafter, the amounts of the assessment shall be collected at the same time and in the same manner as San Bernardino County taxes are collected and are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary San Bernardino County taxes.
- (c) If any real property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if the lien of a bona fide encumbrancer for value has been created and attached thereon prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the costs of abatement, as confirmed, relating to such property shall be transferred to the unsecured toll and collected by any appropriate means.
- (d) Appeals. Any appeal from these charges must be filed within sixty (60) days from the date of billing by the Fire District. An appeal may also be filed within sixty (60) days from the date of mailing of a tax bill which shows abatement charges, if and only if, no bill was issued to the appellant. The appeal procedure shall be the same as in Section 6 of this Ordinance, and the Appeals Board's decision shall be final.
- (e) Cancellation of lien. All or any portion of any such assessment, penalty, or cost heretofore entered shall, on order of the Board of Appeals or Fire District Finance Officer, be canceled by the San Bernardino County Auditor if uncollected, or, except in the case provided in Subdivision (5) hereof, refunded by the San Bernardino County Treasurer if collected, if the Board of Appeals or Fire District Finance Officer determines that they were entered, charged or paid:
 - (1) More than once.
 - (2) Through clerical error.
 - (3) Through error or mistake of the Board of Appeals, Fire District Finance Officer, or an officer designated to give notice or to abate the fire hazard in respect to any material fact, including the case where the cost report rendered and confirmed as herein before provided shows the Fire District or private contractor abated the fire hazard, but such is not the actual fact.
 - (4) Illegally.
 - (5) On property acquired after the lien date by the State of California or by any county, city, school district, or political subdivision and, because of this public ownership, the property is not subject to sale for delinquent taxes.
- (f) Procedure for refund of payment. No order for a cancellation or refund under Subdivision (d) of this section shall be made except on a claim; and
 - (1) Verified by the person who paid the special assessment or his or her guardian, executor or administrator; and

- (2) Filed within sixty (60) days after the error was discovered by the property owner and no more than one (1) year after making the payment sought to be refunded.

SEC. 10 VIOLATIONS

It shall be a misdemeanor for any person, natural or corporate, owning, possessing, or controlling any premises to fail to perform the duty set forth in Section 1 of this Ordinance, or to fail to comply with the requirements in the Notice set forth in Section 4 of this Ordinance, or to interfere with the performance of the duties herein specified for any of the officers named in this Ordinance, or to refuse to allow any such officers, employees, or approved private contractors, to enter upon any premises for the purpose of removing any offending weeds or other material herein before described, or to interfere in any manner whatever with said officers in the work of removal herein provided.

SEC. 11 PENALTY FOR VIOLATION

- (a) Any person, firm, company, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon arrest and conviction, shall be punished by a fine of not in excess of five hundred dollars (\$500.00) and imprisonment of not more than ninety (90) days or both.
- (b) Payment of any fine or service of a jail sentence shall not relieve a person, firm, partnership, corporation or other entity from the responsibility of correcting the condition which resulted in the violation.
- (c) In addition to the above penalties, the court may order that the guilty party reimburse the Fire District for all of its costs of investigating, analyzing, and prosecuting the enforcement action against the guilty party. The court shall fix the amount of any such reimbursement upon submission of proof of such cost by the Fire District.

SEC. 12 REPEAL OF CONFLICTING ORDINANCE

Ordinance No. 37, which adopted standards for the determination, enforcement, and abatement of fire hazards, is hereby repealed.

SEC. 13 DATE OF EFFECT

This Ordinance shall take effect thirty (30) days from the date of adoption.

ADOPTED this 16th day of September 1999.



Tom Stoudt, President of
Apple Valley Fire Protection District and
the Board of Directors thereof