

Meeting date: 10/21/09 (13)

ORDINANCE NO. 10019 (N.S.)

AN ORDINANCE AMENDING TITLE 6 OF THE SAN DIEGO COUNTY CODE
RELATING TO VECTOR ABATEMENT AND CONTROL

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that this ordinance will cleanup and clarify Title 6, Division 4, Chapter 2 of the San Diego County Code by expounding on the purpose of this chapter, revising definitions and clarifying the duties and authority of the Department of Environmental Health to control and abate mosquitoes and other vectors in San Diego County to protect the public health, safety and welfare of the entire San Diego County community from vectorborne diseases.

Section 2. Title 6, Division 4, Chapter 2 of the San Diego County Code is amended to read as follows:

CHAPTER 2. VECTOR ABATEMENT AND CONTROL

SEC. 64.201. PURPOSE.

Health and Safety Code (H & S Code) sections 2001 et seq. recognize that California's climate and topography support a wide diversity of biological organisms and that while most of these organisms are beneficial, some are vectors of human disease pathogens or directly cause other human diseases. The Legislature recognized that some of the diseases may be fatal, especially in children and older adults. In order to protect Californians and their communities against the dangers of vectorborne diseases the Legislature granted broad statutory authority to mosquito abatement and vector control districts. Government Code Section 25842.5 allows a board of supervisors to provide the same services and exercise the powers of a mosquito abatement and vector control district. Pursuant to this statutory authority, the Board of Supervisors resolved to act as a mosquito abatement and vector control district in both the incorporated cities and the unincorporated area of the County. The city council of each incorporated city in the County consented to the Board's resolution. The Board also resolved to delegate implementation and enforcement duties to the Department of Environmental Health. The purpose of this chapter is to establish a program authorized by Government Code section 25842.5 to control and abate mosquitoes and other vectors in San Diego County to protect the public health, safety and welfare of the entire San Diego County community from vectorborne diseases.

SEC. 64.202. DEFINITIONS.

The following definitions shall apply to this chapter:

(a) "Abate" means to eliminate a public nuisance or to reduce the degree or intensity of a public nuisance.

(b) "Director" means the Director of the Department of Environmental Health and any other person the Director employs or appoints to implement or enforce this chapter.

(c) "Hearing officer" means a County hearing officer appointed pursuant to County Administrative Code sections 650 et seq.

(d) "Property" has the same meaning as the term property in H & S Code section 2002(h).

(e) "Public nuisance" means any of the following:

(1) Any property, excluding water, that has been artificially altered from its natural condition so that it now supports the development, attraction or harborage of a vector. The presence of vectors in their development stages on a property is prima facie evidence that the property is a public nuisance.

(2) Any water that is a breeding place for vectors. The presence of vectors in their development stages in the water is prima facie evidence that the water is a public nuisance.

(3) Any activity that supports the development, attraction or harborage of vectors or that facilitates the introduction or spread of vectors.

(f) "Vector" means an animal capable of transmitting the causative agent of human disease.

64.203. SCOPE AND AUTHORITY.

The Director when acting pursuant to this chapter may exercise the following powers on any property located in the unincorporated area of the County or in any incorporated city in the County:

(a) Conduct surveillance programs and other appropriate studies of vectors and vectorborne diseases.

(b) Take any necessary and lawful action to prevent the occurrence of vectors and vectorborne diseases.

(c) Take any necessary and lawful action to abate or control vectors and vectorborne diseases.

SEC. 64.204. RIGHT TO INSPECT PROPERTY.

Subject to the limitations of the United States Constitution and the California Constitution, the Director may enter any property in San Diego County or property outside San Diego County from which disease bearing vectors may enter San Diego County, without interference or hindrance for the following purposes:

(a) Inspect the property to determine the presence of vectors or other public nuisance that is likely to create a breeding ground or harborage for vectors.

(b) Abate a public nuisance pursuant to this chapter, either directly or to give notice to the property owner to abate the public nuisance.

(c) Determine if a notice to abate a public nuisance has been complied with.

(d) Control vectors and treat property with appropriate physical, chemical or biological control measures.

SEC. 64.205. INSPECTION AND ABATEMENT WARRANTS.

The Director may request an inspection or abatement warrant pursuant to Code of Civil Procedure sections 1822.50 et seq. A warrant issued pursuant to this section, however, shall apply only to the exterior of a place, dwelling, structure or premises. The warrant shall state the geographic area which it covers and shall state its purposes. A warrant may only authorize the Director to enter property to do the following:

(a) Inspect to determine the presence of vectors or other public nuisance that may create a breeding ground or harborage for vectors.

(b) Abate a public nuisance, either directly or by giving notice to the property owner to abate a public nuisance.

(c) Determine if a notice to abate a public nuisance has been complied with.

SEC. 64.206. NOTICE AND ORDER TO ABATE.

(a) Whenever the Director determines that a public nuisance exists on property the Director may issue a Notice and Order to Abate to the property owner.

(b) The notice shall be served by U. S. mail to the owner at the address shown on the County's current assessment roll. The notice shall also be posted in a conspicuous location in the front of the property on which the public nuisance exists. If the property has no frontage the notice shall be posted at a conspicuous location on the roadway closest to the property most likely to give actual notice to the property owner.

(c) The notice shall contain the following information:

(1) That the Director has determined that a public nuisance exists on the owner's property, describing the nuisance and its location on the property.

(2) The date by which the owner is ordered to abate the nuisance.

(3) Any action the owner is ordered to take to prevent the recurrence of the nuisance.

(4) If the owner fails to comply with the notice and order within the time specified the Director has the right to take the action ordered and the owner may be liable for paying the County's costs to abate, including the County's administrative costs.

(5) If the owner fails to comply with the notice and order within the time specified the owner may be liable for civil penalties up to \$1,000 per day for each day the nuisance continues after the specified time.

(6) The owner has the right to request a hearing by a date specified in the notice. The notice shall also advise the owner of the requirements for filing an appeal in section 64.207.

SEC. 64.207. APPEAL PROCEDURE AND FEE.

(a) A property owner may appeal a Notice and Order to Abate by filing a written request for a hearing to the Clerk (Clerk) of the Board of Supervisors, stating the grounds for the appeal, contain the name, mailing address and telephone number of the appellant and be accompanied by the appeal fee.

(b) The fee to appeal a Notice and Order to Abate issued pursuant to this chapter shall be the same fee as the Board periodically establishes, based on the County costs incurred, to appeal a Notice and Order to Abate under the County Public Nuisance Abatement

procedure in sections 16.201 et seq. If the hearing officer finds there is no public nuisance the Clerk shall refund the fee without interest.

(c) If the appellant claims an economic hardship in paying the appeal fee, the appellant may apply for a waiver of the appeal fee on forms provided by the Clerk for that purpose. The forms shall be substantially similar to those required of litigants initiating court proceedings in forma pauperis pursuant to Government Code section 68511.3. The appellant shall execute the forms under penalty of perjury and contain a declaration as to the truthfulness and correctness of the information contained in the forms that an appellant qualifies for a waiver under this section the Clerk shall allow the appeal to go forward without the appellant paying the appeal fee. If the appellant timely files an appeal and demonstrates good cause the Clerk may grant the appellant up to two additional days to complete and submit the waiver forms. If the appellant fails to timely submit the waiver forms or pay the appeal fee the appellant's request for appeal shall be automatically denied and the Director may enforce the order to abate as if the appellant did not submit an appeal request.

(d) When a property owner submits a timely request for appeal to Clerk, the Clerk shall set the matter for hearing, assign the appeal to a hearing officer by selecting a hearing officer on a rotating basis from the list of appointed hearing officers and provide at least ten days written notice to the appellant and the Director of the time, date and location of the hearing.

(e) A hearing under this chapter shall be conducted in the same manner as a hearing under section 16.209, except that the hearing officer shall also accept written testimony and may assign the appropriate weight to the written testimony based upon the hearing officer's determination as the testimony's reliability.

(f) The request for hearing shall stay the effect of the Notice and Order to Abate until the time specified for compliance in the hearing officer's decision if the hearing officer upholds the notice and order.

SEC. 64.208. PRE-ABATEMENT HEARING.

When conducting a hearing requested by property owner to contest a Notice and Order to Abate, the hearing officer shall determine whether the Director has demonstrated there is substantial evidence of a public nuisance and additional action is necessary to prevent recurrence of the public nuisance. At the conclusion of the hearing the hearing officer shall make written findings of fact and conclusions of law. The hearing officer's decision shall uphold or overrule, in whole or in part, the Director's determination that a public nuisance exists and whether additional action is necessary to prevent recurrence of the public nuisance. If the hearing officer determines the Notice and Order to Abate shall be enforced, the hearing officer shall determine a reasonable time for compliance and the

decision shall specify a date by which the property owner shall comply. The hearing officer shall file the decision with the Clerk within seven days of the conclusion of the hearing. The hearing officer's decision shall be final when it is filed with the Clerk. The Clerk shall send the decision to the appellant by U.S. mail and provide a copy to the Director.

SEC. 64.209. NONCOMPLIANCE WITH NOTICE AND ORDER TO ABATE.

(a) If the property owner fails to abate the public nuisance or take action to prevent the public nuisance from recurring within the time specified in the Director's order or the hearing officer's decision, whichever is applicable, the Director may abate the public nuisance and take whatever action is necessary to prevent the recurrence of the public nuisance. If the Director intends to recover the County's costs for the abatement the Director shall keep a separate account for the costs for each assessor's parcel involved in the Director's action.

(b) The Director may also impose a civil penalty up to \$1,000 a day for each day the property owner failed to comply. The Director shall apportion the daily civil penalty assessed among the parcels involved in the action, applying the same percentage to each parcel based upon the percentage of the County's costs incurred for each parcel.

SEC. 64.210. SUMMARY ABATEMENT.

(a) If the Director determines the existence of a public nuisance on property constitutes an immediate threat to public health and safety the Director may summarily abate the nuisance without notice and without a hearing, even if the Director has sent a Notice and Order to Abate pursuant to section 64.206 and the time specified in the notice has not expired or the property owner has requested a hearing under section 64.207.

(b) When the Director summarily abates a public nuisance and intends to recover the County's abatement costs the Director shall keep a separate account for the costs for each assessor's parcel involved in the summary abatement.

SEC. 64.211. RECOVERY OF COSTS AND CIVIL PENALTIES.

(a) The Director may bill the property owner by U.S. mail to recover the County's cost in abating a public nuisance, taking other action to prevent the recurrence of the public nuisance and any civil penalties the Director assessed. If the property owner does not pay the bill within 15 days the Director shall request the Clerk of the Board schedule a hearing with a County hearing officer. With the request the Director shall submit to the Clerk an itemized written cost report including a copy of each invoice from each private contractor who performed any of the work included in the cost report.

(b) When the Director requests the Clerk of the Board schedule a hearing under this section the Clerk shall select a hearing officer and schedule a hearing in the same manner as provided in section 64.207(c). With the notice of hearing sent to the property owner, the Clerk shall include a copy of the Director's cost report.

SEC. 64.212. POST-ABATEMENT HEARING.

(a) A hearing officer conducting a hearing requested by the Director pursuant to section 64.211 shall follow the same hearing procedures as provided in section 64.207(e).

(b) The hearing officer conducting a post-abatement hearing shall review the abatement costs, the costs to prevent the recurrence of the public nuisance abatement and the amount of civil penalties the Director assessed. In reviewing the costs, the hearing officer shall determine whether the costs are reasonable for the work performed. In cases where the Director acted pursuant to a Notice and Order to Abate, the hearing officer shall not review whether a public nuisance existed or whether it was necessary for the Director to take action to prevent the recurrence of the public nuisance. Where the Director summarily abated a public nuisance the hearing officer shall also review whether a public nuisance existed.

(c) The hearing officer may consider the following factors when reviewing the amount of civil penalties: the duration of the public nuisance, the nature and extent of the public nuisance, what action the owner took after first being made aware of the public nuisance, the frequency or recurrence of the public nuisance condition, the economic impact of the penalties on the property owner and any other factors the interests of justice require the hearing officer consider.

(d) At the conclusion of the hearing, the hearing officer shall make written findings of fact and conclusions of law. In cases where the Director acted pursuant to a Notice and Order to Abate, the hearing officer shall determine the amount of costs and civil penalties to allow. Where the Director summarily abated a public nuisance, the hearing officer shall decide whether a public nuisance existed and if so, the amount of costs to allow. The hearing officer shall file a decision with the Clerk within seven days of the conclusion of the hearing. If the hearing officer finds for the Director, in whole or in part, with the decision the hearing officer shall also issue a separate Notice of Abatement Lien that shall provide the name of the record owner of the property, the last known address of the record owner, the last date that work was performed on the property to abate a public nuisance and to prevent the recurrence of the public nuisance, the amount of costs and the amount of civil penalties awarded against the property owner and the parcel number and if applicable, the address of the real property subject to the lien. If more than one parcel is involved, the hearing officer's decision shall state which costs and penalties are awarded against each parcel and the hearing officer shall issue a separate Notice of Abatement Lien for each parcel for which the hearing officer makes an award

in favor of the County. The hearing officer's decision shall be final when it is filed with the Clerk. The Clerk shall send the decision to the appellant by U.S. mail and provide a copy to the Director.

SEC. 64.213. COLLECTION OF COSTS AND PENALTIES.

(a) If the property owner fails to pay the amount awarded within 30 days of the hearing officer's post-abatement decision the County may collect the amount at the same time and in the same manner as ordinary county taxes are collected. The unpaid amount shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of County taxes are applicable to the costs and civil penalties awarded against the property.

(b) If the property owner fails to pay the amount awarded within 30 days the County may also cause the each Notice of Abatement Lien the hearing officer issues to be recorded.

SEC. 64.214. UNLAWFUL TO INTERFERE WITH DIRECTOR.

It shall be unlawful for a person to restrain, hinder, obstruct or threaten the Director or to interfere with any work being done by the Director or any person acting under the Director's direction when the Director is acting pursuant to this chapter.

Section 3. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Commerce a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 21st day of October, 2009.