

**ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE OF REGULATORY  
ORDINANCES RELATED TO EYE GNAT ADVISORY SERVICES**

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

**Section 1. Purpose.**

The purpose of this ordinance is to remove obsolete references to the Farm and Home Advisor, which no longer exists. This ordinance replaces the obsolete references with new references to an independent Eye Gnat Advisor, which is defined as an institute of higher learning having the requisite staff to provide independent advising services regarding eye gnats. Services provided by the Advisor will not change in the implementation of this ordinance.

Section 2. Section 64.404 of the San Diego County Code is hereby amended to read as follows:

**SEC. 64.404. VOLUNTARY PLAN PROCEDURES.**

Prior to issuing an order to abate to a commercial organic grower, the Director shall provide the grower an opportunity to take effective action voluntarily. The procedures set out below apply.

(a) If the Director receives a substantial number of eye gnat complaints from a community near the farm, the Director shall investigate. The Director shall endeavor to complete this investigation within 30 days. If completion of the investigation is interrupted by seasonal or other factors, the investigation may resume when feasible without requiring new community complaints. The Director shall proceed with the process set out in this section if the investigation:

i. Verifies through eye gnat source identification testing that the farm supports the development, attraction or harborage of eye gnats; and

ii. Verifies through observations by County staff or through evidence provided by community members that nuisance conditions exist in the community; and

iii. Determines through surveillance, eye gnat source identification testing or other testing whether other abatable sources of eye gnats in the area may also be, alone or in combination, a predominant cause of the development, attraction or harborage of eye gnats.

(b) If the conditions in subsection (a) are satisfied, the Director shall promptly contact the farmer, state that action to abate eye gnats is required under state law, and offer assistance to the farmer to undertake such action voluntarily.

(c) The assistance offered shall include consultation with an Eye Gnat Advisor, as detailed in section 64.412 (Eye Gnat Advisor), to assess the eye gnat problem on the farm and to identify eye gnat abatement measures that are likely to be effective and to be practicable for that farm. The Director shall inform the farmer that, if the offer of assistance is accepted, the conclusions and recommendation of the Eye Gnat Advisor will be shared with the Director. The farmer may retain independent scientific experts to consult on preparation of a voluntary plan.

(d) If the farmer agrees to accept assistance from the Eye Gnat Advisor, the farmer shall have such time as specified by the Director, but not fewer than 60 days, to submit a voluntary plan for eye gnat abatement to the Director. The Director may extend the period for submission of this plan if an extension is requested by the Eye Gnat Advisor.

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(e) During development of the voluntary plan the grower and Eye Gnat Advisor shall consider and discuss at least the following strategies: the management of weeds and crop residues, the selection of fertilizers, watering practices, soil covers, flight barriers, barrier crops, trapping strategies, fallow periods or non-irrigated periods. The voluntary plan shall address both the prevention of eye gnat breeding and the interception of eye gnats on the farm, and shall include both appropriate cultural control measures and other appropriate control measures.

(f) The voluntary plan must include a combination of validated measures applicable to and practicable for that farm that the Farm and Home Advisor, after consultation with any experts hired by the farmer, determines are likely to significantly reduce eye gnat development and migration from the farm. The plan may include additional eye gnat abatement measures that have not yet been validated. The plan shall include provisions for monitoring the effectiveness of control measures on the farm and in the community. Plans typically should cover a one year period, however, a two-year plan can be submitted to and approved by the Director if the Eye Gnat Advisor advises the Director that the most significant eye gnat abatement measures in that plan will take two or more years to achieve the effects intended.

(g) The Director shall approve the plan as submitted if the Director determines that it is likely to be sufficient to alleviate nuisance conditions in the affected community, or if the Director determines that the plan includes all validated, applicable and practicable measures for that farm. If the Director does not respond to or approve a plan within 45 days of receipt of the plan, the plan shall be deemed to have been approved.

(h) The Director may approve any plan that the Director determines constitutes an appropriate effort for that farm that year.

(i) In the event the Director determines that the voluntary plan submitted will not adequately abate eye gnats, the Director after review with the commercial organic farmer may request modifications to the plan to incorporate additional validated, applicable and practicable measures. The Director shall provide written notice of any requested modification to the farmer. Additions can include requirements to use on-farm and offsite trapping strategies. If the submitted or modified plan includes providing traps and bait free of charge to affected residents, the Director shall inform recent and subsequent complainants that free traps and bait are available from the farmer.

(j) The Director may request that a plan be modified at any time if the plan requires clarification or refinement, or if additional eye gnat abatement measures are validated while that plan is in place, and those measures are determined by the Director to be applicable and practicable for that farm. In addition, the Director may request that the second year of a two year plan be modified if the success of that plan is in jeopardy because significant eye gnat abatement measures in that plan did not perform as anticipated in the first year of the plan.

(k) If a farmer declines to add additional measures to a voluntary plan as requested by the Director, the Director may issue an order to abate, subject to the limitations in section [64.403](#). The farmer may appeal the order to abate as set out in this chapter.

(l) If the approved voluntary plan is implemented by the farmer on a timely basis and if there is substantial and continuous conformance to that plan, the Director may not issue an order to abate eye gnats to that farmer during the remainder of the calendar year or years in which the plan was implemented. If substantial progress is made by the end of the plan period the Director after consultation with the Eye Gnat Advisor and consideration of any input provided by experts hired by the farmer may approve a voluntary plan for an additional full calendar year. The Director can request modifications to any approved plan at any time to the extent provided in subsection (j) of this section.

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(m) Whether to issue an order to abate after the first voluntary plan period (whether one or two years) is in the Director's discretion, subject to the limitations in section [64.403](#).

Section 3. Section 64.405 of the San Diego County Code is hereby amended to read as follows:

**SEC. 64.405. VALIDATED AND APPLICABLE EYE GNAT ABATEMENT MEASURES.**

Procedures for validating abatement measures in addition to the measures listed in Section [64.402\(1\)](#), and for determining where they are applicable are set out in this section.

(a) Within one month of the effective date of this section, and approximately annually thereafter, the Director shall compile a list of eye gnat abatement measures that are candidates for validation. Candidate measures shall be limited to measures that have been tested for effectiveness under controlled conditions, or that have been observed to be effective by a qualified scientist in a farm or test farm setting. Candidate measures shall include on-farm measures that are compatible with organic farming, measures to address other sources of eye gnat development, and measures to reduce eye gnat populations from all sources within affected communities. The Director shall consider input from the Eye Gnat Advisor, as detailed in section 64.412 (Eye Gnat Advisor) and any input provided by other qualified experts when compiling this list.

(b) The Director shall confer with the Eye Gnat Advisor to determine for each candidate measure whether a scientific peer review process has been completed and supports the conclusion that an abatement measure is effective. If the Director determines that an abatement measure has been peer reviewed and is effective, the Director may validate that measure.

(c) Within three months of the effective date of this section and from time to time thereafter, the Director shall arrange for two or more Professors of Entomology or similarly qualified persons, not employed by the County, to review the effectiveness of candidate measures identified by the Eye Gnat Advisor that have not been validated based on prior peer reviews. Where new information is available concerning the effectiveness of a previously validated eye gnat abatement measure, that information shall also be reviewed. If feasible, this accelerated informal peer review shall be conducted orally through questions posed to a representative of the Eye Gnat Advisor in a forum that the public can observe. If a participating reviewer is unable or unwilling to participate in a public forum, the Director can accept and consider a written review by that Professor of Entomology or similarly qualified person. Any written review shall be made available to the public while it is being considered by the Director.

(d) Based on the advice of the Eye Gnat Advisor and the reviewing Professors of Entomology or similarly qualified persons, the Director shall determine whether specific eye gnat abatement measures are likely to be feasible and effective, and in what circumstances. The Director shall validate only those measures that are sufficiently proven to warrant mandated use in one or more applicable situations. The Director may determine that additional eye gnat abatement measures are suited to implementation by the Vector Control Program or by others on a voluntary basis.

(e) Before issuing an order to abate to a commercial organic farmer, the Director shall determine, in consultation with the Eye Gnat Advisor, which validated eye gnat abatement measures are practicable and applicable to the farm and situation at issue. In making this determination the Director shall consider, in consultation with the Eye Gnat Advisor, whether implementation at that farm is technically feasible or appropriate, whether a noticeable reduction in eye gnats is expected to result, whether costs are disproportionate to the benefits achieved, and other relevant factors. The Director may not require

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the submission of cost information or financial information by a farmer for consideration in making this determination, but may consider any such information a farmer chooses to submit.

Section 4. Section 64.412 of the San Diego County Code is hereby amended to read as follows:

**SEC. 64.412. EYE GNAT ADVISOR.**

The Director may apply vector control program funds to support work by an independent Eye Gnat Advisor to implement this chapter, including funding research by the Eye Gnat Advisor. The independent Eye Gnat Advisor shall be an institute of higher learning having the requisite staff to provide independent advising services regarding eye gnats. The Director may also fund work by the Eye Gnat Advisor to address situations with the potential to become community eye gnat nuisances, including outreach to help farmers identify and mitigate those situations.

Section 5. Effective Date. This Ordinance shall take and be in force thirty (30) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in The Daily Transcript, a newspaper of general circulation published in the County of San Diego

APPROVED AS TO FORM AND LEGALITY  
COUNTY COUNSEL  
BY  
Geoffrey P. Holbrook, Senior Deputy

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 9<sup>th</sup> day of December 2020.



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GREG COX  
Chairman, Board of Supervisors  
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Fletcher, Gaspar, Desmond

ATTEST my hand and the seal of the Board of Supervisors this 9<sup>th</sup> day of December 2020.

ANDREW POTTER  
Clerk of the Board of Supervisors

By



Joana Santiago, Deputy



Ordinance No.: 10704 (N.S.)  
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