

ORDINANCE NO. 23-01

**AN ORDINANCE OF THE WOODSIDE FIRE PROTECTION DISTRICT OF
SAN MATEO COUNTY, CALIFORNIA, AMENDING THE
ADMINISTRATIVE CITATION PROGRAM, ESTABLISHING
ADMINISTRATIVE FINES, DETERMINING THE ORDINANCE IS
EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT,
AND REPEALING ORDINANCE 22-01**

The Board of Directors, as the governing body of the Woodside Fire Protection 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 Woodside 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 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. California Environmental Quality Act Determinations

- (a) The District finds that this ordinance is exempt under the California Environmental Quality Act (CEQA) 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.
- (b) The District also finds that the ordinance is not subject to CEQA under the categorical exemption of 14 C.C.R. Section 15321 (enforcement of a law, general rule, standard, or objective, administered or adopted by the District).
- (c) 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. Applicability & General Enforcement Authority.

- (a) 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 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 Sections 13861(h) and (i). The Fire Code Official, as defined in this Ordinance, is authorized to issue Administrative Citations pursuant to this Ordinance.
- (b) The Fire Code Official, as defined in this Ordinance, is further authorized to issue written orders to correct or eliminate a fire hazard or life hazard, in accordance with Health & Safety Code section 13870.
- (c) The Fire Code Official, as defined in this Ordinance, is further authorized to issue criminal citations for the misdemeanors specified in Health & Safety Code section 13871, in accordance with Health & Safety Code section 13872.

SECTION 5. Definitions.

- (a) "Administrative Citation" means a citation issued by a Fire Code Official for a violation of the Code processed in accordance with the administrative procedures of this Ordinance.
- (b) "Board" means the Board of Directors of the Woodside Fire Protection 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 Woodside Fire Protection District.
- (e) "Fire Chief" means an employee of the District who is designated by the Board as such and who supervises the other Fire Code Officials.
- (f) "Fire Marshal" means an employee of the District so designated by the Fire Chief.
- (g) "Fire Code 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 Code Official has authority to issue an Administrative Citation or Pre-Citation Notice.

SECTION 6. 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 Code 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 Code 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 Code 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 Code Official may issue an Administrative Citation without first issuing a Pre-Citation Notice.
 - ii. If the Fire Code 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 Code 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 Code Official shall inspect the property and determine if the Violation has been corrected.
- i. If the Violation has been corrected, the Fire Code 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 Code Official shall serve on the Responsible Person an Administrative Citation as set forth in this Ordinance.

- (d) Administrative Citation. Whenever a Fire Code Official determines that a Violation has occurred, the Fire Code Official shall have the authority to issue an Administrative Citation to any person responsible for the Violation.
- (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 9 of this Ordinance and the 10-day deadline for seeking an Advance Deposit Hardship Waiver under Section 10 of this Ordinance, the procedure for obtaining from the District Secretary 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 Code Official.

SECTION 7. Amounts of Administrative Fines, Late Payment Charges, and Interest.

- (a) Fine Amounts.
 - i. Unless otherwise expressly provided by law, the amount of the Administrative Fine per Violation shall not exceed the amount that could be imposed as a fine in a criminal prosecution for that offense if it was determined to be a misdemeanor.
 - ii. Where the Violation would otherwise be an infraction, the fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 of the California Government Code.
- (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 established by the provisions 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) Factors Considered in Determining the Amount of the Administrative Fine. In determining the amount of the administrative fine, the following factors shall be considered:
 - i. The duration of the Violation;
 - ii. The frequency, recurrence, and number of Violations by the Responsible Person;
 - iii. The seriousness of the Violation;
 - iv. The bona fide efforts of the Responsible Person to come into compliance;
 - v. The financial burden of the fine on the Responsible Person;
 - vi. The impact of the Violation on the community health and safety; and
 - vii. Such other factors as justice requires.

SECTION 8. 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 9. 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 the fine is excessive in light of the factors identified in Section 7(d) of this Ordinance, 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, the person shall submit a request for a hearing to the District Secretary 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 10 of this Ordinance.

- (b) Dismissal of Citation. At any time before the hearing, if the Fire Code Official 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 Code Official shall dismiss the Administrative Citation, cancel the hearing, and refund any Administrative Citation fine deposited.

SECTION 10. Advance Deposit Hardship Waiver.

- (a) Request for Waiver. A person who intends to contest an Administrative Citation under Section 9 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 Secretary 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 Code Official may waive the requirement of an advance deposit under Section 9 of this Ordinance and issue the waiver only if the evidence submitted demonstrates to the satisfaction of the Fire Code Official 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 Code Official 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 Code Official is final. The written determination shall state that the time for judicial review of the decision is governed by Government Code Section 53069.4.
- (f) Deposit Required If Waiver Denied. If the Fire Code Official determines not to issue a waiver, the person cited shall deposit the fine with the District Secretary 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 11. Hearing Procedure.

- (a) Setting the Hearing. In response to a request for a hearing under Section 9 of this Ordinance, the Fire Code Official 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 Code Official 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 Code 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 9 of this Ordinance, or an advance deposit hardship waiver has been issued under Section 10 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 Code 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 Code Official or the person requesting the hearing before issuing its decision.

SECTION 12. 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 Secretary 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 the 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 13. Recovery of Fines, Late Charges, and Interest.

- (a) 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.
- (b) 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.
- (c) Whenever any such civil action is brought, and the District notifies the person(s) against whom the action or proceeding has commenced of its election to seek recovery of attorney's fees, with such notice provided in writing at the time the action or proceeding has been commenced, the prevailing party shall be entitled to recover attorney's fees. The amount of any award of attorney's fees to a prevailing party pursuant to this section shall not exceed the amount of reasonable attorney's fees incurred by the District in the action or proceeding.

SECTION 14. Right to Judicial Review.

Any person aggrieved by the decision of the Board on an Administrative Citation or a decision by the Fire Code Official on an application for an Advance Deposit Hardship Waiver under this Ordinance may obtain review of the decision by filing a notice of appeal with the San Mateo 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 15. 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 16. Severability & Repeal of Ordinance 22-01.

- (a) If any section, subsection, sentence, clause, phrase, or provision of this Ordinance or its application to any person or circumstance is held invalid for any reason, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Board of Directors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause, phrase, or provision thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or provisions be declared unconstitutional or invalid.
- (b) Ordinance 22-1 is hereby repealed. All former ordinances and resolutions, or parts thereof, conflicting or inconsistent with the provisions of this ordinance are hereby superseded by this Ordinance. The adoption of this ordinance shall not in any manner affect any action or prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, be construed as a waiver of any license, fee, or penalty required by or resulting from any such ordinance, or affect the validity of any bond (or cash deposit in lieu thereof) required to be posted, filed, or deposited pursuant to such ordinance.

SECTION 17. Date of Effect.

This ordinance shall take effect and be in full force and effect 30 days after its passage. This ordinance shall be published as required by law.

PASSED, APPROVED, and ADOPTED this day of at the regular meeting of the District Board of Directors, on a motion made by Director and seconded by Director and duly carried with the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ORDINANCE 23-01

Matt Miller, President
Board of Directors

ATTEST:

Randy Holthaus
District Secretary

APPROVED AS TO FORM:

Jonathan V. Holtzman
District Counsel