PUBLIC REQUEST TO ADDRESS
THE BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES, CALIFORNIA

Correspondence Received

			The following individuals submitted comments on agenda item:	
Agenda #	**Relate To**	**Position**	**Name**	**Comments**
3.		**Oppose**	Greg B Tomey	I am opposed to having my property included in the program for brush clearance/weed abatement because my property has not been determined to have hazardous or nuisance vegetation, contrary to the declaration made by the Board in its resolution dated January 9, 2024."
			Hector Hernandez	I oppose Agenda Item 3 (Hearing on the 2024 Brush Clearance/Weed Abatement Referees' Hearing Report)
			Lillian Liu	If you want, you can simply state "I am opposed to having my property included in the program for brush clearance/weed abatement because my property has not been determined to have hazardous or nuisance vegetation, contrary to the declaration made by the Board in its resolution dated January 9, 2024.
			Sally Hernandez	I OPPOSE AGENDA ITEM 3 FOR THE SAME REASONS STATED BY HECTOR HERNANDEZ IN HIS ATTACHED COMMENTS BELOW.
			SHELBY EMERSON HERNANDEZ	SEE ATTACHED COMMENTS BELOW FROM HECTOR HERNANDEZ
		Item Total	**5**	
Grand Total			**5**	

As of: 3/8/2024 12:25:56 PM

Comments for

Board Meeting March 12, 2024

Agenda Item 3

(Hearing on the 2024 Brush Clearance/Weed Abatement Referees' Hearing Report)

Defensible space inspections are critical for the prevention of wildfires, especially in areas prone to periodic drought conditions like LA County, which only recently came out of a years-long, severe drought. But my property wasn't inspected, and yet the Board declared it to have "hazardous or nuisance vegetation and rubbish" and further "declared [that vegetation] to be a seasonal recurrent public nuisance which should be abated."

How could that be? The answer is that the Board of Supervisors and the County Fire Department planned to fund the cost of inspections through a mechanism that requires an abatement order to be given by the Board BEFORE an inspection is conducted in order to recover the cost of that inspection. It's a sneaky manipulation of the California Health and Safety Code at best and illegal at worst.

Back in January 2023, about 60,000 property owners countywide received a notice from the County Fire Department telling them that, for the first time, they would be subject to annual defensible space inspections (basically, brush clearance inspections). In January of this year, 20,000 more property owners received the notice for the first time. I was one of the 20,000.

I questioned why my home, which sits in a dense urban area, would be subject to brush clearance inspection. Isn't that for homes in rural areas or abutting forested land? Before I could get an answer to that question, I received a second notice from the Fire Department. It was an abatement notice.

That notice explained that the Board of Supervisors had passed a resolution back on January 9 and declared "hazardous brush, dry grass, weeds, combustible growth or flammable vegetation[,] where growing upon or in front of [my] property[,] . . . to be a potential fire hazard or nuisance . . . which must be removed and the nuisance abated," but only if the Fire Department verified through later inspection that there was an actual hazard or nuisance. In other words, there MIGHT be a hazard or nuisance, but the Fire Department would need to inspect my property to determine if there was an ACTUAL hazard or nuisance.

This was putting the cart before the horse. Why issue an abatement notice before you knew if an actual hazard or nuisance existed that required abatement? Logic would dictate that the Fire Department should inspect my property first and then, if a hazard or nuisance is found, issue an abatement notice. Reversing this process made no sense at all. And then I dug into how the Department was planning to recover its inspection costs. That's when I uncovered the county's ill-advised plan.

California Health & Safety Code, Section 14902 allows recovery of various costs, including inspection costs associated with abatement of rubbish and hazardous weeds ("weeds" being a broad term loosely defined in Health & Safety Code, Section 14875). The Fire Department started recovering its inspection costs from property owners beginning in 2022 under the authority of 14902. But there's a catch. In order to recover

inspection costs, there must be an abatement order given by the Board. If the Fire Department inspects a property, finds an actual hazard or nuisance, and the Board subsequently gives an order to abate that nuisance, the inspection cost can be recovered from the property owner. On the other hand, if the Department inspects a property, finds NO actual hazard or nuisance, an abatement order wouldn't be given (*there would be nothing to abate*) and that inspection cost couldn't be recovered, at least not under 14902.

With 20,000 new properties scheduled to be added this year to the existing 112,000 properties already in the defensible space inspection program and the potential that a good chunk of those properties won't be found to pose a brush hazard or nuisance, the Fire Department was desperate to find a mechanism to guarantee recovery of all their inspection costs. And they found one, but they would need the Board's help. The Board would have to agree to issue an abatement order before the Department performed any inspections. That way, even if an inspection revealed no hazard or nuisance, the cost could still be recovered, at least that's what the Department believes. It's disturbing that the Board would go along with such an ill-advised plan.

To understand the details of the plan, I compared the abatement notice with the Board's actual resolution. It turns out the Fire Department didn't describe the resolution accurately in its notice. According to the notice, the Board had found a <u>potential</u> hazard or nuisance on my property, but the actual language in the resolution reveals that the Board had accepted as fact that an <u>actual</u> hazard or nuisance exists, and the Board "declared [it] to be a seasonal recurrent public nuisance which should be abated." Also

according to the notice, the Board had authorized the Fire Department to later inspect and verify that the hazard or nuisance was, in fact, an actual hazard or nuisance, but the Board had done no such thing. All that the Board authorized was the issuance of the notice itself. There was no mention of inspections to be conducted after issuance of the notice.

Why didn't the Board's resolution simply declare a potential (instead of an actual) hazard or nuisance subject to post verification by the Fire Department? The answer can be found in another section of the California Health & Safety Code, Section 14880. That section states that "whenever weeds are growing upon any street, sidewalk, or on private property in any county, the board of supervisors, by resolution, may declare the weeds a public nuisance [underline added]." 14880 sets a condition on the Board's discretion to issue a resolution. Weeds must be present before the Board can act. If the presence of weeds isn't established first, the Board has no discretion to issue a resolution declaring weeds a public nuisance. And the Board couldn't issue a resolution for weeds possibly being present, that wouldn't satisfy the requirement of 14880. The Board's resolution had to be clear that weeds are present.

The really disturbing part in all of this is that the Board issued a resolution that contained knowingly false information. The Board knew the Fire Department had not established that my property posed an actual hazard or nuisance, yet it issued a resolution not only with a finding that my property has hazardous or nuisance vegetation, but the Board declared that vegetation "to be a seasonal recurrent public nuisance which should be abated." This declaration adds another level of controversy by depriving me of due process rights.

California Health & Safety Code, Section 14900.5 states that if the Board declares a nuisance to be seasonal and recurrent, then “the seasonal and recurring weeds shall be abated every year without the necessity of any further hearing.” There would be no yearly opportunity for me to protest or object to the inclusion of my property in the brush clearance inspection program, even if year after year no hazard or nuisance vegetation is ever found on my property. I would still be charged an annual inspection fee without the opportunity to challenge it. My only recourse would be to file a claim for a refund, as allowed by Section 14921 of the code, and contest the inspection fee as illegal, which is one of the five reasons for a refund listed in Section 14920.

And the Board is now poised to order abatement to proceed, knowing full well that there may be nothing to abate on my property or on tens of thousands of other properties. But as long as the order is given, the Fire Department believes that all of its inspection costs will be recovered through assessments to be levied on all properties in the inspection program, even on those properties where inspections fail to reveal hazardous or nuisance vegetation. But the Fire Department is mistaken in its belief.

The Department and the Board failed to properly consider 14902. They built their plan on shaky legal ground. They saw in 14902 only what they wanted to see. In their eyes, 14902 allows recovery of all inspection costs as long as the Board has issued an order to abate. What they ignored was the importance of the very first sentence of 14902 and the restriction that it imposes. The sentence reads as follows: “Before the arrival of the officer, board, or commission, or their representatives, any property owner may remove weeds at his or her own expense.” This section of the code, therefore, applies only to a narrow class of property owners, specifically, property owners who

perform their own abatement. It does not apply to property owners who do not perform abatement.

The section of the California Health & Safety Code that applies to that second class of property owners is 14912. But that section allows for the COUNTY'S ACTUAL COSTS of abatement, including inspection costs. So neither 14902 nor 14912 provide legal support to recover inspection costs from properties where the Board has issued an order to abate but no abatement is actually performed, either by the property owners themselves or by the county. So what about this third class of property owners where the Board has issued an order to abate but subsequent Fire Department inspection finds no hazardous brush to abate and, therefore, no abatement is performed? Which section of the code provides for recovery of those inspection costs? The answer: None.

The Board and Fire Department's ill-advised and legally questionable plan cannot stand. If allowed to continue, what would prevent other county departments from implementing similar plans? Consider California Vehicle Code 5204(a)(1), which reads "vehicles that fail to display current month and year tabs or display expired tabs are in violation." Imagine if the Sheriff's Department mailed notices of a potential violation to every single vehicle owner within its jurisdiction who owns property. Sheriff's Deputies fan out across the county and inspect all vehicles to determine if there are, in fact, violations. Imagine if the owners of vehicles subsequently inspected and found NOT to be in violation are charged an inspection fee, the cost to be recovered through direct assessments on their properties as authorized through a resolution by the Board. Would the residents of LA County tolerate such a thing? No. And they shouldn't tolerate the ill-advised plan slapped together by the Board and Fire Department.

What the Board has done cannot be good governance.

I protest the Fire Department's notice as inaccurate and not in conformance with California Health & Safety Code, Section 14892, which requires that the notice "shall be substantially in the following form." And that form includes clear language that an existing condition is actually present and must be abated. I also protest the Board's resolution, dated January 9, 2024, as falsely declaring my property to have hazardous or nuisance vegetation and falsely declaring such vegetation as a recurring nuisance, and I request the Board to remove my property from the list of properties requiring abatement.

I want to add that the only reason my property was included in the Board's resolution was because it's located in a Very High Fire Hazard Severity Zone (VHFHSZ), as determined by the state's CAL FIRE maps. But California Health & Safety Code doesn't give the Board authority to declare a public nuisance on my property simply because it's located in a VHFHSZ. Section 14880 of the Health & Safety Code is clear that the Board can only declare a public nuisance if weeds are ACTUALLY growing on my property. And the Board knows full well that the Fire Department has not yet inspected my property to determine if that's the case. Inspections in my area won't begin until April 1.

I should also note that a letter, dated January 10, 2024, which I received from the Fire Department, contained incorrect justification for determining my property was subject to annual defensible space inspections. The letter stated that "California Public Resources Code, Section 4291 mandates all homes in the HFHSZ or VHFHSZ

receive . . . annual defensible space inspection." While it's true my home is in a VHFHSZ, 4291 doesn't mandate inspection.

What 4291 says is that "(a) A person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, shrub-covered lands, grass-covered lands, or land that is covered with flammable material, shall at all times do all of the following: (1) (A) Maintain defensible space of 100 feet . . . but not beyond the property line." My home isn't in, upon, or adjoining any of those types of lands.

When I talked to a Department Representative in the Defensible Space Unit and questioned the validity of 4291 as justification for mandatory inspections, I was told that 4291 in conjunction with Los Angeles County Fire Code 325 provided the mandatory basis. So I read 325, but like 4291, 325 doesn't mandate inspections for homes in fire hazard zones. The code basically mirrors the language of 4291 but with three notable differences.

First, while 4291 requires defensible space around buildings or structures in, upon, or adjoining specified lands, Fire Code Sec 325.2.1 extends those requirements to persons who have land adjacent to the buildings or structures or apiary (an additional structure not specified in 4291) "upon or adjoining any mountainous, or forest- or brush-covered land or land covered with flammable growth." Again, my home isn't adjacent to any such lands or to any buildings or structures or apiary that adjoin such lands.

The second notable difference between 4291 and 325 shows up in Section 325.2.1.1. That section exempts "ornamental plants and trees that are individually planted, spaced and maintained in such a manner that they do not form a means of

transmitting fire from native growth to the structure." Not exempt are trees known to be flammable, and examples are given. All of the plants and trees on my property meet the exemption requirement of 325.2.1.1.

The third and final notable difference is an exemption in Fire Code Section 325.2.1.2, which states "cultivated ground cover such as green grass . . . shall be exempt from these requirements." My front yard and backyard have green grass for ground cover. Once again, I meet the exemption requirement.

Both 4291 and 325.2.1 basically require a defensible space of 100 feet around a structure, which makes sense if you're talking about homes with large properties and heavy vegetation or homes abutting lands with heavy vegetation. But I live in an urban community of clustered homes and have exactly ten feet of open space between my house and each of my side neighbors. Clearly, 4291 and 325 were not meant to apply to homes like mine, which may explain why my home and the other 20,000 homes now targeted for brush clearance inspections were never inspected before. Someone had the sense back in 2003—the year my home was built—to recognize that brush clearance would not be a problem and inspections weren't warranted.

I would argue that my home should not be subject to annual defensible space inspections just because its in a VHFHSZ. What the Fire Department failed to do was determine if my home posed a higher RISK of fire damage because its in that zone. CAL FIRE created the fire hazard zone maps, and the Office of the State Fire Marshal's website explicitly states that the maps only evaluate hazard NOT risk. Risk is the potential damage a fire can cause, taking into account mitigation measures.

What are some mitigation measures? How about concrete roof tiles? My home has them. Or cultivated ground cover such as green grass? Again, my home has it. Or ornamental plants and trees that are individually planted, spaced and maintained in such a manner that they don't form a means of transmitting fire from native growth to the home? Once again, my home has them. And what are other considerations for determining risk? How about proximity to a fire hydrant? I'm 250 feet from one. Or proximity to a fire station? I'm less than two miles from two different fire stations. I would argue that my home is not at higher risk of fire damage just because its in a VHFHSZ.

What the Fire Department should have done from the outset was to first determine which properties in a HFHSZ or VHFHSZ have a higher risk of fire damage. Once those properties were identified, the Department should have conducted an inspection to determine if they were in violation of the Fire Code pertaining to brush clearance and vegetation growth. Only then (and not before) should the Department have requested the Board to issue a resolution finding that hazardous or nuisance vegetation existed on those properties and declared that vegetation a public nuisance subject to abatement proceedings. Those would have been the appropriate steps for a responsible agency to have taken.

Hector Hernandez
Santa Clarita