

ORDINANCE NO. 2020-02

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE RANCHO SANTA FE FIRE PROTECTION DISTRICT ADOPTING AN ADMINISTRATIVE CITATION PROGRAM.

WHEREAS, The Rancho Santa Fe Fire Protection District (“RSFFPD”) finds that enforcement throughout RSFFPD of all Ordinances, including such Ordinances that have adopted codes by reference, as well as any applicable State codes, is an important public service; and

WHEREAS, RSFFPD believes that code enforcement is vital to the protection of the public’s health, safety, and quality of life; and

WHEREAS, RSFFPD recognizes that code enforcement depends upon the codification of regulations that can be effectively applied in administrative and judicial proceedings; and

WHEREAS, RSFFPD further finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with code regulations.

NOW THEREFORE, the Board of Directors of the Rancho Santa Fe Fire Protection do hereby ordain as follows:

1. **Applicability**

A. This Ordinance provides for Administrative Citations, which are in addition to all other legal remedies, criminal or civil, which the District may pursue to address a violation of the Code. Use of this Ordinance is at the sole discretion of the District. This Ordinance is authorized under Government Code Sections 53069.4 and Health and Safety Code Sections 13861(h) and (i), 13870 and 13871.

2. **Definitions**

The following words and phrases whenever used in this Ordinance shall be construed as defined in this Section, unless it shall be apparent from the context that a different meaning is intended or unless a different meaning is specifically defined elsewhere in this Ordinance and specifically stated to apply:

A. “Administrative Citation” means a citation issued by a Fire Official for violation of Code after reasonable time to correct as set forth in Section 3.

B. “Board” means the Board of Directors of the Rancho Santa Fe Fire Protection District.

C. “District” means RSFFPD.

D. “Code” means any RSFFPD Ordinance, the California State Fire Code, or the Health and Safety Code, or any condition of approval placed on development regarding the foregoing.

E. “Continuing Violation” means any violation of the Code when the violation pertains to building, plumbing, electrical, weeds, fire hazards, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

F. “Fire Official” means RSFFPD, the Fire Chief, and any other designated agents or representatives, including but not limited to the Deputy Chief, Division Chiefs, Fire Marshal, Fire Prevention Specialist or any other employee of RSFFPD with the authority to enforce the Code.

G. “Fire Marshal” means an employee of the RSFFPD so designated by the Fire Chief.

H. “Hearing Officer” means the hearing officer appointed under section 8 of this ordinance.

I. “Fire Chief” means an employee of the RSFFPD designated by the Board as such and who supervises the Fire Marshal, Fire Officials, and appoints the Hearing Officer.

J. “Notice of Violation” means the written notice provided to a Responsible Person that a continuing violation of the Code pertaining to building, plumbing, electrical, weeds, fire hazards, or other similar structural or zoning issues that does not create an immediate danger to health or safety exists.

K. “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.

3. Administrative Citation

A. Authority. Whenever a Fire Official determines that a violation of the Code has occurred, other than a Continuing Violation, the Fire Official has the authority to issue an Administrative Citation to the Responsible Person causing or permitting the violation concurrently with an administrative fine and an Administrative Citation for each subsequent violation.

B. Code Violation. When the Fire Official determines a continuing violation of this Code exists, the Fire Official shall issue a Notice of Violation requiring the Responsible Person to immediately cease and abate the Continuing Violation. The Responsible Person shall have ten (10) days or such time as the Fire Official deems reasonable, after which time an Administrative Citation and administrative fine may be issued.

C. Contents of 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 description of the violation.

- iv. The amount of the fine, if applicable, for the Code violation.
- v. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid.
- vi. An order prohibiting the continuation or repeated occurrence of the Code violation described in the Administrative Citation.
- vii. A description of the Administrative Citation review process, including the time within which the Administrative Citation may be contested and the place from which a request for hearing form to contest the Administrative Citation may be obtained.
- viii. The name and signature of the citing Fire Official.

D. Delivery of Notice of Violation or Administrative Citation. The notice of violation or Administrative Citation shall be delivered either of the following methods:

- i. Personally served on the Responsible Party, or
- ii. Sent by first class certified mail to the Responsible Person, as shown on the County Tax Assessor's Roll or otherwise known to the Fire Official. Notice will be effective on the date of mailing.

The failure of a Responsible Person to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under the Code.

E. Dismissal of Citation. At any time before the hearing, if the Fire Chief or designee determines that there was no violation as charged in the Administrative Citation or that the Administrative Citation should be dismissed in the interest of justice, the Fire Chief or designee shall dismiss the Administrative Citation, cancel the hearing, and refund any Administrative Citation fine.

4. Amount of Fine

A. Maximum Amount of Fine. The maximum amount of the fine imposed for each Code violation under this ordinance shall be as set forth by Board ordinance or resolution.

B. Additional Amounts. In addition to the fine amount, the Responsible Person shall be liable to the District for all administrative costs, including, but not limited to, interest, late payment charges, costs of compliance re-inspections, and collection costs. These additional amounts include:

- i. Administrative costs: based on time spent by RSFFPD staff, and supervisors, at the full cost hourly rate of each employee, including salary, benefits and overhead.
- ii. Late payment charges: due at the rate of ten percent (10%) per month.
- iii. Compliance re-inspection: based on staff time at the full cost

hourly rate.

- iv. Collection costs: actual collection costs.
- v. Reasonable attorney fees and costs.

C. Discretion of Hearing Officer—Factors in establishing fine. In determining the amount of the fine and additional amounts that may be owing, the Hearing Officer has the discretion to set the fine lower than the maximum amount, or to reduce the additional costs, based on one or more of the following factors:

- i. The duration of the violation;
- ii. The frequency, recurrence and number of violations, related or unrelated, by the Responsible Party;
- iii. The seriousness of the violation;
- iv. The good faith efforts of the Responsible Party to come into compliance;
- v. The economic impact of the fine on the Responsible Party;
- vi. The impact of the violation on the community health and safety; and
- vii. Such other factors as justice requires.

5. 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 Official may (but shall not be obligated to) suspend the imposition of fines for any period of time during which the Responsible Party has filed for necessary permits, and such permits are required to achieve compliance, and the permit applications are actively pending before the appropriate governmental agency.

B. Refund. The District shall refund a fine paid if the Hearing Officer determines, after a hearing held under Section 9 hereof, that the person charged in the Administrative Citation was not responsible for the violation or that there was no violation as charged.

C. Further Violations Not Excused. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation.

6. Hearing Request

A. Hearing Request. A person who receives an Administrative Citation may contest the citation on the basis that there was no violation of the Code or that he or she is not the Responsible Person. To contest the Administrative Citation, the person shall submit a request for hearing to the District's Board Clerk 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 7 hereof.

B. Notice of Hearing. The person requesting the hearing shall be notified, in writing, of the time and place set for the hearing at least ten (10) days before the date of the hearing.

C. Additional Reports. If the Fire Official submits an additional written report concerning the Administrative Citation to the Hearing Officer for consideration at the hearing, then a copy of this report also shall be provided to the person requesting the hearing at least five (5) days before the date of the hearing.

7. Advance Deposit Hardship Waiver

A. Request for Waiver. A person who intends to contest an Administrative Citation under Section 6 hereof and who is financially unable to make the required advance deposit of the fine may file a request for an advance deposit hardship waiver under this section.

B. Filing. An advance deposit hardship waiver shall be filed with the District's Board Clerk 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 requirements of depositing the fine shall be stayed unless or until the District makes a determination not to issue the advance deposit hardship waiver.

D. Standard for Waiver. The Fire Chief may waive the requirement of an advance deposit under Section 6 hereof and issue the waiver only if the evidence submitted demonstrates to the satisfaction of the Fire Chief of 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 Chief 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 Chief is final. The written determination shall be served upon the person who applied for the waiver.

F. Deposit Required If Waiver Denied. If the Fire Chief determines not to issue a waiver, the person cited shall deposit the fine with the District's Board Clerk within ten (10) days following the date of that decision or thirty (30) days following the date of the Administrative Citation, whichever is later.

8. Hearing Officer

A. Hearing Officer. The Fire Chief shall designate the Hearing Officer for the Administrative Citation hearing. The Hearing Officer shall be an impartial person selected from one of the following categories:

- i. An employee from the County of San Diego or a special district which has not been involved in the Code enforcement; or
- ii. A fire department employee from a neighboring agency; or
- iii. A person selected randomly from a panel of local attorneys who have been admitted to practice before the courts of this state for at least five (5) years willing to volunteer as a hearing officer; or
- iv. A person that the District utilizes for impartial hearing officer services.

B. Opposition to Hearing Officer. Should the person seeking the hearing reject, for good cause, the Hearing Officer selected by the District, then the Hearing Officer shall be hired from an organization which provides such hearing officer services and the cost therefore shall be shared equally by the District and the person seeking the hearing.

C. Compensation of Hearing Officer. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by decision rendered or the amount of Administrative Citation fines upheld by the hearing officer, if any.

9. Hearing Procedure

A. Setting the Hearing. A hearing before the Hearing Officer shall be set for 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 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 Official submits a written report concerning the citation to the Hearing Officer for consideration at the hearing, then 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 6(A) hereof, or an advance deposit hardship waiver has been issued under Section 7 hereof.

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 additional report submitted by the Fire 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. Technical rules of evidence shall not govern the proceedings before the Hearing Officer.

D. Continuance. The Hearing Officer may continue the hearing and may request additional information from the Fire Official or the person requesting the hearing before issuing the decision provided that the hearing shall not be continued for more than fifteen (15) days.

10. Hearing Officer's Decision

A. Decision. After considering the testimony and evidence presented at the hearing, the Hearing Officer shall issue a written decision to uphold, dismiss or modify the Administrative Citation. The Hearing Officer shall state the reasons for the decision and shall send a copy of the decision to the person requesting the hearing, the Fire Official, and the District. The decision of the hearing officer shall constitute the District's final administrative decision.

B. Status of Fine. If the Administrative Citation is upheld, then the fine amount on deposit with the District shall be retained by the District. If the fine has not been deposited because there was an advance deposit hardship waiver, the Hearing Officer shall set forth in the decision a payment schedule for the fine. If the Administrative Citation is dismissed, the District shall promptly refund the amount of 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.

11. Late Payment Charges

A. Late Charges. Any person who fails to pay the District the fine imposed under this chapter on or before the date that fine is due is also liable for the payment of the applicable late payment charges set forth in Section 4 hereof.

12. Recovery of Administrative Citation Fines and Costs

A. Costs of Securing Payment. A person who fails to pay any fine or other charge owed to the District under this Ordinance is liable in any action brought by the District for all costs incurred in securing payment of the delinquent amount, including but not limited to administrative costs and reasonable attorney's fees. Such collection costs are in addition to any fines, interest, and late charges.

B. Other Costs. In addition to the Administrative Citation fine, the District may collect its administrative costs, interest, late payment charges, costs of compliance re-inspections, and collection costs.

C. Collection. The District may collect any past due Administrative Citation fine and other costs and charges by any available legal means. The District may use a third party to collect the fines and fees.

13. Right to Judicial Review

A. Judicial Review. A person aggrieved by the Hearing Officer's decision on an Administrative Citation may obtain review of the decision by filing a petition for review with the Superior Court in and for the County of San Diego within twenty (20) days after service of the final decision in accordance with the timelines and provisions set for in California Government Code Section 53069.4.

14. Notices

A. Method of Service. The Administrative Citation and all notices required to be given by the District pursuant to this ordinance shall be served on the Responsible Person either by:

- i. Personal service on the Responsible Person or the person requesting the hearing; or
- ii. By first class certified mail, return receipt requested.

B. Real Property. When real property is involved in the violation, any original notice and the Administrative Citation and all notices required to be given by this Ordinance shall be served on the Responsible Person and, if different, to the property owner at the 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 each notice and the citation shall be conspicuously posted at the property which is the subject of the violation. The District may, in its discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property.

C. Failure to Receive Notice. The failure of a person to receive a required notice shall not affect the validity of any proceedings taken under this Ordinance.

15. Administrative fine schedule

A. Violation Penalties. Every person who violates any provision of any the Code is guilty of a misdemeanor. The imposition of one penalty for any violation shall not excuse the violation or permit such violation to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

B. Maximum Amount of Fine Not Listed. The maximum amount of the fine imposed for any violation not listed in Administrative Fee Schedule ordinance or resolution, as such may be amended from time to time, and may not exceed the maximum fine or penalty amounts for infractions set forth in Section 25132 and subdivision (b) of Section 36900 of the California Government Code.

C. Maximum Amount of Fine. The maximum amount of the fine imposed for each code violation under this ordinance shall be as established and amended from time to time by Board resolution.

16. Miscellaneous

A. Unenforceable. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

B. No Waiver. Nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or Ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

C. Vote. The Clerk of the Board is hereby ordered and directed to cause this Ordinance to be published. First read at a regular meeting of the Board of Directors of the Rancho Santa Fe Fire Protection District, held on August 19, 2020. A second reading and final adoption occurred at a regular meeting on September 16, 2020, and ordered published in the manner required by law at the hearing and meeting on the September 16, 2020 by the following roll call vote:

AYES: Ashcraft, Hillgren, Malin, Stine, Tanner
NOES: None
ABSENT: None
ABSTAIN: None

D. This Ordinance and the rules, regulations, provisions, requirements, orders, and matters established and adopted hereby shall take effect and be in full force and effect **November 1, 2020.**



James H. Ashcraft
President

ATTEST:



Karlena Rannals
Board Clerk