

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

806



FROM: Code Enforcement Department

SUBMITTAL DATE:
May 21, 2007


SUBJECT: Ordinance No. 541.5 Relating to the Removal of Rubbish

RECOMMENDED MOTION: That the Board of Supervisors introduce and on the following week adopt Riverside County Ordinance No. 541.5 amending the current Ordinance that prohibits the accumulation of rubbish on any real property in the unincorporated area of Riverside County.

BACKGROUND: In April 2003, Supervisor Marion Ashley established a Riverside County Trash Task Force with the purpose of mitigating illegal dumping throughout the unincorporated area of Riverside County. Furthermore, during the retreat coordinated by the Code Enforcement Department and Supervisor John Tavaglione on November 2006, participants of this retreat brought up the idea of speeding up the process to clean and lien private properties.

The Trash Task force, together with Riverside County Departments of Code Enforcement, Waste Management, Environmental Health and Transportation, has collected over 5,700 tons of rubbish, trash or debris since October, 2006 and has expended costs in excess of \$800,000.00.

(Continued on page 2)


JAY ORR, Director
Code Enforcement Department

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|-----------------------|-------------------------------|------|-------------------------|-------|
| FINANCIAL DATA | Current F.Y. Total Cost: | \$ 0 | In Current Year Budget: | Yes |
| | Current F.Y. Net County Cost: | \$ 0 | Budget Adjustment: | No |
| | Annual Net County Cost: | \$ 0 | For Fiscal Year: | 06/07 |

| | | |
|-------------------------|----------------------------------|--------------------------|
| SOURCE OF FUNDS: | Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| | Requires 4/5 Vote | <input type="checkbox"/> |

C.E.O. RECOMMENDATION:

APPROVE


BY: 
Tina Grande

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above ordinance is approved as introduced with waiver of reading.

Ayes: Buster, Tavaglione, Stone, Wilson and Ashley
Nays: None
Absent: None
Date: June 5, 2007
xc: CED, COB

Nancy Romero
Clerk of the Board
By: 
Deputy

Departmental Concurrence
 MAY 21 2007
 BY: 

Policy
 Consent
 of Exec. Ofc.:

It is well settled law in California that landowners and occupants have a duty to maintain real property in a safe condition and in a manner that avoids exposing the public to harm. Such duty exists when the risk of harm is caused by natural conditions, artificial conditions on the premises and even if caused by criminal activity of another. This duty extends to any property owner and occupant allowing rubbish to remain on their land. A failure to fulfill this duty is negligence.

Riverside County Ordinance No. 541.4 currently prohibits the accumulation of rubbish through use of the administrative abatement process which authorizes the Board of Supervisors to order removal of rubbish deemed a public nuisance. Although Administrative abatement procedures used by the County have been highly successful in recovering reimbursement for abatement costs, thus facilitating the abatement of additional public nuisances, the procedure currently takes up to nine (9) months for clean up.

The adoption of this amended ordinance is intended to protect the public and promote public health and welfare while streamlining the administrative abatement process for the removal of unsightly rubbish that negatively impacts property values and creates unsafe and hazardous conditions.

It is recommended that the current ordinance be amended to shorten the amount of time the administrative abatement process takes, while preserving constitutional due process rights, by:

1. Providing one notice to property owners (and occupants) only, and not to all persons with a financial interest in the property;
2. By providing an opportunity for a hearing only at the request of the property owner or occupant. In the event the opportunity for a hearing is not requested, the abatement process shall proceed immediately at the end of the thirty (30) day notice period without further notice or hearing;
3. In the event a hearing is requested, ten day notice of the hearing date will be provided. Subsequent to a board order, if issued, the property owner will be required to remove the rubbish within ten (10) days in lieu of ninety (90) days allowed under the existing ordinance; and
4. Following removal of the rubbish, a cost bill will be immediately provided to the property owner, which if unpaid after fifteen (15) days, may be assessed as a tax lien against the real property on which the rubbish was located.

This ordinance further allows the Board to delegate its authority to a County Abatement Hearing Board or to a County Hearing Officer (pursuant to Riverside County Ordinance No. 643), if necessary.

The Director of the Code Enforcement Department, together with the Riverside County Trash Task Force recommend that the Board approve, authorize and adopt this amended ordinance to expedite the County's ability to remove rubbish on any real property located in the unincorporated areas of Riverside County.

- 1 b. Abatement costs. Any costs or expenses reasonably related
2 to the abatement of conditions which violate this ordinance
3 and shall include, but not be limited to, costs associated with
4 the removal, storage, transportation, cleaning, clearing and
5 disposal of the accumulated rubbish and costs as further
6 defined in Riverside County Ordinance No. 725, as
7 amended.
- 8 c. Accumulation of Rubbish. Any measurable amount of
9 accumulated items constituting a condition harmful,
10 dangerous or injurious to the health or welfare of persons or
11 to the public, including the environment.
- 12 d. Administrative Costs. All Riverside County staff time
13 expended and reasonably related to enforcement of this
14 ordinance including, but not limited to, site inspections,
15 investigations, telephonic or other contacts, reports,
16 summaries, correspondence, enforcement, notices,
17 appearances at hearings or court proceedings including travel
18 time, collections, hearing officer costs, and attorneys fees.
19 Staff time shall be calculated at an hourly rate as established
20 and revised from time to time by the Board of Supervisors as
21 set forth in Ordinance No. 725, as amended. Travel time for
22 inspections shall not be included.
- 23 e. Enforcement Officer. The Director of the Riverside County
24 Code Enforcement Department, Director of Environmental
25 Health, Transportation Land Management Agency, Clerk of
26 the Board of Supervisors, Sheriff and the Riverside County
27 Fire Chief, or their designees.

- 1 f. Real Property. The improved or unimproved real property in
2 violation of this ordinance or otherwise subject to an
3 abatement proceeding.
- 4 g. Rubbish. Including, but is not limited to, any items
5 consisting of trash, litter, garbage, waste, junk, debris,
6 discarded items, refuse, construction, landscape or
7 demolition materials, cans, bottles, barrels, bricks, boxes,
8 crates, cartons, containers, packaging, wood, plastics, metal,
9 visqueen, paper, cardboard, appliances, vehicle parts, tires,
10 discarded mattresses, equipment, furniture, carcass of a dead
11 animal, ordinary household garbage, discards, green waste,
12 or other dangerous, nauseous or offensive material of any
13 kind.

14 Section 4. INSPECTION AND AUTHORITY TO ENTER
15 PROPERTY.

- 16 a. For the purpose of enforcing or administering this ordinance,
17 the Enforcement Officer may enter any real property for the
18 purpose of inspecting the property or for summary abatement
19 proceedings whenever the Officer is informed or has
20 reasonable cause to believe that there is an accumulation of
21 rubbish or other material constituting a condition dangerous
22 or injurious to the health or welfare of persons or to the
23 public, including the environment, or is otherwise in
24 violation of this ordinance.
- 25 b. No person shall interfere with the entry of the Enforcement
26 Officer in the official course of his or her duty.

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1 Section 5. NUISANCE, DUTY TO ABATE.

2 Real Property or any condition caused, maintained or permitted to exist in
3 violation of any provisions of this ordinance is unlawful and is a public nuisance. The
4 owner and any person or entity in possession of Real Property constituting such nuisance,
5 shall be jointly and severally liable for the maintenance thereof and has the duty to
6 immediately abate the nuisance.

7 Section 6. Procedures, Remedies and Penalties

8 The procedures, remedies and penalties applicable to violation of this
9 ordinance and for recovery of costs related to enforcement are set forth herein. Any public
10 nuisance may also be abated in a manner consistent with the provisions of Riverside
11 County Ordinance No. 725, as amended and codified in Riverside County Code Chapter
12 1.16, as amended, which are respectively and cumulatively incorporated herein by this
13 reference.

14 Section 7. Summary Abatement Proceedings.

15 Pursuant to California Government Code Section 25845, as amended, the
16 Enforcement Officer is authorized to enter real property and summarily abate any public
17 nuisance determined by the Enforcement Officer to constitute an immediate threat to
18 public health or safety without prior notice or hearing.

19 Section 8. Administrative Abatement Proceedings.

- 20 a. Notice of Violation and Order to Remove Rubbish. If the
21 Enforcement Officer determines that Real Property is being
22 maintained or permitted to exist in a manner prohibited by
23 this ordinance, the Enforcement Officer shall issue written
24 notice to the property owner and any known person in
25 possession of the property, of the pending abatement
26 proceeding and of the opportunity to appear before the Board
27 of Supervisors and be heard prior to abatement by the
28 county. The notice shall also specify the corrective actions

1 required to abate the rubbish, order the person in possession
2 or owner to abate the accumulation of rubbish within thirty
3 (30) days and state that the failure to bring the Real Property
4 into compliance with this ordinance could subject the owner
5 or person in possession to civil, administrative and criminal
6 penalties. The failure of the notice to set forth all required
7 contents shall not affect the validity of the proceedings.

8 b. Manner of Giving Notice. The Enforcement Officer shall
9 post a copy of the notice on The Real Property and shall send
10 a copy by registered or certified mail, postage prepaid, return
11 receipt requested, to all known persons in possession, and to
12 the owner of the Real Property as such person's name and
13 address appears on the last County Equalized Assessment
14 Roll. If the address is unknown, that fact shall be so stated
15 and the notice shall be addressed to the person at the county
16 seat. Service by mail shall be deemed complete at the time
17 of deposit in the mail. The Enforcement Officer shall file a
18 copy of the notice with the Clerk of the Board, along with an
19 affidavit certifying to the persons, and the date and manner
20 in which notice was given. The failure of any person in
21 possession or owner to receive such notice shall not affect
22 the validity of these proceedings.

23 c. Notice of Noncompliance. Whenever a Notice of Violation
24 and Order to Remove Rubbish has been issued, the
25 Enforcement Officer may record a Notice of Noncompliance
26 with the Office of the County Recorder of Riverside County
27 and shall notify the owner of the Real Property of such
28 action. The Notice of Noncompliance shall describe the

1 Real Property, shall set forth the non-complying conditions,
2 and shall state that any costs incurred by the county,
3 including, but not limited to investigative, administrative and
4 abatement costs and attorneys' fees as a result of the
5 violation of Riverside County Ordinances may become a lien
6 on the Real Property and that the owner has been so notified.

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8 d. Hearing. Upon the timely written request by the recipient of
9 the Notice of Violation and Order to Remove Rubbish, a
10 hearing shall be scheduled with notice thereof mailed or
11 otherwise delivered to the owner(s) and occupants of the
12 Real Property at least ten (10) days before the hearing. The
13 failure of any owner or occupant to receive such notice shall
14 not affect the validity of the proceedings.

15 At the time fixed in the notice of hearing, the Board
16 of Supervisors or its delegate (the "Board") shall receive
17 evidence from the Enforcement Officer and the owner or
18 person in possession of the Real Property in violation, or
19 their representatives and any other concerned persons who
20 may desire to present oral or documentary evidence
21 regarding the conditions of the Real Property or other
22 relevant matter, if such persons are present at the hearing. In
23 conducting the hearing, the Board shall not be limited by the
24 technical rules of evidence. Failure of the owner or
25 occupants to appear shall not affect the validity of the
26 proceedings or order issued thereon.

27 Upon conclusion of the hearing, the Board shall make
28 its decision and in the event it so concludes, may declare the
conditions on the Real Property to be in violation of this

1 ordinance and to constitute a public nuisance. The Board
2 may direct the owner or person in possession to abate the
3 rubbish within ten (10) days after mailing and posting of the
4 Board's decision. The order shall include notice that if the
5 rubbish is not abated as directed and within ten (10) days, the
6 Enforcement Officer may abate the rubbish and the
7 Abatement Costs shall be a lien and an assessment against
8 the Real Property.

9 The Board may grant any extension of time to abate
10 such conditions that it may deem justifiable upon good cause
11 being shown.

12 e. Abatement Cost Recovery. As set forth in Government
13 Code Section 25845, the owner and any person in possession
14 of the Real Property upon which the rubbish is found to exist
15 shall be jointly and severally liable for all Abatement Costs
16 incurred by the county, and any and all costs incurred in the
17 physical abatement of the nuisance without any further
18 hearing.

19 f. Notice of Abatement Costs. At the conclusion of the
20 abatement the Enforcement Officer shall issue a bill setting
21 forth the Abatement Costs to the owner and person in
22 possession of the Real Property. The bill shall demand
23 payment to the County of Riverside of the total abatement
24 costs and administration costs, plus attorneys' fees, within
25 fifteen (15) days of its mailing.

26 g. Abatement Costs Assessed Against the Parcel. If the
27 Abatement Costs are not paid upon demand by the county,
28 the cost of the abatement shall be assessed against The Real

1 Property pursuant to Government Code Section 22845, as
2 amended, or by any other means provided by law. The
3 assessment may be collected at the same time and in the
4 same manner as ordinary county taxes are collected, and
5 shall be subject to the same penalties and the same procedure
6 and sale in case of delinquency as are ordinary county taxes.

7 h. Notice of Abatement Lien. A Notice of Abatement Lien
8 may be recorded against The Real Property setting forth the
9 date upon which abatement of the nuisance was ordered by
10 the Board of Supervisors, the date the abatement was
11 complete, and the amount of abatement costs. The notice
12 shall identify the parcel address, the record owner, the
13 possessor of the property, if applicable, together with the last
14 known address of the record owner or possessor.

15 i. Attorneys Fees. Reasonable attorneys' fees may be
16 recovered by the prevailing party in any action,
17 administrative proceeding or special proceeding established
18 by this Ordinance. In the event the Board of Supervisors
19 deems the Real Property to be a public nuisance and orders
20 the Enforcement Officer to abate the rubbish or other
21 violating condition, the County shall be deemed the
22 prevailing party.

23 Section 9. Hearing Official.

24 a. Delegation of Authority. The Board of Supervisors may
25 delegate its authority to conduct the Administrative
26 Abatement proceedings set forth in Section 8, above, to
27 either of the following:
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1) The County Hearing Officer (CHO) appointed by the Board of Supervisors pursuant to Riverside County Ordinance No. 643 and Government Code Section 27720, as amended. The CHO shall have full authority and duty to preside over hearings in the manner set forth in Riverside County Ordinance No. 643, as amended.

2) A County Abatement Hearing Board (CAHB) designated pursuant to Government Code Section 25845, as amended. The CAHB shall have full authority to act and may preside over hearings with the same authority, power and duties of the CHO.

b. Recommended Action. At the conclusion of a hearing by either the CHO or CAHB, a Recommended Decision shall be served by mailing a copy to the persons or entities noticed in the Notice of Violation at the same address indicated therein, and to any other interested persons previously requesting notice. The CHO or CAHB shall thereafter file the Recommended Decision with the Board of Supervisors, together with proof of service thereof.

c. No further Notice of Hearing. Upon receiving the Recommended Decision from either the CHO or CAHB, the Board of Supervisors may adopt the recommendation on the consent agenda at its next regularly scheduled Board meeting without further notice or hearing, or may set the matter for a de novo hearing before the Board of Supervisors.

Section 10. OTHER REMEDIES. The provisions of this ordinance are to be construed as an added remedy of abatement and not in derogation of any other

1 actions or proceedings or remedies otherwise provided by law.

2 Section 11. SEVERABILITY. This ordinance and the various parts,
3 sections and clauses thereof are hereby declared to be severable. If any part, sentence,
4 paragraph, section or clause is adjudged unconstitutional or invalid, the remainder of this
5 ordinance shall not be affected thereby.

6 The County Board of Supervisors hereby declares that it would have passed
7 this ordinance and each part thereof, regardless of the fact that one or more parts thereof be
8 declared unconstitutional or invalid.”

9 Section 2. Effective Date

10 This Ordinance shall take effect thirty (30) days after its adoption.

11 BOARD OF SUPERVISORS OF THE COUNTY
12 OF RIVERSIDE, STATE OF CALIFORNIA

13 By: _____
14 Chairman

15 ATTEST:

16 CLERK OF THE BOARD:

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18 By: _____
19 Deputy

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21 (SEAL)
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