

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT  
AND RECORD OF ACTION**

July 24, 2012

**FROM: GERRY NEWCOMBE, Director  
Flood Control District**

**SUBJECT: ADOPTION - ORDINANCE OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, RELATING TO PUBLIC SAFETY; THE PROTECTION AND PRESERVATION OF DISTRICT PROPERTY, RESOURCES, AND INFRASTRUCTURE; PROHIBITION OF TRESPASS; ENFORCEMENT**

**RECOMMENDATION(S)**

CONTINUED FROM TUESDAY, JULY 10, 2012, Item #67 - Acting as the governing body of the San Bernardino County Flood Control District (District), adopt the proposed **Ordinance No. FCD 12-02** relating to public safety; the protection and preservation of District property, resources, and infrastructure; prohibition of trespass, enforcement.

(Affected Districts: All)

(Presenter: Gerry Newcombe, Director, 387-7906)

**BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES**

**Improve County Government Operations.**

**Maintain Public Safety.**

**BACKGROUND INFORMATION**

The proposed Ordinance will establish that it shall be unlawful to trespass on San Bernardino County Flood Control District property where access and entry is prohibited; whether or not the person so doing is an equestrian, pedestrian, or operator of a private vehicle. Fines and Civil penalties are outlined in the ordinance. In addition, the ordinance also establishes that as an alternative to the criminal or civil prosecution, all violations of this ordinance may be subject to enforcement through the initiation of an administrative citation action in the same manner as provided by the San Bernardino County Code Title I; Government and Administration; Division 1; General Provisions; Chapter 2: Violations and Enforcement; Section 11.0208 Administrative Citation Actions.

cc: w/ ordinance  
Flood-Newcombe  
County Counsel-Messer  
File - Flood w/ attach  
jr 7/26/12

**ITEM 67**

Record of Action of the Board of Supervisors

**APPROVED (CONSENT CALENDAR)**  
**COUNTY OF SAN BERNARDINO**  
**County Flood Control District**

MOTION	<u>ABSENT</u>	<u>AYE</u>	<u>MOVE</u>	<u>SECOND</u>	<u>AYE</u>
	1	2	3	4	5

LAURA H. WELCH, CLERK OF THE BOARD

BY \_\_\_\_\_

DATED: July 24, 2012





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jurisdictions, the territorial limits of which include real property owned, operated, and/or maintained by the District or for which the District has easements, and upon the effective date of a Memorandum of Understanding between the District and the applicable government agencies for such jurisdictions.

**SECTION 3. Definitions.**

For the purposes of this ordinance, the following words shall be defined as set forth herein:

“Equestrian” shall mean any person riding or walking with a horse or any other animal reasonably suitable for riding, as the terms “horse” and “animal” are commonly understood.

“Pedestrian” shall mean any person who is “afoot” within the meaning of California Vehicle Code (“CVC”) § 467; any person who is operating any form of conveyance as defined at CVC § 467; any person possessing or using in any manner any kind of skateboard, as that term is commonly understood; and any person possessing or using in any manner any bicycle, as defined at CVC § 231.

“Private vehicle” shall mean, without limitation, any of the following vehicles that is not owned or operated by any local, state, or federal government agency: any vehicle, as defined at CVC § 670; any motor vehicle, as defined at CVC §§ 415; any off-highway vehicle as defined at CVC § 38006; any other specific classification of vehicle or motor vehicle as defined at CVC §§ 100-680, inclusive; any form of aircraft (as that term is commonly understood and shall include without limitation, airplane, glider, hang-glider, ultra-light, gyrocopter, and helicopter); any form of watercraft (as that term is commonly understood and which shall include without limitation boat, canoe, kayak, body board, and surfboard).

“Trespass” shall mean (1) any entry by any unauthorized person, without District consent, onto District property for which entry is prohibited and notice of the prohibition

1 is posted by reasonably conspicuous signage or communicated in any manner by a  
2 District employee or representative; or (2) a refusal to leave after any such entry and  
3 the failure or refusal to comply with such notice, including any demand or direction  
4 made by the District employee or representative to the person refusing to leave.

5 "Unauthorized person" shall mean any person who is not subject to the  
6 exemptions or exceptions provided in Section 6 of this ordinance.  
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9 **SECTION 4. Applicability.**

10 This ordinance applies to all property owned, operated and/or maintained by the  
11 District, including property over which the District holds easement rights.

12 **SECTION 5. Trespass on San Bernardino County Flood Control District**  
13 **Property Prohibited.**

14 It shall be unlawful at all times for any person, who is not otherwise subject to  
15 the exemptions or exceptions provided in Section 6 of this ordinance, to trespass on  
16 San Bernardino County Flood Control District property where access and entry is  
17 prohibited; whether or not the person so doing is an equestrian, pedestrian, or operator  
18 of a private vehicle.  
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20 **SECTION 6. Exemptions and Exceptions.**

21 A. All law enforcement, fire, state, and federal government agencies are  
22 exempt from this ordinance.

23 B. All persons operating private vehicles pursuant to a valid permit issued by  
24 the District for conducting activities on District property shall be granted an exception to  
25 the enforcement of Section 5 of this ordinance, subject to the limitations of the permit  
26 issued and only for the period of time the permit remains valid.

27 C. All persons possessing a valid permit issued by the District allowing  
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1 access and entry onto District property shall be granted an exception to the  
2 enforcement of Section 5 of this ordinance, subject to the limitations of the permit  
3 issued and only for the period of time the permit remains valid.

4 D. All persons who are lawfully and properly using the designated recreation  
5 trails and who, while so doing, remain at all times within the designated trail area and  
6 within trail boundaries as identified in or referenced to the applicable agreements  
7 between the District and applicable government entities, in compliance with the  
8 applicable trail regulations, shall be granted an exception to the enforcement of Section  
9 5 of this ordinance, subject to the extent of their compliance with the applicable trail  
10 regulations and this subsection.

11 E. All fee owners of property for which the District has been granted an  
12 easement are exempt from this ordinance.

13 F. All persons to whom the District has granted an easement are exempt  
14 from this ordinance.

15 G. All persons authorized access and entry pursuant to a written agreement  
16 with the District are exempt from this ordinance.

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18 **SECTION 7. Enforcement; Criminal Actions.**

19 A. Criminal Penalties for Violations. It is unlawful for any person to violate  
20 this ordinance. Any person committing such violation shall be deemed guilty of an  
21 infraction or misdemeanor, as herein provided.

22 B. Infraction Violations. A violation of this ordinance may be cited, charged,  
23 and prosecuted as an infraction. Where so prosecuted each such violation shall be  
24 punishable, except as otherwise provided herein, upon conviction or upon a plea of  
25 nolo contendere (commonly called "no contest"), by a base fine not exceeding \$100.00  
26 for a first violation; a base fine not exceeding \$200.00 for a second violation of the  
27 same Code section within one year; and a base fine not exceeding \$500.00 for each  
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1 additional violation of the same Code section within one year of the first violation. Any  
2 court costs that the court may otherwise be required to impose pursuant to applicable  
3 State law or local ordinance shall be imposed in addition to the base fine.

4 C. Misdemeanor Violations. A fourth or subsequent violation of this  
5 ordinance may be cited, charged, and prosecuted as a misdemeanor. Upon conviction  
6 of a misdemeanor, or upon a plea of nolo contendere (commonly called "no contest"),  
7 the penalty shall be a base fine of not less than \$500.00 and not more than \$1,000.00,  
8 or imprisonment in the County jail for a period of not more than six months, or both  
9 such base fine and imprisonment. Any court costs that the court may otherwise be  
10 required to impose pursuant to applicable State law or local ordinance shall be  
11 imposed in addition to the base fine.

12 D. The maximum fines for infraction violations of this ordinance imposed  
13 pursuant to this Section are based upon the provisions of Government Code § 25132  
14 and will be increased automatically and without amendment to this Section upon any  
15 amendment to Government Code § 25132 increasing the amount of fines permitted.

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17 **SECTION 8. Enforcement; Civil Actions.**

18 As an alternative to the criminal or administrative enforcement of this ordinance,  
19 all violations of this ordinance may be subject to enforcement through the initiation of a  
20 civil action in accordance with this section and in the same manner as provided in San  
21 Bernardino County Code Section 11.0207, the terms of which are incorporated herein  
22 by this reference as though fully set forth herein and which are hereby deemed  
23 adopted by the District for the purpose of this ordinance.

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25 **SECTION 9. Enforcement: Administrative Citation Actions.**

26 As an alternative to the criminal or civil enforcement of this ordinance, all  
27 violations of this ordinance may be subject to enforcement through the initiation of an  
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1 administrative citation action in accordance with this section and in the same manner  
2 as provided in San Bernardino County Code Section 11.0208, the terms of which are  
3 incorporated herein by this reference as though fully set forth herein and which are  
4 hereby deemed adopted by the District for the purpose of this ordinance.  
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6 **SECTION 10. Enforcement Remedies and Penalties are Cumulative and**  
7 **Discretionary; Not Exclusive; Declaration of Public Nuisance.**  
8

9 All remedies and penalties provided for by this ordinance shall be cumulative  
10 and discretionary and not exclusive of other applicable provisions of any other  
11 ordinance of the District or other applicable State or Federal law. Each and every  
12 violation of this ordinance is hereby declared unlawful and a public nuisance. The use  
13 of the enforcement remedies provided by this ordinance shall be at the sole discretion  
14 of the District. In the exercise of such discretion in selecting an appropriate  
15 enforcement remedy, the District shall not be required to institute available  
16 enforcement remedies in any particular order, or to prefer the application of one  
17 remedy to another.  
18

19 **SECTION 11. Declaration of District Property As Not Constituting A Public**  
20 **Forum.**

21 All District property that is the site of District operated and maintained facilities  
22 or infrastructure or equipment and which is directly related to its operations in  
23 controlling, managing, directing, conserving, spreading, retaining, or storing flood and  
24 storm waters and run-off, is hereby declared to not constitute a public forum for any  
25 First Amendment purpose.  
26

27 **SECTION 12. Severability.**

28 The Board of Supervisors of the San Bernardino County Flood Control District

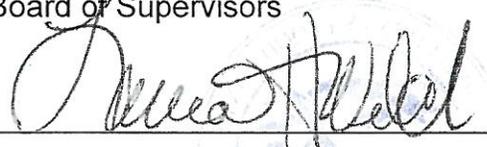
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declares that it would have adopted this ordinance and each section, sentence, clause, phrase, or portion of it irrespective of the fact that any one or more sections, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional. If for any reason any portion of this ordinance is declared invalid or unconstitutional, then all other provisions of it shall remain valid and enforceable.

**SECTION 13.** This ordinance shall take effect thirty (30) days from the date of adoption.

  
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JOSIE GONZALES, Chair  
Board of Supervisors  
San Bernardino County Flood Control District

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD

LAURA H. WELCH, Clerk of the Board of Supervisors  
  
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STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN BERNARDINO )

I, LAURA H. WELCH, Clerk of the Board of Supervisors of the San Bernardino County Flood Control District of San Bernardino County, State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the 24th day of July, 2012, at which meeting were present Supervisors:

Rutherford, Derry, Ovitt, Gonzales

and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

AYES: SUPERVISORS: **Rutherford, Derry, Ovitt, Gonzales**

NOES: SUPERVISORS: **None**

ABSENT: SUPERVISORS: **Mitzelfelt**

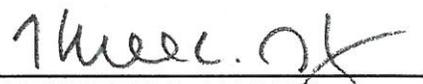
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors this 24th day of July, 2012.

LAURA H. WELCH, Clerk of the Board of Supervisors of the San Bernardino County Flood Control District of San Bernardino County, State of California

  
Deputy

Approved as to Form:

JEAN-RENE BASLE  
County Counsel

By:   
KENNETH C. HARDY  
Deputy County Counsel

Date: 4/8/12