

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

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS
OF THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT
AND RECORD OF ACTION**

July 26, 2022

FROM

DAN MUNSEY, Fire Chief/Fire Warden, San Bernardino County Fire Protection District

SUBJECT

Settlement Agreements Associated with Administrative Enforcement Orders

RECOMMENDATION(S)

1. Acting as the governing body of San Bernardino County:
 - a. Approve Stipulation and Order Settlement Agreement template associated with Administrative Enforcement Orders issued by the San Bernardino County Fire Protection District, on behalf of San Bernardino County as the Certified Unified Program Agency, from July 26, 2022, through June 30, 2027.
 - b. Approve Consent Order Settlement Agreement template associated with Administrative Enforcement Orders issued by the San Bernardino County Fire Protection District, on behalf of San Bernardino County as the Certified Unified Program Agency, from July 26, 2022, through June 30, 2027.
 - c. Authorize the San Bernardino County Fire Warden or the Deputy Fire Warden to complete and approve Settlement Agreements (Stipulation and Orders, as well as Consent Orders) with a penalty assessment of \$100,000 or less associated with Administrative Enforcement Orders issued by the San Bernardino County Fire Protection District, on behalf of San Bernardino County as the Certified Unified Program Agency, from July 26, 2022, through June 30, 2027.
 - d. Direct the San Bernardino County Fire Warden or the Deputy Fire Warden to present an annual report summarizing all Settlement Agreements executed for receipt by the Board of Supervisors within 120 days from the end of each fiscal year.
2. Acting as the governing body of the San Bernardino County Fire Protection District:
 - a. Approve Stipulation and Order Settlement Agreement template associated with Administrative Enforcement Orders issued by the San Bernardino County Fire Protection District, on behalf of San Bernardino County as the Certified Unified Program Agency, from July 26, 2022, through June 30, 2027.
 - b. Approve Consent Order Settlement Agreement template associated with Administrative Enforcement Orders issued by the San Bernardino County Fire Protection District, on behalf of San Bernardino County as the Certified Unified Program Agency, from July 26, 2022, through June 30, 2027.
 - c. Authorize the Fire Marshal or the Deputy Fire Marshal to complete and approve Settlement Agreements (Stipulation and Orders, as well as Consent Orders) with a penalty assessment of \$100,000 or less associated with Administrative Enforcement

**Settlement Agreements Associated with Administrative Enforcement
Orders
July 26, 2022**

Orders issued by the San Bernardino County Fire Protection District, on behalf of San Bernardino County as the Certified Unified Program Agency, from July 26, 2022, through June 30, 2027.

- d. Direct the Fire Marshal or the Deputy Fire Marshal to present an annual report summarizing all Settlement Agreements executed for receipt by the Board of Directors within 120 days from the end of each fiscal year.

(Presenter: Dan Munsey, Fire Chief/Fire Warden, 387-5779)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of these actions will not require the use of additional Discretionary General Funding (Net County Cost) as no costs will be incurred as a result of entering into Settlement Agreements associated with Administrative Enforcement Orders (AEOs). San Bernardino County (County) is the recognized Certified Unified Program Agency (CUPA) since December 31, 1996. The County's CUPA program is implemented by the San Bernardino County Fire Protection District (SBCFPD), Office of the Fire Marshal, Hazardous Materials Section. The issuance of AEOs is authorized by Chapter 6.11 of Division 20 of the Health and Safety Code (HSC) and are an important means to ensure Health and Safety Code compliance to protect the public health and safety. All settlement proceeds will be paid to the SBCFPD on behalf of the County and are deposited in the Hazardous Materials Fund. Per HSC section 25404.1.1, these funds are to be used solely to fund activities of the CUPA in enforcing hazardous materials laws and regulations.

BACKGROUND INFORMATION

On December 31, 1996, the California Environmental Protection Agency (CalEPA) designated San Bernardino County as the CUPA. The Hazardous Materials Section, currently under the SBCFPD, has been the only agency that has implemented the CUPA for San Bernardino County (County) since the County applied for authorization in 1995.

The purpose of this program is to coordinate, consolidate, and make consistent the application of hazardous materials laws and regulations throughout the entire county. Enforcement activities are an integral part of the CUPA's inspection program. There are various tools that may be utilized for enforcement purposes by the CUPA depending on the number and type of violations, history of non-compliance, and/or the potential impact on human health, safety, and/or the environment.

As authorized under HSC section 25404.1.1, the CUPA can issue AEOs that impose penalties. AEOs are a formal means of enforcement of hazardous materials laws and regulations. AEOs are used primarily to address the failure of a business to disclose hazardous substance and waste inventory on premises and are an alternative to civil or criminal prosecution when a violator does not respond to a notice to comply. The goals of the AEO are to return a facility to compliance with hazardous materials laws and regulations in a timely manner and to deter future non-compliance.

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The CUPA has an Inspection and Enforcement Plan that outlines how to implement enforcement. After an inspection/file review takes place, a notice with information on the requirements, type of violation, how to correct it, and deadline to comply is sent to the entity. If there is no compliance, additional reminder letters, phone calls, and return visits are conducted to attempt to assist the facility return to compliance. If there is still no compliance, a final notice is issued that identifies the violations and possible penalties if compliance is not reached. In the Inspection and Enforcement Plan, there are appendices that identify violations and correlates penalties. Depending on the severity of the violation, duration, and possible repeat of violation, the penalty is determined.

AEOs are issued by SBCFPD on behalf of the County and are often settled with the responding party. To expedite achieving the enforcement goal as efficiently as possible, the CUPA may enter into settlement agreements. In fact, settlement discussions between the CUPA and the respondent can occur at any time in the AEO process. The CUPA sets a time and place for any settlement discussion meeting. If the CUPA and the respondent are able to reach settlement, the CUPA will issue a Settlement Agreement.

The Settlement Agreement can be in the form of a "Stipulation and Order" or a "Consent Order". Depending on the facts of the case, the parties may utilize a "Stipulation and Order" or a "Consent Order" (collectively referred to as "Settlement Agreements"). At a minimum, the Settlement Agreements (Stipulation and Order, or a Consent Order) mandate: 1) compliance with applicable laws; 2) payment of fees and/or costs due to SBCFPD on behalf of the CUPA; and 3) payment to SBCFPD on behalf of the CUPA of any penalty assessed. This item will approve the Settlement Agreement templates.

Penalty assessments associated with Settlement Agreements are usually at or below \$100,000. Approval of these actions will delegate Board of Supervisors' authority to the County Fire Warden and the Deputy Fire Warden, as well as Board of Directors' authority to the Fire Marshal and Deputy Fire Marshal, to approve Settlement Agreements by SBCFPD on behalf of the County, with parties that agree to a penalty assessment of \$100,000 or less associated with AEOs. Settlement Agreements in which the penalty assessment is more than \$100,000 will be submitted for approval by the Board of Supervisors and Board of Directors.

SBCFPD staff anticipates approximately 50 Settlement Agreements being processed in any given year.

Delegation of Board of Supervisors' and Board of Directors' authority to approve these Settlement Agreements to the County Fire Warden or the Deputy Fire Warden for the County, as well as the Fire Marshal or the Deputy Fire Marshal for SBCFPD will provide administrative efficiencies to the County and SBCFPD. Delegating settlement authority will allow staff to timely and cost effectively prepare, negotiate, and execute Settlement Agreements associated with AEOs, which will further protect the public health and safety.

SBCFPD staff will provide the County Board of Supervisors and SBCFPD Board of Directors with an annual report summarizing all Settlement Agreements executed pursuant to this item within 120 days from the end of each fiscal year.

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PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Principal Assistant County Counsel, 387-5455) on July 15, 2022; Finance (Tom Forster, Administrative Analyst, 387-4635) on June 16, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on June 22, 2022.

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Record of Action of the Board of Supervisors
San Bernardino County

Record of Action of the Board of Directors
San Bernardino County Fire Protection District

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Janice Rutherford
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD/SECRETARY

BY _____
DATED: July 26, 2022



cc: File - SDD/SBCFPD w/attach
CCM 08/11/2022