

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING TITLE 6 OF THE COUNTY CODE OF REGULATORY ORDINANCES TO MODIFY THE COUNTYWIDE EYE GNAT PROGRAM

The Board of Supervisors of the County of San Diego ordains as follows:

**Section 1.** The Board of Supervisors finds and determines that significant progress on eye gnat mitigation has been made during 2012, and the most affected commercial organic grower has submitted a plan to continue during 2013 voluntary efforts that were effective during 2012. Modifications to the eye gnat program that do not weaken that program can now be made, both to clarify for commercial organic growers and their customers how the County intends to implement this program, and to resolve the litigation in San Diego Superior Court Case No. 37-2013-00030966-CU-TT-CTL.

**Section 2:** Subsection (g) of Section 64.202 of the County Code is amended to read as follows:

(g) “Public nuisance” means, [subject to the limitation described in section 2062 of the Health and Safety Code](#), any of the following:

(1) Any property, excluding water, that has been artificially altered from its natural condition so that it now supports the development, attraction or harborage of a vector. The presence of vectors in their development stages on a property is prima facie evidence that the property is a public nuisance.

(2) Any water that is a breeding place for vectors. The presence of vectors in their development stages in the water is prima facie evidence that the water is a public nuisance.

(3) Any activity that supports the development, attraction or harborage of vectors or that facilitates the introduction or spread of vectors.

**Section 3.** Subsection (i) of Section 64.402 of the County Code is amended to read as follows:

(i) “Last resort situation” means a public nuisance as defined in Chapter [24](#), for which a commercial organic farm alone is a predominant cause, which has not been abated within [sixnine](#) months after the implementation of abatement

measures by that farm pursuant to an agreed voluntary plan or abatement order. Where a commercial organic farm is a predominant cause of a public nuisance only in combination with other sources, a last resort situation does not exist until those other sources also take or are ordered to take abatement actions the Director determines are appropriate. Notwithstanding any other provision of this ordinance, the Director may also exercise the last resort powers described in section 64.403 where a farmer fails or refuses to participate in the voluntary plan process or fails or refuses to comply with a previously issued abatement order or approved voluntary plan.

**Section 4.** Subsection (j) of Section 64.402 of the County Code is amended to read as follows:

(j) “Predominant cause” of a public nuisance means any cause or combination of causes contributing substantially more to the existence of that nuisance than other causes, which, if mitigated, would substantially reduce nuisance conditions in the community.

**Section 5.** Subsection (k) of Section 64.402 of the County Code is renumbered as subsection (m) without changing the text of that subsection.

**Section 6.** Subsection (l) of Section 64.402 of the County Code is renumbered as subsection (n) without changing the text of that subsection.

**Section 7.** New subsection (k) is inserted into Section 64.402 of the County Code to read as follows:

(k) “Public nuisance” means conditions that constitute a public nuisance as defined in section 3480 of the California Civil Code, predominantly caused by the development, attraction or harborage of eye gnats on a commercial organic farm and by the migration of eye gnats from that farm.”

**Section 8.** New subsection (l) is inserted into Section 64.402 of the County Code to read as follows:

(l) “Reasonable precautionary and protection measures” means the use of any inexpensive, convenient, and relatively non-invasive practice by an individual property owner to abate eye gnats on that owner’s property and shall include the use of abatement traps in good condition and maintained at least once a week in structure and bait by the individual property owner, provided traps and bait are furnished free of charge to such property owner.

**Section 9.** Subsections (d) through (l) of Section 64.403 of the County Code are renumbered as subsection (e) through (m) respectively, without changing the text of those subsections.

**Section 10.** New subsection (d) is inserted into Section 64.403 of the County Code to read as follows:

(d) The Director may not issue an order to abate eye gnats to a commercial organic grower unless that grower's operations are a predominant cause of a 'public nuisance' as defined in this chapter.

**Section 11.** Subsection (e) of Section 64.405 of the County Code is amended to read as follows:

(e) Before issuing an order to abate to a commercial organic farmer, the Director shall determine, in his sole discretionconsultation with the Farm and Home Advisor, which validated eye gnat abatement measures are practicable and applicable to the farm and situation at issue. In making this determination the Director shall consider, in consultation with the Farm and Home Advisor, whether implementation at that farm is technically feasible or appropriate, whether a noticeable reduction in eye gnats is expected to result, whether costs are disproportionate to the benefits achieved, and other relevant factors. The Director may not require the submission of cost information or financial information by a farmer for consideration in making this determination, but may consider any such information a farmer chooses to submit.

**Section 12.** Subsection (b) of Section 64.406 of the County Code is amended to read as follows:

(b) The Director may expend Vector Control Program funds for eye gnat monitoring and abatement measures in or near a community affected by eye gnats from a commercial organic farm, to assist in alleviating an eye gnat nuisance. The Director may not compel any specific property owner to accept the use of abatement measures on that owner's property, unless that property itself supports the development, attraction or harborage of eye gnats. The Director may shall consider the overall level of community acceptance of abatement measures deployed within that community and the implementation of reasonable precautionary and protection measures in the community in determining the eye gnat abatement measures which are appropriate to require a commercial organic grower to implement.

**Section 13.** New subsection (e) is added to Section 64.407 of the County Code to read as follows:

(e) If a governmental agency disputes the need or the method and materials to be used to abate or prevent a public nuisance under this chapter with respect to land that such governmental agency is owner, lessor, or otherwise has a legal interest in, the matter shall be subject to appeal to the State Department of Public Health or his designee within 10 days from the final decision on an appeal to the Eye Gnat Abatement Appeals Board or hearing officer, as applicable; provided that such governmental agency participated in the appeal hearing before the Eye Gnat Abatement Appeals Board or hearing officer, as applicable. A Notice and Order to Abate shall remain stayed during the pendency of an appeal under this subdivision, and if the State Department of Public Health consents to hear the appeal, a Notice and Order to Abate shall be stayed under this subdivision until the issuance of the State Department of Public Health’s final decision on the appeal. If the State Department of Public Health determines that it does not have jurisdiction to hear such an appeal, or does not consent within 60 days of the final decision of the Eye Gnat Abatement Appeals Board or hearing officer to hear the appeal, the Notice and Order to Abate shall no longer be stayed.”

**Section 14:** This ordinance shall take effect and be in force thirty days after its passage and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Commerce, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY  
COUNTY COUNSEL  
BY  
Rodney F. Lorang, Senior Deputy