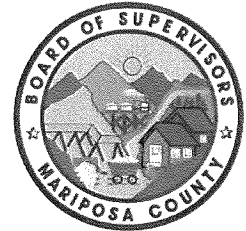


MARIPOSA COUNTY

Administration • 966-3222



ORDINANCE 2022-1178

MEETING: August 30, 2022

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Interim Urgency Ordinance - Procedures and Requirements for Oak Fire Debris and Hazard Tree Removal

RECOMMENDED ACTION AND JUSTIFICATION:

Adopt Interim Urgency Ordinance Establishing Procedures and Requirements for Fire Debris and Hazard Tree Removal for Properties Impacted by the Oak Fire.

To aid in the recovery efforts of counties which have experienced devastating losses due to wildland fires, the California Governor's Office of Emergency Services established the State Consolidated Debris and Hazard Tree Removal Program. In this program, counties work with the State and, if applicable, the Federal Emergency Management Agency (FEMA) to conduct wildfire debris and/or tree removal at no cost to the property owner. As a participant and partner of the State in the execution of the program, **Mariposa County must perform certain tasks**. One of those requirements is the adoption of an urgency ordinance which contains specific provisions. The proposed Interim Urgency Ordinance was developed based on the State's urgency ordinance template.

BACKGROUND:

Requirements of Interim Urgency Ordinance and Program

County must perform certain tasks to be a participant and partner in the State Consolidated Debris and Hazard Tree Removal Program.

County must adopt urgency ordinance.

Property owners in fire impacted area which contains wildfire debris must remediate their site by either:

- Participating in State Consolidated Program
- Pursuing remediation through private option

State Consolidated Program

Right of Entry (ROE) Form

- Property owners must sign Right of Entry (ROE) (form is provided by Cal OES and may not be modified)
- County must ensure that homeowner's insurance information is provided on the ROE
- County must confirm property ownership for ROEs
- County must confirm eligible structure on parcel for which ROE is provided

Insurance Collection

- County will make reasonable efforts to collect insurance proceeds from insured property owners
- County must contact insurance companies
- County must communicate costs of debris removal process to insurance companies
- County must demand payment for reimbursement from insurance companies
- If insurance company paid the policyholder, then County must demand payment from policyholder (for debris and hazard tree removal portion of payment only)
- County must remit insurance payments to state with documentation

Cost Share

- County pays appropriate local cost share (may be as high as 25%)

Homeowner Personal Property

- County responsible for intaking, storing and managing personal property discovered during debris operations
- County responsible for notifying and distributing property to appropriate owner
- Sheriff responsible for intaking, storing and returning firearms discovered during debris operations

Private Option

County must establish alternate program for those not participating in state program.

Alternate program requires property owners to remove fire debris and hazard trees pursuant to state and federal standards.

Enforcement Requirements - Nuisance Abatement

If property owners don't participate in the State Consolidated Program and don't pursue the Private Option, then County must pursue abatement procedures / abatement warrants, to obtain compliance.

Costs for remediation are to be levied against property owners.

Nuisance abatement process are established by the Interim Urgency Ordinance. Once the Interim Urgency Ordinance expires, the nuisance abatement provisions established by the ordinance will also expire. The nuisance abatement provisions will only be applicable to Oak Fire Debris and Hazard Tree Removal (if a property owner doesn't successfully complete the site remediation by either the State Consolidated Program or the Private Option).

Building Permits

No building permits can be issued until all fire debris and hazard tree cleanup is completed on affected property.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

July 26, 2022: Resolution No. 2022-434 ratifying the July 23rd, 2022 Proclamation by the Director of Emergency Services of the County of Mariposa, State of California, Proclaiming the Existence of a Local Emergency (due to the Oak Fire)

July 26, 2022: Resolution No. 2022-4352 ratifying the July 22nd, 2022 Declaration of a Local Health Emergency by the County Health Officer (due to the Oak Fire)

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Alternative: Amend text of draft Interim Urgency Ordinance. Any significant changes (to the State's Ordinance Template) could affect the County's eligibility for participating in the State Consolidated Debris and Hazard Tree Removal Program.

Negative Action: Do not adopt Interim Urgency Ordinance. The County would not be eligible for partnering with the State in the State Consolidated Debris and Hazard Tree Removal Program. Sites impacted by the Oak Fire may not be properly remediated.

ATTACHMENTS:

220830 Urgency Ordinance-Oak Fire Debris and Tree Removal (PDF)

State Guidance For Counties 2021 (PDF)

State Urgency Ordinance Template (PDF)

220830 Summary of Oak Fire Urgency Ordinance for Publication (DOC)

RESULT: ADOPTED [UNANIMOUS]

MOVER: Wayne Forsythe, District IV Supervisor

SECONDER: Marshall Long, District III Supervisor

AYES: Rosemarie Smallcombe, Marshall Long, Wayne Forsythe, Miles Menetrey

MARIPOSA COUNTY ORDINANCE NO. 22-500

**AN INTERIM URGENCY ORDINANCE ESTABLISHING
PROCEDURES AND REQUIREMENTS FOR FIRE DEBRIS AND HAZARD
TREE REMOVAL FOR PROPERTIES IMPACTED BY THE OAK FIRE**

WHEREAS, this Interim Urgency Ordinance shall be known as “An Interim Urgency Ordinance Establishing Procedures and Requirements for Fire Debris and Hazard Tree Removal for Properties Impacted by the Oak Fire”; and

WHEREAS this Ordinance shall implement procedures and requirements for the Removal of Fire Debris and Hazard Trees resulting from the Oak Fire and addresses the Local Health Emergency as set forth in the July 22nd, 2022 Declaration by the County Health Officer, which was ratified by the Board of Supervisors on July 26th, 2022.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIPOSA, a political subdivision of the State of California, does ordain as follows:

Section 1. Findings and Declarations

- A. Pursuant to Article XI, section 7 of the California Constitution, the County of Mariposa (“County”) may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its residents.
- B. Pursuant to Government Code section 25123, the County may adopt an urgency ordinance that takes effect immediately, to protect against an immediate threat to the public safety, health, and welfare.
- C. Section 101080 of the California Health and Safety Code empowers the County Health Officer to declare a Local Health Emergency if he or she reasonably determines that conditions of exposure to hazardous waste exist that pose an immediate threat to the public health, and requires the Local Health Emergency to expire after seven (7) days unless ratified by the Board of Supervisors, and requires the Board of Supervisors to review the need for continuing the Local Health Emergency at least once every thirty (30) days and proclaim the termination of the Local Health Emergency at the earliest possible date that conditions warrant the termination.
- D. On Friday, July 22, 2022, at approximately 2:00 p.m., a fire broke out at 4966 Carstens Road in Midpines, approximately five (5) miles east of the town of Mariposa. The Oak Fire rapidly expanded toward the south/southeast, toward Triangle Road, Darrah Road, Silva Road, Lushmeadows, Jerseydale, Bootjack and Ponderosa Basin. Over 200 structures were ultimately destroyed by the Oak Fire, with 127 of those being residential dwelling units.
- E. On Saturday, July 23rd, 2022, the Director of Emergency Services of the County of Mariposa, State of California proclaimed the existence of a Local Emergency due to the Oak Fire.

- F. On Tuesday, July 26th, 2022, the Board of Supervisors ratified the Director of Emergency Services' July 23rd, 2022 proclamation of the existence of a Local Emergency due to the Oak Fire.
- G. On Friday, July 22nd, 2022, the County Health Officer declared a Local Health Emergency due to the Oak Fire.
- H. On Tuesday, July 26th, 2022, the Board of Supervisors ratified the County Health Officer's declaration of a Local Health Emergency due to the Oak Fire.
- I. On Saturday, July 23rd, 2022, pursuant to Government Code section 8625, California Governor Newsom declared a State of Emergency in the County of Mariposa, due to the Oak Fire.
- J. In destroying private structures, the Oak Fire has created an accumulation of Fire Debris, much of which has been determined to be contaminated with heavy metals and asbestos.
- K. The potential for widespread toxic exposures and threats to public health and the environment exist in the aftermath of a major fire disaster. Debris and ash from residential structure fires contain hazardous substances that may lead to acute and chronic health problems and may have serious environmental impacts.
- L. The combustion of building materials such as siding, roofing tiles, and insulation results in dangerous ash that may contain asbestos, heavy metals, and other hazardous materials. Household hazardous waste such as paint, gasoline, cleaning products, pesticides, and other chemicals that may have burned in the fire also produce hazardous materials.
- M. Exposure to hazardous substances may lead to acute and chronic health effects and may cause long-term public health and environmental impacts.
- N. Uncontrolled hazardous materials and debris pose significant threats to public health through inhalation of dust particles and contamination of drinking water supplies. Improper handling of hazardous materials can expose workers to toxic materials, and improper transport and disposal of Fire Debris can spread hazardous substances throughout the community.
- O. Dead and dying trees damaged by the Oak Fire and at risk of falling may threaten the health, safety and welfare of workers conducting debris removal and residents of the affected properties, as well as the general public if the trees are at risk of falling onto a public right of way or public infrastructure.
- P. The anticipated start of the rainy season offers little time to mitigate further environmental contamination resulting from the fire, including contamination of the watershed, and, therefore, time is of the essence in removing hazardous waste, Fire Debris and Hazard Trees from affected properties.
- Q. Pursuant to Article XI, section 7 of the California Constitution and Government Code section 25845, the County may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety and welfare of its residents.
- R. Government Code section 25123(d) authorizes the adoption of an interim urgency ordinance for the immediate preservation of the public peace, health, or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by a four-fifths vote of the Board.

- S. There is an urgent need to mitigate the harm to public health and the environment from the improper disturbance, removal, transport and/or disposal of hazardous waste, Fire Debris and Hazard Trees resulting from the Oak Fire, to create and implement clear standards and procedures for removal of Fire Debris and Hazard Trees, and to facilitate coordinated, timely, and effective mitigation of the risks to public health and the environment from the health hazards generated by the Oak Fire.
- T. There is no feasible alternative to enactment of this Ordinance that will satisfactorily mitigate or avoid the identified impacts to the public health, safety and welfare with a less burdensome or restrictive effect.

Section 2. Definitions

- A. "Alternative Program." The term "Alternative Program" shall mean the requirements for inspections, clean up and disposal established by the County of Mariposa for property owners that opt out of or are ineligible for a Consolidated Program.
- B. "Board." The term "Board" means the Mariposa County Board of Supervisors.
- C. "Consolidated Debris and Hazard Tree Removal Program" or "Consolidated Program" means the Fire Debris and Hazard Tree Removal Program operated by Mariposa County for the Oak Fire area in conjunction with the California Governor's Office of Emergency Services and involving the removal and disposal of Fire Debris and Hazard Trees on eligible private property at no cost to the property owner.
- D. "County." The term "County" means the County of Mariposa.
- E. "County Building Official." The term "County Building Official" means the Mariposa County Building Director.
- F. "County Health Officer." The term "County Health Officer" means the Mariposa County Public Health Officer.
- G. "Director." The term "Director" means the Director of the Environmental Health Unit of the Mariposa County Health and Human Services Agency.
- H. "Fire Debris." The term "Fire Debris" means ash or other debris resulting from the Oak Fire that is intended to be discarded but does not include structures or portions thereof.
- I. "Hazard Trees." The term "Hazard Trees" means wildfire-damaged trees that have been so damaged by the Oak Fire that their structural integrity is compromised, and they pose an immediate threat of falling onto work crews or obstructing their access to the debris clearance site or falling onto a public right of way or a public improved property.
- J. "Removal of Fire Debris and Hazard Trees." The term "Removal of Fire Debris and Hazard Trees" includes all cleanup of debris from structures and Hazard Trees resulting from the Oak Fire, including removal, transport and disposal of Fire Debris and Hazard Trees, but it does not include the removal of personal property from residential sites unless such removal of personal property involves cleanup and the removal of ash from the property.
- K. "Right of Entry Permit." The term "Right of Entry Permit" means the Debris and Hazard Tree Removal Right of Entry Permit for providing Fire Debris and Hazard Trees removal on private property under the Consolidated Debris and Hazard Tree Removal Program operated by Mariposa County for use in the cleanup after the Oak Fire.

Section 3. Effective Date

This Ordinance shall take effect immediately upon its approval by at least four-fifths vote of the Board of Supervisors pursuant to Government Code section 25123(d), and shall remain in effect until the later of the cleanup of all Fire Debris on all fire-damaged properties from the Oak Fire or the completion of all enforcement matters related to this Ordinance, if any.

Section 4. Prohibition on Removal of Fire Debris from Private Property

No Removal of Fire Debris and Hazard Trees shall occur unless and until a hazardous materials inspection meeting applicable Department of Toxic Substances Control guidelines has been conducted. Notwithstanding the foregoing, Hazard Trees may be removed from vacant properties or properties on which no structures were damaged without a hazardous materials inspection, subject to the other requirements of this Ordinance.

Section 5. Removal of Fire Debris and Hazard Trees

- A. Consolidated Program. Property owners that, pursuant to the rules established by the Consolidated Program that will be set forth in guidelines provided by the Director, are eligible for the removal of some or all of the Fire Debris and Hazard Trees on their properties through the Consolidated Program, may elect to use the Consolidated Program by submitting a Right of Entry Permit to the Director, which includes an assignment of any insurance proceeds covering the costs of the Fire Debris and Hazard Trees removal. Such Right of Entry Permit must be submitted to the Director by the deadline as provided by the Director. The Director may extend this deadline as necessary and appropriate to facilitate the cleanup, avoid undue hardship, and protect public health and safety, and to the extent any such extensions are approved by the Consolidated Program.
- B. Alternative Program.
 - i. Administration. The Director shall administer the Alternative Program. The Director shall utilize applicable state and/or federal standards for the safe removal and disposal of Fire Debris and Hazard Trees, consistent with the cleanup goals of the Consolidated Program, and incorporate additional requirements as necessary to address changes in conditions, needs, or technologies in order to effectively remove Fire Debris and Hazard Trees from the community. The Director shall prepare procedures and requirements for the Removal of Fire Debris and Hazard Trees and make such procedures and requirements available to the public. The Director shall also provide an application with information that identifies appropriately licensed contractors and describes needed plans to meet such procedures and requirements.
 - ii. Participation. Property owners who are not eligible for the Consolidated Program or who elect not to participate in the Consolidated Program for the removal of some or all of the Fire Debris and Hazard Trees on their properties must comply with the requirements of the Alternative Program. Under the Alternative Program, before any Fire Debris and Hazard Trees are removed from a property, the owner

shall submit the required application to the Director together with all required attachments. Work shall not begin until the Director approves the application and the property owner obtains all applicable permits from the County Building Official.

- iii. Completion. The Director shall establish a deadline by which properties in the Alternative Program must be cleaned up. Upon the completion of the Removal of Fire Debris and Hazard Trees under the Alternative Program, the property owner shall submit to the Director required documentation that demonstrates the Removal of Fire Debris and Hazard Trees was completed in compliance with applicable standards and requirements as established by the Director.
- iv. Deadline. The Director shall establish a deadline by which property owners who are not participating in the Consolidated Program must submit an Alternative Program application to the Director in accordance with Section 5.B.ii of this Ordinance. Such properties that have Fire Debris from structures damaged or destroyed in the Oak Fire or Hazard Trees damaged or destroyed in the Oak Fire that have not submitted an application for the Alternative Program by that date are hereby declared a public nuisance and health hazard and shall be subject to nuisance abatement provisions pursuant to Section 5.E of this Ordinance.
- v. Extensions. The Director may extend deadlines under the Alternative Program as necessary and appropriate to facilitate the cleanup, avoid undue hardship, and to protect public health and safety.

C. Restrictions on Building Permits. No building permit from the County to demolish, repair, or reconstruct a structure that has been damaged or destroyed by the Oak Fire shall be issued until Fire Debris and Hazard Trees cleanup is completed on the affected property in accordance with the Alternative Program or the Consolidated Program. Any permit for the demolition, repair, or reconstruction of a structure that has been damaged or destroyed by the Oak Fire shall be held in abeyance and not acted upon until Fire Debris and Hazard Trees cleanup is completed on the affected property and completion is confirmed to the County Building Official by the Director, either through the Alternative Program or the Consolidated Program. This restriction may also apply to permits for power, and well and septic system repair on impacted parcels. Notwithstanding the foregoing, a demolition or miscellaneous permit issued by the County Building Official may be required for Removal of Fire Debris and Hazard Trees for work involving the removal of buildings, structures, or portions thereof, as determined by the Director.

D. Exigent Circumstances. The Board's intent is to facilitate an orderly remediation of large-scale disasters. Nothing in the deadlines as set forth by this Ordinance shall limit the authority of the County or any County official to abate hazards more quickly where required by exigent circumstances. Nothing in this Ordinance shall limit the authority of the County or any County official to take any enforcement action or pursue any available remedies, including, without limitation, requiring preventive measures as defined in Health and Safety Code section 101040.

E. Nuisance Abatement.

- i. Civil Abatement. Any property deemed a public nuisance in accordance with this Ordinance shall be subject to nuisance abatement pursuant to this Ordinance and other applicable law.
- ii. Summary Abatement. In addition to any other nuisance abatement procedures provided by law, the Director and County Health Officer and their designee are authorized to enter onto any property deemed a public nuisance under this Ordinance. If the County Health Officer finds that the property constitutes an immediate threat to public health or safety, the Director may summarily abate the nuisance upon satisfaction of the summary abatement procedures set forth below, as applicable.
 - a. Pre-Abatement Notice. Unless emergency conditions preclude doing so, the Director shall issue a Summary Abatement Notice and Order to the property owner(s) of record, as listed on the last equalized tax roll or as provided to the Director by the County Assessor-Recorder. A summary of the Notice and Order shall be posted in a conspicuous location on the property to be abated at least ten (10) calendar days prior to the summary abatement action.
 - b. Appeal and Waiver. The property owner(s) or any person or entity having a legal interest in the property may submit a written appeal of the Director's Order, to the Director or the Director's designee, by United States mail, overnight mail, or personal delivery, no later than fifteen (15) calendar days from the date the Director mailed or delivered the Notice and Order. The written appeal shall state the basis for the appeal. The Director or the Director's designee shall review the appeal, if the appeal is timely, and shall issue a written decision no later than ten (10) calendar days after receipt. The Director's or the designee's decision on the appeal shall uphold, rescind or modify the determination of the Notice and Order. The Director's or the designee's decision on the appeal shall be final. A copy of the Director's or the designee's determination shall be delivered, promptly upon its issuance, to the appellant by United States mail or personal delivery at the address listed on the last equalized tax roll or such other address provided by the appellant. Failure to appeal within the time prescribed shall constitute a waiver of the right to contest the Summary Abatement.
 - c. Post-Abatement Notice. After the Summary Abatement is completed, the Director shall promptly deliver to the property owner(s) a Post-Abatement Notice indicating: (a) the action taken by the County; (b) the reasons for the actions; (c) the costs of the abatement and a request that the costs be paid by the property owner(s) to the County within sixty (60) calendar days; and (d) that a lien will be recorded against the property if the property owner(s) fail(s) to pay the requested abatement

costs within sixty (60) calendar days. The Post-Abatement Notice shall be delivered by United States mail or personal delivery.

- F. Judicial Enforcement Action. County Counsel is authorized to initiate judicial enforcement as to a violation of any provision of this Ordinance without further Board approval.
- G. Remedies Not Exclusive. The remedies identified in this Ordinance are in addition to and do not supersede or limit any and all other remedies, civil or criminal, available at law or in equity.

Section 6. Environmental Determination

Adoption of this Interim Urgency Ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”) pursuant to California Public Resources Code section 21080(b)(3), which applies to projects undertaken, carried out by, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, Government Code sections 8550 et seq., and Government Code section 21080(b)(4) regarding specific actions necessary to prevent or mitigate an emergency. These exemptions are also established by State CEQA Guidelines section 15269(a) and (c). The Oak Fire and its aftermath constitute a sudden unexpected occurrence, involving clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services under California Public Resources Code section 21060.3 and State CEQA Guidelines section 15359.

Section 7. Severability

If any provision of this Ordinance or the application thereof to any person, property, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provisions or application thereof, and to this end, the provisions of this Interim Urgency Ordinance are hereby declared to be severable.

Section 8. Conflicting Regulations

If any portion of this Interim Urgency Ordinance conflicts with any existing Mariposa County Code, this Ordinance shall take precedence.

Section 9. Publication and Posting

A fair and accurate summary of this Ordinance shall be published once before the expiration of fifteen (15) calendar days after said passage, with the names of the Supervisors voting for or against the same, in the *Mariposa Gazette*. A certified copy of the full text of this Ordinance shall be posted at the Office of the Clerk of the Board of Supervisors at 5100 Bullion Street, Mariposa, CA, and shall be available for public inspection and copying in that office in

accordance with the Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1.

The foregoing Interim Urgency Ordinance was introduced, read and passed at a special meeting of the County of Mariposa Board of Supervisors, State of California, held on Tuesday, August 30th, 2022, by the following four-fifths vote:

AYES:	SMALLCOMBE, LONG, FORSYTHE, MENETREY
NOES:	NONE
ABSTAINED:	NONE
EXCUSED:	NONE


ROSEMARIE SMALLCOMBE, Chair
Mariposa County Board of Supervisors

ATTEST:


DANIELLE BONDSHU
Clerk of the Board

APPROVED AS TO FORM:


STEVEN W. DAHLEM
County Counsel