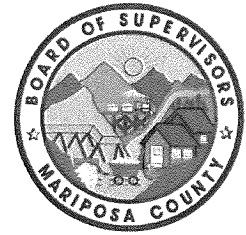


# MARIPOSA COUNTY

Administration • 966-3222



## ORDINANCE 2022-1179

MEETING: September 13, 2022  
TO: The Board of Supervisors  
FROM: Dallin Kimble, County Administrative Officer  
RE: Interim Urgency Ordinance Establishing Code for Debris and Hazard Tree Removal (Alternative Program)

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### RECOMMENDED ACTION AND JUSTIFICATION:

Adopt an Interim Urgency Ordinance Establishing Procedures and Requirements for Fire Debris and Hazard Tree Removal (The Alternative Program).

This action will establish the **Alternative Program**, which is required for the County's partnership with the California Governor's Office of Emergency Services for the Oak Fire Disaster Response (see Section II.J, County Responsibilities in the State of California Debris Removal Program Guidance for Counties).

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 to conduct wildfire debris and/or tree removal at no cost to the property owner (State Consolidated Program). 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 establishment of specific requirements for a property owner who chooses not to participate in the State Consolidated Program. This is referred to as the Alternative Program.

This ordinance establishes procedures and requirements for fire debris and hazard tree removal, when a fire has damaged or destroyed a structure or structures, and the property owner is responsible for removal of the fire debris and/or hazard trees. The requirements are based on state and federal standards. The ordinance prohibits issuance of building permits to the affected property, until all fire debris and hazard tree cleanup is completed on the affected property.

Once the urgency ordinance is adopted, it will be in place for Oak Fire property owners who choose not to participate in the State Consolidated Program. Staff intends to pursue adoption of the ordinance through the regular procedures as well, so that procedures and requirements will also be in place in the future, for fires which impact a single property owner.

The County currently has these procedures in place for fire debris removal (such as when a single property is impacted), but it is established by a policy document, not a regulatory document.

**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)

**August 30, 2022:** Interim Urgency Ordinance No. 1178 adopted establishing Procedures and Requirements for Oak Fire Debris and Hazard Tree Removal

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

**Alternative:** Amend text of draft Interim Urgency Ordinance.

**Negative Action:** Do not adopt Interim Urgency Ordinance. The County would not have the Alternative Program established as required for partnering with the State for the Debris and Hazard Tree Removal Program. Sites impacted by the Oak Fire may not be properly remediated.

**ATTACHMENTS:**

**State Guidance For Counties 2021 (PDF)**

**220913 Summary of Urgency Ordinance for Chapter 8.64 Publication (DOC)**

**220913 Urgency Ordinance-Alternative Program Fire Debris and Tree Removal FINAL(DOCX)**

**RESULT: ADOPTED [UNANIMOUS]**

**MOVER:** Marshall Long, District III Supervisor

**SECONDER:** Wayne Forsythe, District IV Supervisor

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

**MARIPOSA COUNTY ORDINANCE NO. 1179**

**AN INTERIM URGENCY ORDINANCE ESTABLISHING  
PROCEDURES AND REQUIREMENTS FOR FIRE DEBRIS AND  
HAZARD TREE REMOVAL**

**WHEREAS** this Interim Urgency Ordinance shall establish procedures and requirements for the Removal of Fire Debris and Hazard Trees resulting from the Oak Fire under the Alternative Program and addresses the Local Health Emergency as set forth in the July 22<sup>nd</sup>, 2022, Declaration by the County Health Officer, which was ratified by the Board of Supervisors on July 26<sup>th</sup>, 2022; and

**WHEREAS**, 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; and

**WHEREAS**, on Saturday, July 23<sup>rd</sup>, 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; and

**WHEREAS**, on Tuesday, July 26<sup>th</sup>, 2022, the Board of Supervisors ratified the Director of Emergency Services' July 23<sup>rd</sup>, 2022, proclamation of the existence of a Local Emergency due to the Oak Fire; and

**WHEREAS**, on Friday, July 22<sup>nd</sup>, 2022, the County Health Officer declared a Local Health Emergency due to the Oak Fire; and

**WHEREAS**, on Tuesday, July 26<sup>th</sup>, 2022, the Board of Supervisors ratified the County Health Officer's declaration of a Local Health Emergency due to the Oak Fire; and

**WHEREAS**, on Saturday, July 23<sup>rd</sup>, 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; and

**WHEREAS**, 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; and

**WHEREAS** 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; and

**WHEREAS** 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; and

**WHEREAS** exposure to hazardous substances may lead to acute and chronic health effects and may cause long-term public health and environmental impacts; and

**WHEREAS** 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; and

**WHEREAS**, 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; and

**WHEREAS** 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; and

**WHEREAS**, 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; and

**WHEREAS** 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; and

**WHEREAS**, the Board of Supervisors has determined 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 by property owners, 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; and

**WHEREAS**, when the County partners with the California Governor's Office of Emergency Procedures to address a local fire emergency, the state requires that the county have adopted regulations establishing procedures and requirements for the Removal of Fire Debris and Hazard Trees adopted for the Alternative Program (when a property owner does not participate in the State's Consolidated Program); and

**WHEREAS**, as a result of the lack of procedures and requirements adopted by ordinance to address the Removal of Fire Debris and Hazard Trees requirements for property owners, an Interim Urgency Ordinance is necessary to protect the public safety, health and welfare of the citizens of Mariposa County as delineated in the finding below; and

**WHEREAS** 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; and

**WHEREAS**, during this interim urgency period, county staff is directed to prepare and process necessary documents, including an ordinance and CEQA determination, for Fire Debris and Hazard Tree Removal through the regular ordinance adoption process. Staff is directed to process this project pursuant to County Code, which includes scheduling and noticing public hearings for the Board of Supervisors.

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

**Section I:** During the dates this Interim Urgency Ordinance and any extension thereof is effective, the provisions for Fire Debris and Hazard Tree Removal, as shown in Attachment 1, shall be applicable.

**Section II:** The purpose of this Interim Urgency Ordinance is to protect the public safety, health and welfare of the citizens of Mariposa County and is based upon the following finding:

The Board of Supervisors hereby finds and declares that the ordinance promotes public health, safety, and general welfare of County residents by providing clear requirements for property owners who are removing hazardous Fire Debris and Hazard Trees from their property as a result of the Oak Fire.

**Section III:** Failure to adopt this ordinance may result in significant human health and safety impacts to Mariposa County residents impacted by the Oak Fire.

**Section IV:** Based on the foregoing, the Board of Supervisors does hereby declare this Interim Urgency Ordinance is necessary to protect the public health, safety, and welfare following a locally declared disaster.

**Section V:** 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 VI:** 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 VII:** If any portion of this Interim Urgency Ordinance conflicts with any existing Mariposa County Code, this Ordinance shall take precedence.

**Section VIII:** An 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.

**PASSED AND ADOPTED** on this 13<sup>th</sup> day of September 2022 by the following 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

# ATTACHMENT 1

## Fire Debris and Hazard Tree Removal

### Sections:

- I. Purpose
- II. Definitions
- III. Prohibition on Removal of Fire Debris
- IV. Removal of Fire Debris and Hazard Trees
- V. Building Permits
- VI. Severability and pre-emption

#### I. Purpose.

A. The purpose of this ordinance is to establish procedures and requirements for Removal of Fire Debris and/or Hazard Trees, when a fire has damaged or destroyed a structure or structures, and the property owner is responsible for removal of the fire debris and/or hazard trees.

B. This ordinance is also established to provide the "Alternative Program" for properties impacted by a declared Local Emergency, when the California Governor's Office of Emergency Services is partnering with the County to respond to the emergency, and the property owner does not participate in the State Consolidated Program.

#### II. Definitions.

The following terms as used in this ordinance shall have the following meanings, unless the context in which a term is used plainly requires another meaning:

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 following a declared Local Emergency.

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 a declared Local Fire Emergency 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 a fire that is intended to be discarded but does not include structures or portions thereof.

I. "Hazard Trees." The term "Hazard Trees" means wildfire or fire-damaged trees that have been so damaged by a 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 a fire, including removal, transport and disposal of Fire Debris and Hazard Trees.

### **III. Prohibition on Removal of Fire Debris.**

A. No Removal of Fire Debris and/or Hazard Trees shall occur unless and until a hazardous materials inspection meeting applicable Department of Toxic Substances Control guidelines has been conducted.

B. The Director may authorize Removal of Hazard Trees from vacant properties or properties on which no structures were damaged without a hazardous materials inspection, subject to the other requirements of this Ordinance.

### **IV. Removal of Fire Debris and Hazard Trees.**

Property owners who are removing Fire Debris and/or Hazard Trees shall follow all procedural requirements and shall comply with all protocols and specifications described herein.

#### **A. Application and Submittal Requirements**

1. The owner or contractor shall submit a demolition permit application to the County Building Department.

2. Once the demolition permit has been issued by the County, the owner or contractor may begin the Removal of Fire Debris and/or Hazard Trees process.

3. After the debris removal process has been completed, the owner or contractor shall hire a certified consultant who shall collect soil samples pursuant to the protocols established herein.

4. When the soil testing results comply with the cleanup protocols and requirements, the owner or contractor shall submit the results to the Director for review and approval.

#### **B. Cleanup Protocols**

##### **1. Pre-Debris Removal**

a) Notify USA Underground or Underground Service Alert.

b) Secure all utilities.

c) Identify and flag all property corners; secure and protect any existing survey monuments.



d) Thoroughly wet down the Fire Debris before any removal activities begin. The Fire Debris site shall be wetted down twenty-four (24) hours before debris activities begin.

e) Identify and flag septic tank and leach field locations on each property.

f) Identify and flag water wells or other water sources.

g) Field measure and record foundation area.

h) Identify other property-specific hazards (i.e., swimming pools, propane tanks, Hazard Trees) and flag if necessary.

i) Identify, sample, analyze, and remove bulk asbestos containing materials using a Certified Asbestos Consultant or Contractor.

## 2. Fire Debris Removal

a) Complete Notifications identified in the Pre-Debris Removal section.

b) Wet the site down again before beginning removal activities.

c) Use appropriate personal protective equipment.

d) Remove vehicles for recycling or disposal. Check with California Department of Motor Vehicles (DMV) and the homeowner before destruction.

e) Collect, consolidate, and remove metals for recycling.

f) Remove Fire Debris and soil for disposal.

g) Remove three (3) to six (6) inches of soil under the Fire Debris (ash).

h) Remove concrete foundations for recycling. If foundations are left, contact the County Building Department for further instruction.

i) Driveways may remain in place, when appropriate, to aid in rebuilding and erosion control. Driveways can be removed and replaced by the home builder as a last step of the rebuilding process.

j) Remove Hazard Trees for recycling or disposal.

k) Finish grading/smoothing ground surface.

## 3. Confirmation Sampling

a) Sample and analyze soil by using a certified consultant.

b) Compare soil results to cleanup goals (2X background for metals).

c) If results exceed cleanup goals, remove a 10-foot by 10-foot area three (3) to six (6) inches deep of soil surrounding the failed soil sample and re-sample.

d) If results are less than cleanup goals, prepare for final erosion control and certification.

## 4. Implement Erosion Control

Implement storm water best management practices to control sediment runoff and promote vegetation from each remediated property in the area where destroyed structures were cleaned up.

## C. Cleanup Specifications

1. Fire Debris

a) Shall be transported to and disposed of at an approved lined, Class III landfill.

b) Fire Debris shall be wetted, wrapped with plastic sheeting, taped closed, and covered with a tarp to eliminate the release of dust during transport.

c) Property owners or contractors shall contact the landfill operator prior to hauling the Fire Debris waste to assure its acceptance.

d) A receipt for waste disposal shall be obtained from the landfill operator and a copy provided to the Director as part of the final permit closure process.

2. Dust control

Fire Debris shall be thoroughly wetted prior to removal. Hoses with fine spray nozzles shall be used to apply water to the work site prior to and during active Fire Debris removal. The materials shall also be wetted while being loaded into trucks to prevent visible dust from crossing property lines. Care shall be taken to avoid excessive use of water in order to prevent runoff. Any runoff produced shall be contained onsite.

3. Erosion Control

a) Best management practices shall be used to prevent Fire Debris or soil from washing into the street, road, drainage courses and culverts, or onto neighboring properties.

b) Stockpiled materials that are not immediately loaded for transport shall be handled and stored on site in such a manner as to avoid offsite migration. This may include wetting and covering the Fire Debris until it is loaded and transported.

4. Hazard Trees

Trees that pose a hazard to the home site or to workers during Fire Debris removal activities, or that will pose a hazard during reconstruction activities, or that will pose a hazard to public roads shall be removed. Trees may be cut and set aside for firewood or taken off site and recycled per owner's instruction.

5. Hazardous materials

Hazardous materials encountered, such as gas cylinders, propane tanks, drums, batteries, etc., shall be set aside for separate disposal and not placed in the debris or ash waste stream.

6. Cleanup Sampling

a) Soil shall be sampled and analyzed to verify that cleanup standards have been met.

b) Following removal of all Fire Debris and impacted soil from the site, soil samples shall be collected from the impacted structure area. Sample collection shall be performed by a California Professional Geologist, Registered Civil Engineer or other appropriately licensed professional as approved by the Director. A report of analytical results shall be prepared by this professional and a copy provided to the Director.

c) Confirmation samples will be collected from the impacted structure area in native soil, at random locations. The selection of the random samples shall be based on a 10-foot by 10-foot grid overlay of the impacted area with the number of samples to be

collected based on the square footage of the area impacted as follows (in square feet or sf):

- i. <2000 sf 2 samples
- ii. 2001-3000 sf 3 samples
- iii. 3001-4000 sf 4 samples
- iv. >4000 sf 1 sample per 1000 additional square feet or fraction thereof

d) Samples are to be analyzed by a California State Certified Laboratory for heavy metals (*California Assessment Manual (CAM) 17 metals TTLC procedures, EPA Method 6010B*).

e) Samples must meet a cleanup goal as established by the current disaster Debris Removal Operations Plan for the Consolidated Program. If the cleanup is not the result of a declared disaster, the Director shall establish clean up goals based on known background levels of CAM 17 metals. If there are no known background levels available, the Director may require background samples to be taken in an area at least 150 feet away from any impacted structure.

f) If soil sample analyses indicate that cleanup goals have not been achieved, then additional excavation and sampling may be required.

**V. Building Permits.**

No building permit from the county to demolish, repair, or reconstruct a structure that has been damaged or destroyed by a fire shall be issued until the Fire Debris and/or Hazard Trees cleanup is completed on the affected property in accordance with this ordinance. Any permit for the demolition, repair, or reconstruction of a structure that has been damaged or destroyed by a fire shall be held in abeyance and not acted upon until Fire Debris and/or Hazard Trees cleanup is completed on the affected property and completion is confirmed to the County Building Official by the Director. This restriction may also apply to permits for power and/or well and/or 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.

**Vi. Severability and pre-emption.**

A. If any section, subsection, sentence, clause, or phrase of this ordinance, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this ordinance.