

ORDINANCE NO. 762

AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SHASTA, STATE OF CALIFORNIA, ESTABLISHING REQUIREMENTS FOR THE REMOVAL OF FIRE-DAMAGED DEBRIS FROM PRIVATE PROPERTY FOLLOWING THE FAWN FIRE

The Board of Supervisors of the County of Shasta, State of California, ordains as follows:

SECTION 1.

This ordinance shall be known as the Fawn Fire Debris Removal Urgency Ordinance.

SECTION 2.

Emergency Findings. This urgency ordinance is adopted pursuant to California Government Code sections 25123(d) and 25131 and shall take effect immediately upon its approval by at least a four-fifths vote of the Board of Supervisors. The Board finds that this ordinance is necessary for the immediate preservation of public peace, health, and safety, based upon the following facts:

1. A large number of residential structures have burned in the Fawn Fire.
2. The potential for widespread toxic exposures and threats to public health and the environment exists in the aftermath of a major wildfire disaster. Debris and ash from residential and commercial structure fires can contain hazardous substances and the health effects of hazardous substances releases after a wildfire are well-documented.
3. The combustion of building materials such as siding, roofing tiles, and insulation can result in dangerous ash that contains asbestos, heavy metals, and other hazardous materials. Household hazardous waste such as paint, gasoline, cleaning products, pesticides, compressed gas cylinders, and chemicals may have been stored in homes, garages, or sheds that may have also burned in the fire, also producing hazardous materials.
4. Exposure to hazardous substances may lead to acute and chronic health effects and may potentially cause long-term public health and environmental impacts. Uncontrolled hazardous materials and debris pose significant threats to public health through inhalation of dust particles and contamination of drinking water supplies. Improper handling can expose workers to toxic materials, and improper transport and disposal of fire debris can spread hazardous substances throughout the community.
5. The establishment of requirements for the removal of fire-damaged debris is needed immediately to protect the environment and public health, and to facilitate coordinated and effective mitigation of the risks to the environment and public health from the health hazards generated in the Fawn Fire disaster.

6. On September 28, 2021, pursuant to California Health and Safety Code sections 101075 through 101095 and 101040, the Shasta County Health Officer issued a "Proclamation of a Local Health Emergency" ("Proclamation") due to the threats to public health posed by the Fawn Fire and at a Regular Meeting held on October 5, 2021, the Shasta County Board of Supervisors ratified the Proclamation.
7. The Proclamation declares, in part, that the threat to public health creates the immediate need to facilitate assistance and undertake preventive measures to protect the health of people and the environment and to inform the affected public of any potential health issues associated with the hazardous waste created by the Fawn Fire, and that assistance to private property owners and to others within Shasta County is needed for timely implementation of necessary preventive measures to protect public health and the environment.
8. It is essential that this ordinance become effective immediately to mitigate the harm that could be caused to the public health and safety and to the environment from improper disturbance, removal and/or disposal of debris containing hazardous materials, and to facilitate the orderly recovery from the Fawn Fire disaster.

SECTION 3.

1. Definitions.

- a. **Director.** The term Director shall mean the Shasta County Director of Environmental Health or his/her designee.
- b. **OES Program.** For purposes of this ordinance, the term "OES Program" shall mean the fire damage debris clearance program operated by the California Governor's Office of Emergency Services (OES) for the Fawn Fire in conjunction with other State and Federal agencies.
- c. **Alternative Program:** For purposes of this ordinance, the term "Alternative Program" shall mean the requirements for inspections and cleanup established by the County of Shasta for property owners that opt-out of, or are ineligible for, the OES Program or who otherwise participate in the "Shasta County Fawn Fire Debris Removal Program."
- d. **Private Action.** For the purposes of this ordinance, the term "private action" shall mean the removal of fire debris and ash from private property damaged by the Fawn Fire by persons not eligible for or opting out of the OES Program.
- e. **Removal of Fire Debris.** The term "removal of fire debris" as used in this ordinance includes all cleanup of fire debris and ash from structures and hazard trees resulting from the Fawn Fire, including the removal, transport, and disposal of fire debris, ash, and hazardous trees, but it does not include the removal of personal property from property damaged by the Fawn Fire unless such removal of personal property involves cleanup and the removal of fire debris and/or ash from the property.

- f. Right of Entry Permit. The term "Right of Entry Permit" means the Debris Removal Right-of-Entry Permit (For Providing Debris Removal on Private Property) approved by OES for use in the cleanup after the Fawn Fire.
- g. Board. The term "Board" means the Board of Supervisors.
- h. Fawn Fire Ash & Debris Removal Requirements & Guidelines. The term Fawn Fire Ash & Debris Removal Requirements & Guidelines (or Requirements & Guidelines) shall mean the requirements and guidelines issued by the Director for removal of fire ash and debris and the Director is hereby authorized by this ordinance to issue such Requirements & Guidelines. Such Requirements & Guidelines shall apply to the Alternative Program and shall have the same force and effect of law as this ordinance.

2. Term of this Ordinance.

This ordinance shall take effect immediately upon adoption and shall remain in effect until the cleanup of fire debris has been completed on all properties damaged by the Fawn Fire.

3. Prohibition on Removal of Fire Debris from Private Property.

No fire debris resulting from destroyed structures shall be removed from private property until hazardous materials removal has been conducted by the California Department of Toxic Substances Control (DTSC) through OES's fire debris clearance program, or the property owner has removed and properly disposed of all hazardous materials in accordance with the Requirements & Guidelines, or by another state or federal agency or private entity with the appropriate expertise approved by the Director through the Alternative Program. The Alternative Program which incorporates the Requirements & Guidelines can only commence once a Demolition Permit is issued by the Shasta County Building Official.

4. Removal of Fire Debris through the OES Program.

- a. Effect of the Right of Entry Permit: The Right of Entry Permit shall function as the sole permit and authorization for participation in the OES Program.
- b. Notwithstanding any contrary provision in the Shasta County Code, no county approvals or permits for fire debris removal are required for structures participating in the OES Program, other than the Right of Entry Permit.

5. Removal of Fire Debris through the Alternative Program.

- a. The County shall administratively adopt and administer the Alternative Program in the unincorporated areas of Shasta County under the supervision of the Shasta County Director of Environmental Health or his/her designee. The County shall utilize the Requirements & Guidelines promulgated by the Director as the requirements and guidelines for the Alternative Program. The Director may administratively update these requirements and guidelines as

necessary to address ongoing changes in the administration of the Alternative Program and the need to efficiently remove hazardous fire debris from the community.

- b. For those persons who are not eligible for the OES Program, or who opt out of the OES Program, private action to remove fire debris from fire-destroyed properties is prohibited unless and until household hazardous waste removal has been performed by DTSC or the property owner has obtained a Demolition Permit and has removed and properly disposed of hazardous materials pursuant to the Alternative Program.
- c. The Alternative Program shall require an application for a Demolition Permit, including execution of the "Shasta County Fawn Fire Debris Removal Program Options and Warning," and compliance with the Requirements & Guidelines issued by the Director, except as otherwise exempted by the Director in the Requirements & Guidelines. Work shall not begin unless and until the Shasta County Building Official approves the Demolition Permit application and issues a Demolition Permit, or the work is exempted in the Requirements & Guidelines. The County may rely upon the subject matter expertise of multiple departments or agencies in deciding whether to approve the application.
- d. Upon completion of the work for which the Demolition Permit was issued, the Alternative Program shall require the submittal of the Fawn Fire Debris Removal Cleanup Certification.

6. Hold on Building Permits.

- a. Any issued County of Shasta building permit to repair or reconstruct a fire-damaged structure or private infrastructure shall be held in abeyance and not acted upon until fire debris cleanup is completed on the affected property and completion is confirmed to the Shasta County Building Official, either through the OES Program or through the Alternative Program.

7. Deadlines and Enforcement.

- a. The Director may set deadlines for filing either a complete and acceptable Right of Entry Permit in the OES Program or an acceptable application for the Alternative Program.
- b. Properties that have fire ash and debris from the Fawn Fire and that have neither an approved Right of Entry Permit for the OES Program nor an approved application for the Alternative Program by the deadlines set by the Director are hereby declared a nuisance and health hazard.
- c. The Director may set deadlines for the completion of work in the Alternative Program. Properties that have fire ash and debris from the Fawn Fire after said deadlines are hereby declared a nuisance and health hazard.

- d. The Board's intent is to facilitate orderly remediation of a large-scale disaster. Nothing in these deadlines shall limit the authority of the County to abate hazards more quickly where required by exigent circumstances. Nothing in this ordinance or in these deadline limits the authority of the Shasta County Health Officer to require preventive measures as defined in Health and Safety Code section 101040.
- e. Enforcement and Abatement.
 - i. General Enforcement Action. When the Director determines that an activity is being performed in violation of this Ordinance, the Director may initiate an enforcement action using the process set forth in the Shasta County Code and may seek the imposition of costs and civil penalties pursuant to the Shasta County Code. Nothing in this provision is intended to prevent alternate enforcement mechanisms, including but not limited to, health officer orders pursuant to Health and Safety Code section 101040.
 - ii. Summary Abatement. Pursuant to the authority of Cal. Const., art. XI, Section 7; Health & Safety Code Section 101040, Government Code Section 25845, and the Shasta County Code, if the Director determines that a violation of this ordinance has created an emergency condition which seriously endangers the public health or safety, the County may abate the condition within the unincorporated territory of the County of Shasta. The costs shall be charged to the property owner(s) and the County may, at its option, recover the same in an administrative or civil action. Such charges shall be in addition to any penalty for a violation of this Ordinance.
 1. Pre-Abatement Notice. Unless emergency conditions preclude doing so, the Director shall issue a Summary Abatement Notice and Order with reasonable notice. The Notice and Order shall be mailed to the property owner(s) as listed on the last equalized tax roll. A summary of the Notice and Order shall be posted in a conspicuous location on the property to be abated at least 10 calendar days prior to the summary abatement action.
 2. 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 County Health Officer or his/her designee no later than 10 calendar days from the date of mailing of the Notice and Order. The written appeal shall state the basis for the appeal. The County Health Officer or his/her designee shall review the appeal and shall issue a written decision (the "Decision") no later than 10 calendar days after receipt. The Decision shall uphold, rescind or modify the determination of the Notice and Order. The Decision on the appeal shall be final. Failure to appeal within the time prescribed shall constitute a waiver of the right to contest the summary abatement.
 3. Post Abatement Notice. After the summary abatement is completed, the Director shall serve the property owner(s) with a post abatement notice that sets forth: (a) The actions taken by the County; (b) the reasons for the actions; (c) a statement of the costs, expenses, and attorneys' fees, if any, of the abatement and notice of the County's intent to collect

those costs; and (d) right to appeal the costs determination within ten calendar days of the notice. If the property owner is responsible for any costs, expenses or attorney's fees, such costs shall become a lien against the property and a Notice of Abatement Lien may be recorded.

4. Post Abatement Costs Appeal. If the property owner(s) or anyone with a legal interest in the property submits a timely costs appeal, the County shall schedule an administrative hearing on the matter and provide the appealing party with reasonable notice of the hearing.

The hearing officer shall conduct an administrative hearing where each party shall have the opportunity to present evidence and the County shall have the obligation to establish that the costs, including expenses and attorney's fees, if any, incurred for the summary abatement were necessary by a preponderance of the evidence. After the hearing, the hearing officer shall issue a written decision and order that shall be served upon the appealing party within 30 calendar days of the hearing unless extended by agreement of the parties.

- iii. 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.
- iv. Remedies Not Exclusive. The remedies identified are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided in this chapter shall be cumulative and not exclusive. Should action be initiated under the Enforcement & Abatement provisions of this Urgency Ordinance, the Enforcement & Abatement provisions of this Urgency Ordinance shall control over any provisions in the Shasta County Code.

SECTION 4.

Adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(3) regarding projects to maintain, repair, restore, or replace property or facilities damaged or destroyed as a result of a declared disaster and Section 21080(b)(4) regarding actions to mitigate or prevent an emergency, and CEQA Guidelines Section 15269(a) regarding maintaining, repairing, restoring, demolishing, or replacing property or facilities damaged or destroyed as a result of a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Section 8550 of the Government Code.

SECTION 5.

If any section, subsection, sentence, clause, phrase, or provision of this Ordinance or its application to any person or circumstance is held invalid for any reason, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Board

of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause, phrase, or provision thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or provisions be declared unconstitutional or invalid.

SECTION 6.

This Ordinance shall be and the same is hereby declared to be in full force and effect immediately upon its passage by a four-fifths (4/5) or greater vote. The Clerk shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this 14th day of December, 2021, by the Board of Supervisors of the County of Shasta by the following vote:

AYES: Supervisors Chimenti, Moty, Rickert, Jones, and Baugh
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None



JOE CHIMENTI, CHAIR
Board of Supervisors
County of Shasta
State of California

ATTEST:

MATTHEW P. PONTES
Clerk of the Board of Supervisors

By: 
Deputy