



## **ORDINANCE No. 2521**

### **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

#### **AN ORDINANCE AMENDING ARTICLE 7 OF CHAPTER IV OF THE NEVADA COUNTY GENERAL CODE REGARDING HAZARDOUS VEGETATION ABATEMENT**

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

#### SECTION I:

The Nevada County Board of Supervisors hereby finds and determines as follows:

A. Of paramount importance to the Nevada County Board of Supervisors and the citizens of Nevada County are the protection of lives and structures from the threat of wildfire, and the safety of fire and law enforcement during wildfires. The proper establishment of defensible space benefits property owners, public safety personnel and all citizens of Nevada County by dramatically increasing the likelihood that structures will survive a wildfire, provides for firefighter safety during a firestorm and generally aids in the protection of lives.

B. During annual fire seasons, Nevada County generally has a dry, arid climate conducive to wildfires. Nevada County also has a very diverse and complex landscape, which includes dry, brush-covered and grass-covered wildlands, mountainous areas, dense heavily forested properties and other terrains which are home to many sensitive plant and animal species. Many of the County's native and non-native plant species can be highly combustible during normal dry periods and have contributed to significant wildfires within the County. Difficult topography and terrain exacerbate the fire danger and the difficulty of fighting wildfires, and have resulted in catastrophic fire losses to life, property, and the environment.

C. With recent fire events, the community has expressed concern about fire safety. This Ordinance amendment continues to provide mechanisms for inspections, notices, enforcement, and vegetation abatement. To allow time for an effective defensible space inspection period to occur prior to the start of fire season an update to the vegetation abatement ordinance is necessary.

#### SECTION II:

Article 7 of Chapter IV of the Nevada County General Code is hereby amended to read as shown in Exhibit A attached hereto and incorporated herein by this reference.

#### SECTION III:

The County finds that this Article is not subject to the California Environmental Quality Act (CEQA) pursuant to the following categorical exemptions: Section 15304 (minor public or private alterations in the condition of land, water and/or vegetation which do not involve the

removal of healthy, mature, scenic trees except for forestry and agricultural purposes, including but not limited to specified fuels management activities within 100 feet of a dwelling), 15301 (maintenance or minor alteration of topographical features, including existing landscaping and native growth), 15307 (actions taken as authorized by local ordinance to assure the protection of natural resources), 15308 (actions taken as authorized by local ordinance to assure the protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

SECTION IV:

Severability. If any provision of this Article or the application thereof to any person or circumstance is held invalid, the remainder of this Article, including the application of such part or provision to other circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one (1) or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be held unconstitutional, invalid or unenforceable.

SECTION V:

This Ordinance shall be passed and adopted immediately after notice and a public hearing as required by statute, and shall take effect and be in force at the expiration of thirty (30) days from and after its passage, and shall become operative on the 18th day of May, 2023, and, before the expiration of fifteen (15) days after its passage a summary shall be published once, with the names of the Supervisors voting for and against same in the Union, a newspaper of general circulation printed and published in the County of Nevada.

PASSED AND ADOPTED by a majority vote of the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 18<sup>th</sup> day of April, 2023, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward C. Scofield, Lisa Swarhout, Susan Hoek and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By: 

  
Edward C. Scofield, Chair

4/18/2023 cc: Union\*  
COB\*  
CoCo\*  
OES\*

**EXHIBIT A**

\* \* \*

**Sec. G-IV 7.1 Findings**

- A. The Nevada County Board of Supervisors supports the improved parcel defensible space obligations found in Cal. Pub. Res. Code § 4291 and as adopted in the County of Nevada's local amendments to the California Building Standards Code. However, PRC 4291 does not address hazardous vegetation and combustible material abatement beyond the property line of a parcel on which a protected building or structure is located or the potential impact that hazardous vegetation beyond a property line could have on an adjacent improved parcel. This Article extends and supplements state law, utilizing the same treatment requirements as provided by PRC 4291, to ensure defensible space is maintained on parcels adjacent to improved parcels and along emergency access and evacuation routes and fire access easements so that landowners benefit from defensible space on adjacent parcels where appropriate.
- B. During the fire season, County of Nevada generally has a dry, arid climate conducive to wildfires. Nevada County also has a very diverse and complex landscape, which includes dry, brush-covered and grass- covered wildlands, mountainous areas, dense heavily forested properties and other terrains which are home to many sensitive plant and animal species. Many of the County's native and non-native plant species can be highly combustible during normal dry periods and have contributed to significant wildfires within the County. Difficult topography and terrain exacerbate the fire danger and the difficulty of fighting wildfires, and have resulted in catastrophic fire losses to life, property and the environment.
- C. Of paramount importance to the Nevada County Board of Supervisors and the citizens of Nevada County are the protection of lives and structures from the threat of wildfire, and the safety of firefighters and law enforcement during wildfires. The proper establishment of defensible space benefits property owners, public safety personnel and all citizens of the County of Nevada by dramatically increasing the likelihood that structures will survive a wildfire, provides for firefighter safety during a firestorm and generally aids in the protection of lives.
- D. The purpose of this Article is to provide for the removal of hazardous vegetation and combustible material from around the exterior of improvements situated in the unincorporated areas of the County to reduce the potential for fire and to promote the public health, safety and welfare of the community. It is the further purpose of this Article to establish a hazardous vegetation reduction program that provides a process to identify and abate hazardous vegetation on parcels and protects the lives and property of the citizens of the County of Nevada, while at the same time protecting sensitive plant and animal species and protecting against significant erosion and sedimentation. The removal of hazardous vegetation in the areas subject to this Article is recognized as an essential action homeowners and property owners can take to increase the chances that homes, structures and other property will survive a wildfire, while protecting the natural environment. Regular fuels management and modifications consistent with the requirements of this Article are necessary to ensure adequate defensible space is achieved. The defensible space required by this Article is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structures, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to structures on adjacent improved parcels.
- E. The Nevada County Board of Supervisors does not provide fire protection or suppression services within the County. Such services within the County of Nevada are provided by CAL FIRE and numerous independent local fire protection districts, the United States Forest

Service, and the Bureau of Land Management.

- F. This Article is enacted by ordinance pursuant to the powers granted to the Board of Supervisors concerning the abatement of hazardous vegetation and combustible material as contained in Cal. Health & Safety Code §§ 14930 and 14931. Additional authority for the abatement of nuisances, establishment of procedures, and establishment of real property liens through the Board of Supervisors is provided in Cal. Gov't Code §§ 25845 and 25845.5. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

### **Sec. G-IV 7.2 Application of Article**

This Article shall apply to:

- A. This Article shall be applicable to all unincorporated areas of the county.
- B. All Parcels adjacent to Improved Parcels where: (a) the owner/occupant of the Improved Parcel is unable to obtain the required Defensible Space, as delineated in adopted County Codes; and (b) the current condition of fuels on the subject Parcel is assessed by the Public Official as a hazardous fire condition. The owner of the subject Parcel shall provide the fuel modifications to meet the Defensible Space requirements of the adjacent Improved Parcel subject to applicable law including the finding that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite a Structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the Structure.
- C. All Parcels where:
1. The parcel is adjacent to a roadway which is determined by the Public Official to be necessary for the safe ingress and egress to the area served by the roadway or fire access easement; and
  2. The current condition of fuels on the adjacent Parcel is assessed by the Public Official as a hazardous fire condition.
- D. This Article may be enforced within those unincorporated areas by independent fire districts having governing bodies other than the Board, provided the governing body acts to enforce this Article by adopting an appropriate resolution authorizing the fire chief of the district to enforce the requirements of this Article.
- E. If any part of this Article is in conflict with any other part of this code the more restrictive provision(s) shall control. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2381. (06/10/2014); Ord. 2380. (05/13/2014))

### **Sec. G-IV 7.3 Definitions**

As used in this Article, the following definitions shall apply:

- A. "Abate" or "Abatement" shall mean an act used to remove, destroy, eliminate, seize, impound, or any action taken to mitigate a public nuisance.
- B. "Abatement costs" shall mean any and all costs incurred by the County of Nevada or a local independent fire district to enforce this Article and to abate the hazardous vegetation or combustible material on any property pursuant to this Article, including physical abatement costs, administration fees and any additional actual costs incurred for the abatement proceeding(s), including attorney's fees, if applicable.

- C. "Biomass" shall mean all green waste material generated during the fuels treatment project. Biomass includes, without limitation, all grass, weeds, vegetation and tree trimmings.
- D. "Board of Supervisors" or "Board" shall mean the Board of Supervisors for the County of Nevada.
- E. "Citation" or "Administrative Citation" shall mean a civil citation issued pursuant to the Article stating there has been a violation of one or more provisions and setting the amount of the civil penalty to be paid by the responsible party.
- F. "Combustible material" shall mean all rubbish, litter or material of any kind other than hazardous vegetation that is combustible and endangers the public safety by creating a fire hazard.
- G. "County" shall mean the County of Nevada, a political subdivision of the State of California.
- H. "Days" shall mean calendar days.
- I. "Defensible space" means that area described in Cal. Pub. Res. Code § 4291 and as otherwise described in this Code, which is adjacent to each side of a building or Structure and must be cleared of brush, Hazardous Vegetation, or Combustible Material, as set forth in this Code.
- J. "Ember Resistant Zone" means an area free of combustible material, hazardous vegetation, or vegetative debris located close to a Structure that can result in either radiant heat or a direct flame contact exposure to the Structure.
- K. "Fire hazard" shall mean any condition, arrangement, act or omission which:
  - 1. Increases, or may cause an increase of hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire; or
  - 2. May obstruct, delay, hinder or interfere with the operations of a fire department or the egress of occupants in the event of fire.
- L. "Fuel Modification Area" shall mean a strip of land in which the following fuel reduction activities are required to occur:
  - 1. Cut and remove all weeds and grasses down to four (4) inches or lower;
  - 2. Prune and remove "ladder fuels" up to ten (10) feet or higher;
  - 3. Remove all dead or decaying trees and tree limbs; and
  - 4. Perform any other fire protection or maintenance activities within the Fuel Modification Area(s) consistent with the standards and requirements contained in Cal. Pub. Res. Code § 4290 or as required by a Public Official.
- M. "Hazardous vegetation" shall mean any vegetation that is combustible and endangers the public safety by creating a fire hazard. Hazardous vegetation includes material that in its natural state will readily ignite, burn and transmit fire from native or landscape plants to any Structure or other vegetation. Hazardous vegetation includes, but is not limited to, dry grass and leaves, brush, weeds, green waste, dead or dying trees, low-hanging branches, litter or other flammable vegetation that create a fire hazard. Hazardous vegetation shall not include a commercial agricultural crop that is being actively grown and managed by the property owner or their legal tenant.
- N. "Improved Parcel" shall mean a portion of real property on which a Structure is located, the area of which is determined by the Assessor 's maps and records and which may be identified

by an Assessor's Parcel Number.

- O. "Ladder fuels" shall mean fuels that can carry a fire vertically between or within Combustible Material or Hazardous Vegetation.
- P. "Public Official" shall include the County of Nevada Fire Marshal, the Fire Chief of any local fire protection district located in whole or in part within the County of Nevada, company officers and trained prevention staff as may be designated by a Fire Chief to enforce the provisions of this Article, Office of Emergency Services staff. Public Officials include County Code Compliance officers.
- Q. "Parcel" shall mean a portion of real property of any size, the area of which is determined by the Assessor's maps and records and which may be identified by an Assessor's Parcel Number.
- R. "PRC 4291" shall mean California Public Resources Code section 4291, and any amendments thereto.
- S. "Responsible Party" shall mean an individual, association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, firm, organization, partnership, joint venture or any other person or entity whatsoever whose act or omission caused or contributed to a violation of this Article.
- T. "Structure" shall mean any structure with some sort of foundation such as concrete or piers and/or vehicles meeting at least one of the following:
- Is occupied and used as a business or residence three months of the year or more in any combination of days;
  - Has one or more utilities connected to it, including but not limited to, natural gas, propane, or electricity. This includes any means of connection, permitted or otherwise;
  - Has three or more walls, and a roof, and is greater than 119 square feet in size; or
  - Is used for mechanical processing.
- The definition of a structure shall not include recreational vehicles with tires in good repair, not standing on leveling jacks or posts, and not otherwise meeting the above criteria.
- U. "Unimproved parcel" shall mean a portion of land of any size, the area of which is determined by the Assessor's maps and records and may be identified by an Assessor's Parcel Number (APN) upon which no Structure is located. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

**Sec. G-IV 7.4 Nuisance Declared; Duty to Abate Hazardous Vegetation and Combustible Material**

- A. Hazardous Vegetation and Combustible Materials within one hundred (100') feet of a Structure (or greater as determined by the Public Official) or along roadways that serve as primary ingress and egress routes, are hereby declared to be a public nuisance that may be abated in accordance with this Article, and by any other means available by law.
- B. It shall be the duty of every owner, occupant, and person in control of any Parcel or any

interest therein, which is located in the unincorporated territory of the County of Nevada to abate therefrom, and from all sidewalks and roadways on or immediately adjacent thereto (except for those roads accepted into the County maintained system), all Combustible Material, and Hazardous Vegetation which constitutes a fire hazard and public nuisance which may endanger or damage neighboring property or forestland.

- C. The requirements of this Section shall be satisfied if the Parcel and all sidewalks and roadways on or immediately adjacent thereto (except for those roads accepted into the County maintained system) are cleared in accordance with a Notice to Abate by cutting brush, trimming trees, thinning trees, disking, mowing, plowing or any other method described in a Notice to Abate, or, if no Notice to Abate is issued, by removing all Hazardous Vegetation and Combustible Materials as follows:
1. Maintain a Defensible Space of one hundred (100') feet from each side and from the front and rear of a Structure, but not beyond the property line except as provided by law. The amount of fuel modification necessary may consider the flammability of the Structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the Structure. The intensity of fuels management may vary within the one hundred (100') foot perimeter of a Structure, the most intense being with the first thirty (30') feet around a Structure. Consistent with fuels management objectives, steps should be taken to minimize erosion;
  2. Maintain a one hundred (100') foot wide area of land around Structure(s) located on an adjacent Improved Parcel (some or all of this Defensible Space requirement may be required on an adjacent Parcel depending upon the location of the Structure on the Improved Parcel);
  3. Maintain free of Ladder Fuels a minimum of a 10-foot wide strip of land beyond the edge of the driving surface including the shoulder of the roadway serving as primary ingress and egress to the parcel, or the primary ingress and egress of other parcels, to a height of 15 feet along the boundary of a Parcel;
  4. Remove the portion of a tree that extends within 10 feet of the outline of a chimney, stovepipe, or roofline of all Structures;
  5. Climbing vines must be removed from trees and Structures within the 100-foot defensible space zone around Structure(s);
  6. Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood;
  7. Maintain the roof of a Structure free of leaves, needles, or other vegetative materials;
  8. Maintain the Parcel free of ladder fuels within the one hundred (100') foot Defensible Space area around Structure(s).
  9. Provide a minimum of 10 feet clearance of all combustible material and hazardous vegetation surrounding propane tanks, generators, privately owned power poles, and fuel storage tanks.
  10. Maintain a five-foot ember-resistant zone around Structures and underneath decks, stairs, porches or other combustible material attached to Structures.
  11. Improved and Unimproved parcels less than or equal to one acre in size may be treated



as a Fuel Modification Area for the entirety of the parcel within the discretion of the public official.

- D. The Public Official may mandate additional fuels management of an area more or less than the above- referenced widths or height on a Parcel and all sidewalks and roadways on or immediately adjacent thereto (except for those roads accepted into the County maintained system), for the protection of public health, safety or welfare or the environment if the Public Official finds that the additional fuels management is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite a Structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to a Structure on an Improved Parcel. The Public Official shall determine appropriate defensible space distances based upon a visual inspection of the Parcel and shall consider all factors that place the Structure(s) on the adjacent Improved Parcel at risk from an approaching fire. These factors shall include, but are not limited to, local weather conditions, fuel type(s), topography, and the environment where the adjacent Parcel or the Structure(s) is located;
- E. When a Structure is less than one hundred feet from a property line and Combustible Material or Hazardous Vegetation on an adjacent Parcel presents a fire hazard for the Structure the owner of the Parcel where the fire hazard exists shall be responsible for clearing the area on that owner's land which is within one hundred feet of the Structure and is needed to provide the necessary fire protection in the manner and to the extent required by the Public Official. The owner, occupant or other person in control of the Structure shall be responsible for fifty (50) percent of the abatement cost on the adjacent Parcel if the owner of said adjacent Parcel consents in writing to the abatement. If the owner of the Structure is not willing to pay the (50) percent abatement cost on the adjacent property, no further action will be taken. In the event the adjacent parcel owner is not willing to participate in the 50% cost share they may be held responsible for 100% of the abatement costs on their property should the County proceed with abatement.
- F. Where the terrain, condition or environment on the adjacent Parcel is such that it cannot or should not be disked or mowed, the Public Official may require, or authorize, other means of hazardous vegetation or combustible material removal.
- G. No Parcel owner may allow any portion of vegetation on his or her property to interfere with street and emergency vehicle access, regardless of whether the access is along a public street or along a private residential access road. The Public Official may provide written notice to the property owner requiring vegetation to be trimmed for a specified additional distance when the Public Official determines the vegetation would otherwise interfere with street or emergency vehicle access.
  - 1. If the Parcel Owner fails to maintain these clearance requirements, the Public Official may abate this nuisance without further notice and at the Parcel Owner's expense. This subsection shall not apply to cultivated groundcover such as green grass, ivy, succulents, or similar plants used as groundcovers, provided they do not constitute a fire hazard.
  - 2. Pursuant to Cal. Health & Safety Code §14930 and Cal. Gov't Code §25845, as amended, a Public Official may summarily abate weeds or hazardous growth on private property that in any way hinders emergency access and may charge the Parcel Owner for the costs of the abatement. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

**Sec. G-IV 7.5 Enforcement**

- A. The Public Official shall be the primary authority for enforcement of this Article and shall administer and enforce the requirements as provided in this Article.
- B. The Public Official shall have the following responsibilities and authorities in the enforcement and administration of the provisions of this Article:
  - 1. Receive and respond to complaints through planning and conducting inspections within the limits of available resources.
  - 2. Review the requirements of this Article with property owners and/or occupants found to be out of compliance, to support voluntary compliance with the provisions of this Article.
  - 3. The determination for appropriate clearance distances will be made based upon a visual inspection of the Parcel and shall consider all factors that place the Parcel or adjoining Structure(s) at risk from an approaching fire. These factors shall include local weather conditions, fuel type(s), topography, and the environment where the Parcel or adjoining Structure(s) is located.
  - 4. Prepare and issue Notices to Abate, and such other notices as may be necessary to encourage voluntary compliance with the provisions of this Article.
  - 5. Carry out all enforcement and abatement proceedings as described in this Article.
  - 6. Conduct post-notice/pre-abatement inspections and documentation and conduct post-abatement inspections and documentation.
  - 7. The Public Official may, at their discretion, issue an administrative citation for violations of this Article, in lieu of abating a Parcel.
  - 8. Within local fire district boundaries, inspections established by this Article may be performed by designated fire district personnel.
  - 9. Conduct abatements and handle accounting, assessment and collection of costs, including recordation of liens.
- C. Nothing herein shall limit the ability of a Public Official, to enforce the provisions of this Article, from making initial inspections or independent compliance checks without first receiving a complaint. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

**Sec. G-IV 7.6 Notice to Abate**

Whenever the Public Official determines, based on a planned inspection, that a Parcel is in violation of this Article and requires abatement, the Public Official shall send the owner of record for the Parcel a Notice to Abate. The Notice to Abate shall be in writing and shall:

- A. Identify the owner(s) of the Parcel upon which the violation exists, as named in the records of the County Assessor, and identify the occupant(s) or person in control of the property, if other than the owner(s) and if known or reasonably identifiable.
- B. Describe the location of the Parcel by its commonly used street address, if any; and identify the Parcel by reference to the Assessor's Parcel Number, if any.
- C. Briefly describe the violation(s) on the Parcel and identify the Fuel Modification Area(s) which are required to abate the violation(s) and bring the Parcel into compliance with this Article.

- D. Contain a statement that the legal owner or occupant is required to correct the violation and allow at least thirty (30) calendar days from the date the Notice is served for the work to be completed.
- E. Outline the appeal process as provided in this Article.
- F. Contain a statement that, unless the legal owner or occupant abates the violation(s) and brings the Parcel into compliance with this Article or seeks an appeal within the time prescribed in the Notice, the violation may be abated at the legal owner and/or occupant's expense. It shall also state that the abatement costs, including administrative costs, may be made a special assessment added to the County assessment roll and become a lien on the real property, or be placed on the unsecured tax roll.
- G. Contain a statement that this Article provides that the Parcel owner and any person in possession of the Parcel upon which the Hazardous Vegetation or Combustible Material is found to exist shall be jointly and severally liable for all abatement costs incurred by the County. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

#### **Sec. G-IV 7.7 Service of Notices**

All notices required by this Article shall be served in the following manner:

- A. By delivering it personally to the legal owner(s) of the Parcel(s) and to the occupant(s), or by mailing it by first-class United States mail to the legal owner(s) of the Parcel at their address as it appears on the last equalized assessment roll and to any non-owner occupant(s), if known, at the street address for the Parcel.
  - 1. If the records of the Nevada County Assessor show that the ownership has changed since the last equalized assessment roll was completed, the Notice shall also be mailed to the new owner(s) at his or her address as it appears in said records; or
  - 2. In the event that, after reasonable effort, the Public Official is unable to serve the notice as set forth above, service shall be accomplished by posting copies of the notice along the frontage of the subject Parcel(s), and at such other locations on the Parcel(s) as are reasonably likely to provide notice to the owner(s) and any person known by the Public Official to be in possession of the Parcel(s). At least two (2) copies of the notice shall be posted on a Parcel pursuant to this Section.
- B. The date of service for the notice is deemed to be the date of personal delivery or posting, or three (3) days after deposit in the U.S. mail. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

#### **Sec. G-IV 7.8 Enforcement Process**

- A. Not less than thirty (30) days after the Notice to Abate is served, the Public Official shall conduct a post-notice/pre-abatement inspection on the Parcel and, if the required Fuel Modification Area(s) have not been performed, the Public Official may require that the required Fuel Modification Area(s) be completed by the County, and the cost of enforcement and the abatement with administrative fee be attached to the property tax as a lien.
- B. For Parcels owned or controlled by public agencies, the Public Official or designee may provide a Notice of Nuisance and include the project area in the local community wildfire protection plan and request the hazardous vegetation or combustible material be abated in

accordance with the Healthy Forest Restoration Act of 2003 (H.R. 1904) or the PRC. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26 /2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

#### **Sec. G-IV 7.9 Appeals Process**

- A. Any person upon whom a Notice to Abate has been served may appeal the determination of the Public Official by delivering a written request for hearing to the Clerk of the Board's office within ten (10) calendar days of the date of the Notice to Abate, together with payment of any appeal fee as may be duly adopted by the Board of Supervisors. The written request shall include a statement of all facts supporting the appeal. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived.
- B. If a timely appeal is filed with the Clerk of the Board, no further enforcement action will be taken until after the Hazardous Vegetation Abatement Hearing Body has made a determination on the appeal. In the absence of a timely filed written request that complies fully with the requirements of this section, the determination of the Public Official as set forth in the Notice to Abate shall become final and conclusive on the thirty-first (31st) day following service of the Notice.
- C. The hearing on the appeal shall occur not more than thirty (30) days after receipt of a timely appeal and shall provide written notice of the hearing date and time to the appellant at least ten (10) days prior to the date of the hearing, unless such time limits are waived in writing by the Public Official and the appellant. Continuances of the hearing will only be granted on a showing of good cause. Unavailability of an attorney does not constitute "good cause." (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2381. (06/10/2014); Ord. 2380. (05/13/2014))

#### **Sec. G-IV 7.10 Hazardous Vegetation Abatement Hearing Body**

A Hazardous Vegetation Abatement Hearing Body is hereby established to hear appeals on any Notice to Abate issued by a Public Official. The Hazardous Vegetation Abatement Hearing Body shall consist of the County Fire Marshal or designee, the County's Emergency Services Director or designee, and a Fire Chief from a local fire protection district selected by the Nevada County Fire Chiefs' Association; provided, however, that if the Notice to Abate being appealed was issued by the County Fire Marshal or designee, then the Hazardous Vegetation Abatement Hearing Body shall consist of the County's Emergency Services Director or designee, and two (2) Fire Chiefs from a local fire protection district selected by the Emergency Services Director. The Hazardous Vegetation Abatement Hearing Body shall have the authority to amend, dismiss, or uphold a Notice to Abate by a majority vote. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2381. (06/10/2014); Ord. 2380. (05/13/2014))

#### **Sec. G-IV 7.11 Abatement by Public Official**

- A. If, at the end of the time allowed for compliance in the original Notice to Abate, or as extended in cases of appeal, or as specified by the Hazardous Vegetation Abatement Hearing Body, compliance has not been accomplished, the Public Official issuing the notice, or the agency of which they are an officer, may pursue a lawful abatement. The Public Official may proceed with the abatement of the Hazardous Vegetation or Combustible Material and provide that it be removed by Public Official or by employees of the agency or by a private contractor selected by the agency in accordance with applicable statutes. The cost of such

removal and enforcement accompanied by a reasonable administrative charge may be imposed as an assessment in the County tax roll.

- B. The costs so assessed shall be limited to the actual costs incurred by the Public Official and the County in enforcing the violation and abatement upon the subject Parcel. Such costs may include, but are not limited to, the costs of all prior inspections, appeal hearings and other enforcement actions leading up to the abatement, payments to the contractor, costs of site inspection, costs of notice, boundary determination and measurement, costs for material disposal and all clerical, personnel, consultant, and other administrative costs. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

#### **Sec. G-IV 7.12 Abatement Penalties and Costs**

Upon expiration of the time limits and appeal processes established by this Article, the Public Official shall acquire jurisdiction to abate the nuisance, and may carry out the following as appropriate:

- A. Disposal of Materials. Any materials abated may be disposed of as a part of the removal process to include, as appropriate, recycling or as a part of a Biomass utilization program.
- B. Cost Accounting, Receipts and Notice of Assessment. The Public Official shall keep an itemized account of the costs of enforcing the provisions of this Article, and of the proceeds of the sale of any materials connected therewith. Upon completion of the abatement, the Public Official shall prepare a notice to be served on the affected Parcel(s) as provided in "Service of Notice" in this Code and specifying:
  1. The work done (supported by before and after pictures);
  2. An itemized account of the costs and receipts of performing the work;
  3. An address, legal description, or other description sufficient to identify the Parcel that was subject to abatement and/or lien;
  4. The amount of the assessment proposed to be levied against the Parcel(s), or the amount to be refunded, if any, due to excess proceeds over the expenses;
  5. The time and place where the Public Official will submit the account to the Hazardous Vegetation Abatement Hearing Body for confirmation. The time and place specified shall be no less than fifteen (15) days after service of the notice;
  6. A statement that the Hazardous Vegetation Abatement Hearing Body will hear and consider objections and protests to the account and proposed assessment or refund. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/14))

#### **Sec. G-IV 7.13 Hearing on Proposed Lien**

At the time and place fixed in the notice, the Hazardous Vegetation Abatement Hearing Body will hear and consider the account and proposed assessment, together with objections and protests thereto. At the conclusion of the hearing, the Hazardous Vegetation Abatement Hearing Body may make such modifications and revisions of the proposed account and assessment as deemed just and may order the account and proposed assessment confirmed or denied, in whole or in part, or as modified and revised, and shall issue a written recommendation regarding the proposed lien to the Board of Supervisors. The Board of Supervisors may summarily adopt the recommendation

of the Hazardous Vegetation Abatement Hearing Body without further notice of hearing or may set the matter for a *de nova* hearing in accordance with Cal. Gov't Code § 25845(h). The determination of the Board of Supervisors as to all matters contained therein shall be final and conclusive. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019))

**Sec. G-IV 7.14 Notice of Lien; Recordation of Lien; Collection of Lien**

- A. Upon confirmation of an assessment by the Board of Supervisors, the Public Official shall notify the affected Parcel owners by certified mail, return receipt requested, of the amount of the pending lien confirmed by the Board of Supervisors, and advise them that they may pay the account in full within thirty (30) days in order to avoid the lien being recorded against the Parcel(s). If the lien amount is not paid by the date stated in the letter, the Public Official shall prepare and have recorded a Notice of Lien with the Nevada County Clerk-Recorder's office. The Notice of Lien shall contain:
1. A legal description, address and/or other description sufficient to identify the Parcel(s) to be liened;
  2. A description of the proceeding under which the special assessment was made, including the order of the Board of Supervisors under this code confirming the assessment;
  3. The amount of the assessment;
  4. A claim of lien upon the described Parcel(s).
- B. Upon the recordation of a Notice of Lien, the amount claimed shall constitute a lien upon the described Parcel(s), pursuant to Cal. Gov't Code § 25845. Such lien shall be at parity with the liens of State and County taxes, to the extent allowed by applicable law.
- C. After recordation, the Notice of Lien shall be delivered to the County Auditor-Controller, who shall enter the amount of the lien on the assessment roll as a special assessment. The amount set forth shall be subject to the same penalties and interest as ordinary County taxes. All laws applicable to the levy, collection and enforcement of County taxes are hereby made applicable to such assessment to the extent allowed by applicable law. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019))

**Sec. G-IV 7.15 Violations**

Pursuant to Nevada County Code, it shall be an infraction or misdemeanor for any person, natural or corporate, owning, possessing, occupying, or controlling any lands or premises to fail to perform the duty set forth in this Article, or to fail to comply with the requirements in the Notice to Abate as specified in this Article, or to interfere with the performance of the duties herein specified for any of the Public Officials named in this part, or to refuse to allow any such Public Official, or approved private contractors, to enter upon any Parcel for the purpose of lawfully inspecting and/or as ordered, removing any Hazardous Vegetation and Combustible Material hereinbefore described as a public nuisance, or to interfere in any manner whatever with the Public Officials or contractors in the work of a lawful inspection and ordered removal herein provided. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13 /2014))

## **Sec. G-IV 7.16 Penalties for Violations**

- A. This Article is a local safety code. Every violation of this Article which is determined to be an infraction or an administrative violation shall be punishable in accordance with Cal. Gov't Code §§ 53069.4 and 25132, as may be amended from time to time.
- B. Any person violating or failing to comply with the provisions of this Article shall be guilty of a misdemeanor, except that when the District Attorney or County Counsel shall elect to charge such violation as an infraction, it shall be an infraction. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Article is committed, continued or permitted by such person and shall be punishable accordingly.
- C. Notwithstanding any other law, a violation of local building and safety codes that is an infraction is punishable under Cal. Gov't Code § 25132, as may be amended from time to time, by the following:
  - 1. A fine not exceeding one hundred thirty dollars (\$130) for a first violation.
  - 2. A fine not exceeding seven hundred dollars (\$700) for a second violation of the same ordinance within one year of the first violation.
  - 3. A fine not exceeding one thousand three hundred dollars (\$1,300) for each additional violation of the same ordinance within one year of the first violation.
  - 4. Upon a subsequent violation within a two (2) year period the violator shall be liable to the County for treble the abatement costs, including, but not limited to, costs incurred by local independent fire districts, in accordance with Government Code Section 25845.5.
  - 5. Unless a violation creates an immediate danger to health and safety, a Responsible Party shall be provided with notice and an opportunity to correct the violation prior to the imposition of the administrative penalty.
  - 6. Acts, omissions, or conditions in violation of this Article that continue to exist, or occur on more than one day, constitute separate violations on each day. Fines may be levied
- D. Pursuant to Cal. Gov't Code § 25132 (f), if the County levies a fine pursuant to subsections (b) or (c) of section "C," governing "Penalties for Violations," the County shall establish a process for granting a hardship waiver to reduce the amount of the fine upon a showing by the responsible party that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.
- E. Any person convicted of a misdemeanor under the provisions of this Code shall be punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.
- F. The administrative penalty, or any portion thereof, for a first-time violation which has become effective following the corrective period, may be waived by the Public Official in their sole discretion only if the Responsible Party corrects the violation in accordance with all conditions established by the Public Official.
- G. If after a third inspection a Parcel owner continues to be noncompliant, the Public Official may issue a noncompliance citation. This can be waived by the Public Official if the Parcel owner is cooperating, performing best efforts, and mitigation progress is visible.
- H. Whenever a notice has been issued, the Public Official may record a notice of

noncompliance with the office of the County Recorder of Nevada County and shall notify the Parcel owner of such action. The notice of noncompliance shall describe the Parcel, shall set forth the noncomplying conditions, and shall state that any abatement costs incurred by the County as a result of the violations of this Article may be specially assessed as a lien on the property and that the Parcel owner has been so notified.

- I. Alternatively, the Public Official may prosecute violations of this Article by civil action, including, without limitation, issuance of administrative citations. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

#### **Sec. G-IV 7.17 Authority to Promulgate Reasonable Rules and Regulations**

The Board of Supervisors reserves its right to adopt reasonable rules, regulations, and resolutions consistent with this Article to enforce, interpret, and carry out the provisions of this Article. Such rules, regulations and resolutions may vary between different areas within the County of Nevada. (Ord. 2477. (05/12/2020); Ord. 2463. (03/26/2019); Ord. 2411. (05/10/2016); Ord. 2380. (05/13/2014))

#### **Sec. G-IV 7.18 No Duty to Enforce**

Nothing in this Article shall be construed as imposing on a Public Official or the County of Nevada any duty to issue a Notice to Abate, nor to abate any Hazardous Vegetation or Combustible Material within a Parcel's Defensible Space, nor to take any other action with regard to any unlawful Hazardous Vegetation or Combustible Material, and neither the Public Official nor the County shall be held liable for failure to issue a Notice to Abate any unlawful Hazardous Vegetation or Combustible Material, nor for failure to abate any unlawful Hazardous Vegetation or Combustible Material, nor for failure to take any other action with regard to any unlawful Hazardous Vegetation or Combustible Material. (Ord. 2477. (05/12/2020))