



# ORDINANCE No. 2496

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

### AN URGENCY ORDINANCE ADDING ARTICLE 4 OF CHAPTER III OF THE NEVADA COUNTY ADMINISTRATIVE CODE FOR THE NEVADA COUNTY RIVER FIRE DISASTER RECOVERY (4/5 AFFIRMATIVE VOTE REQUIRED)

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

#### SECTION I:

#### **Findings and Declarations**

- A. Pursuant to Article XI, section 7 of the California Constitution, the County of Nevada ("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, to provide for the immediate preservation of the public peace, safety, health, or safety, the County may adopt an urgency ordinance that takes effect immediately.
- 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 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 30 days and proclaim the termination of the Local Health Emergency at the earliest possible date that conditions warrant the termination.
- D. On August 4, 2021 in the early afternoon a wildfire commenced near the Bear River Campground, immediately west of Colfax, referred to as the "River Fire." The River Fire has consumed over 2400 acres, and 53 homes, 1 commercial building, 10 mobile homes, 3 motor homes, and 31 structures have been either destroyed or severely damaged.
- E. On August 5, 2021, the Assistant Director of Emergency Services for the County of Nevada proclaimed the existence of a local emergency as a result of the River Fire and the associated threat to the health and safety of thousands of residents living in and around the fire zone.
- F. On August 6, 2021 the Deputy Public Health Officer proclaimed a local health emergency due to the public health threat caused by hazardous waste and debris from the River Fire.
- G. On August 10, 2021 the Board of Supervisors adopted Resolution 21-364 ratifying the Assistant Director of Emergency Services' proclamation the existence of a local emergency and adopted Resolution 21-365 ratifying the Deputy Public Health Officer's proclamation of a local health emergency.
- H. On August 5, 2021 pursuant to Government Code section 8625, California Governor Newsom declared a state of emergency in the State of California, and in the County of Nevada, due to the fire(s) around the State, including the River Fire in the County of Nevada.
- I. On August 24, 2021, President Biden declared a major disaster in the State of California which included the River Fire.

- J. In destroying private structures, the River 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 exists 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, and household hazardous waste such as paint, gasoline, cleaning products, pesticides, and other chemicals that may have burned in the fire also produces 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, and 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 River 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 River Fire, including contamination of the Bear River 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 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 of supervisors.
- 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 River 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 River Fire.

## SECTION II:

Article 4 of Chapter III of the Nevada County Administrative Code is hereby added to read as shown in Exhibit A attached hereto and incorporated by reference.

## SECTION III:

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 IV:

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 River Fire or the completion of all enforcement matters related to this Ordinance, if any. A fair and accurate summary of this Ordinance shall be published once before the expiration of fifteen (15) days after

said passage, with the names of the Supervisors voting for or against the same, in the Union, . A certified copy of the full text of this Ordinance shall be posted in the Union, along with the names of those Supervisors voting for and against the Ordinance.

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 14th day of September, 2021, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller and Hardy Bullock.

Noes: None.

Absent: Susan K. Hoek.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By: \_\_\_\_\_



\_\_\_\_\_  
Dan Miller, Chair



9/14/2021 cc: GIS\*  
Union\*  
COB\*  
CoCo\*  
QC\*  
EH\*

## EXHIBIT A

### ARTICLE 4 – NEVADA COUNTY RIVER FIRE DISASTER RECOVERY

#### Section A-III 4.1 Definitions

- A. "Alternative Program." For purposes of this Article, the term "Alternative Program" shall mean the requirements for inspections, clean up and disposal established by the County for property owners that opt out of or are ineligible for a State Program.
- B. "Board." The term "Board" means the Nevada County Board of Supervisors.
- C. "County." The term "County" shall be defined as the County of .
- D. "County Building Official." The term "County Building Official" means Director of Building or his/her designee.
- E. "County Health Officer." The term "County Health Officer" means the Nevada County Public Health Officer or his/her designee.
- F. "Director." The term "Director" shall be defined as the Director of Environmental Health, his/her designee, or any person as designated by the Chief Executive Officer of the County.
- G. "Fire Debris." The term "Fire Debris" means ash or other debris, resulting from the River Fire that is intended to be discarded but does not include structures or portions thereof.
- H. "Hazard Trees." The term "Hazard Trees" means wildfire-damaged trees that have been so damaged by the fires 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 of falling onto a public right of way or a public improved property.
- I. "Removal of Fire Debris and Hazard Tree." The term "Removal of Fire Debris and Hazard Trees" as used in this article includes all cleanup of debris from structures and Hazard Trees resulting from the River 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.
- J. "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 State Debris and Hazard Tree Removal Program) approved by the California Office of Emergency Services for use in the cleanup after the River Fire.
- K. "State Debris and Hazard Tree Removal Program" or "State Program" means the Fire Debris and Hazard Trees removal program operated by the California Office of Emergency Services ("Cal OES") for the River Fire area in conjunction with other State and Federal agencies and involving the removal and disposal of Fire Debris and Hazard Trees on eligible private property at no cost to the property owner.

#### Section A-III 4.2 Prohibition on Removal of Fire Debris from Private Property

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. 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 A-III 4.3 Removal of Fire Debris and Hazard Trees

- A. State Program. Property owners that, pursuant to the rules established by the State 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 State Program, may elect to use the State 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 to protect public health and safety, and to the extent any such extensions are approved by the State Program.

B. Alternative Program.

- i. Administrative. 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 State 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 adopt an application that discloses the appropriate licensed contractors and appropriate plans to meet such procedures and requirements.
- ii. Participation. Property owners that are not eligible for the State Program or who elect not to participate in the State 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 application adopted by the Director to the Director. 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 an end date or 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 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 an end date or deadline by which property owners who are not participating in the State Program must submit an Alternative Program application to the Director in accordance with Section Section A-III 4.5.B.ii of this Ordinance. Such properties that have Fire Debris from structures damaged or destroyed in the River Fire or Hazard Trees damaged or destroyed in the River 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 pursuant to Section A-III 4.5.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 River 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 State Program. Any permit for the demolition, repair, or reconstruction of a structure that has been damaged or destroyed by the River 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, either through the Alternative Program or the State Program. 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 Nevada County Codes and any other applicable laws.
- ii. Summary Abatement. In addition to any other nuisance abatement procedures provided by law, the Director and County Health Officer are authorized to enter onto

any property deemed a public nuisance under this Ordinance. If the Director or the County Building Official finds that the property constitutes an immediate threat to public health or safety, the County Building Official 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 with property owner(s) as listed on the last equalized tax roll or the Assessor's parcel record. A summary of the Notice and Order shall be posted in a conspicuous location on the property to be abated at least ten (10) 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 five (5) 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 designee shall review the appeal, if the appeal is timely, and shall issue a written decision no later than thirty (30) 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.

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 thirty (30) 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 thirty (30) 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 A-III 4.4 Environmental Determination**

Adoption of this 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 reflected in State CEQA Guidelines section 15269(a) and (c). The River Fire and their 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.