



ORDINANCE No. 2380

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

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

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

SECTION I:

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

SECTION II:

The County finds that this Article is not subject to the California Environmental Quality Act (CEQA) pursuant to the following categorical exemptions: Sections 15304(i) (specified fuels management activities within 100 feet of a dwelling), 15308 (actions taken as authorized by local ordinance to assure 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 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 and be in force at the expiration of thirty (30) days from and after its passage and it shall become operative on the 12th day of June 2014, and before the expiration of fifteen (15) days after its passage it 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 the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 13th day of May, 2014, by the following vote of said Board:

Ayes: Supervisors Nathan H. Beason, Edward Scofield, Terry Lamphier, Hank Weston, and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

DONNA LANDI
Clerk of the Board of Supervisors

By: _____

Donna Landi

Nathan H. Beason, Chair

05/13/2014 cc: CDA*
OES*
CC*
GIS*
Union*
QC*

EXHIBIT A

ARTICLE 7. HAZARDOUS VEGETATION ABATEMENT

Sec. G-IV 7.1 Findings

A. The Nevada County Board of Supervisors supports the improved parcel defensible space obligations found in California Public Resources Code Section (PRC) 4291. However, PRC 4291 does not address hazardous vegetation abatement on unimproved parcels and the potential impact that hazardous vegetation on an unimproved parcel 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 unimproved parcels adjacent to improved parcels and along emergency access and evacuation routes and fire access easements so that land owners benefit from the application of PRC 4291 on unimproved parcels.

B. During the fire season, 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. Of paramount importance to the Nevada County Board of Supervisors and the citizens of Nevada County is 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.

D. It is the purpose of this Chapter to establish a hazardous vegetation abatement program that provides a process to identify and abate hazardous vegetation on unimproved parcels and protects the lives and property of the citizens of Nevada County, 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 on unimproved parcels is necessary to ensure adequate defensible space is achieved.

E. The Nevada County Board of Supervisors does not provide fire protection or suppression services within the County. Such services within Nevada County are provided by CAL FIRE and numerous local fire protection districts, the United States Forest Service and the Bureau of Land Management. The Nevada County Board of Supervisors finds and declares that CAL FIRE and the local fire protection districts, individually or collectively are best suited and equipped to implement this Article.

Sec. G-IV 7.2 Application of Article

This Article shall apply to:

A. Unimproved Parcels adjacent to Improved Parcels where (a) the owner/occupant of the Improved Parcel is unable to obtain the required defensible space clearances, as delineated in adopted County codes and/or PRC 4291, and (b) the current condition of fuels on the Unimproved Parcel is assessed by the Local Fire Official as a hazardous fire condition. The owner of the Unimproved Parcel shall provide the fuel modifications to meet the defensible space requirements of the adjacent Improved Parcel.

B. Unimproved Parcels where (a) the parcel is adjacent to roadways which is determined by the Local Fire Official to be necessary for the safe ingress and egress to the area served by the roadway or fire access easement, and (b) the current condition of fuels on the Unimproved Parcel is assessed by the Local Fire Official as a hazardous fire condition.

C. In the instances where the Structures on the Improved Parcel are built after the effective date of this Article, the owner, occupant or other person in control of the Improved Parcel shall be responsible for fifty (50) percent of the abatement cost on the Unimproved Parcel.

Sec. G-IV 7.3 Definitions

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

A. "Biomass" shall mean all green waste material generated during the defensible space clearing project. Biomass includes without limitation all grass, weeds, vegetation and tree trimmings.

B. "Board of Supervisors" shall mean the Board of Supervisors for the County of Nevada.

C. "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.

D. "County" shall mean the County of Nevada, a political subdivision of the State of California.

E. "Hazardous Vegetation" shall mean any vegetation that is combustible and endangers the public safety by creating a fire hazard including, but not limited to, seasonal and recurrent weeds, stubble, brush, downed limbs, low hanging branches, and dry leaves. Hazardous Vegetation shall not include a commercial agricultural crop which is being actively grown and managed by the property owner or his or her legal tenant.

F. "Improved Parcel" shall mean a portion of real property of five (5) acres or less which is located in an area primarily intended for residential uses (e.g., R-1, R-2, R-3 or R-A), the area of which is determined by the assessor's maps and records and which may be identified by an Assessor's Parcel Number, upon which a Structure is located.

G. "Local Fire Official" shall mean the CAL FIRE unit chief, or the Fire Chief of any local fire protection district located in whole or in part within the County of Nevada, and all chief officers, company officers and trained, professional prevention staff as may be designated by the Fire Chief to enforce the provisions of this Article.

H. "Structure" shall mean any dwelling, house, building, or other type of combustible construction subject to PRC 4291.

I. "PRC 4291" shall mean California Public Resources Code section 4291, and any amendments thereto.

J. "Unimproved 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, upon which no structure is located.

Sec. G-IV 7.4 Nuisance Declared; Duty to Abate Hazardous Vegetation

A. Hazardous Vegetation and Combustible Materials within one hundred (100) feet of a Structure (or greater as determined by the Local Fire Official or his or her designated representative) or along roadways that serve as primary ingress and egress routes, is 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 Unimproved 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 Unimproved Parcel is cleared in accordance with a Notice to Abate by cutting brush, trimming trees, thinning trees, disking, mowing, plowing or any other method described in the Notice and removing all Combustible Materials as follows:

1. A minimum of a ten (10) foot wide strip of land beyond the shoulder of the roadway, to a height of fifteen (15) feet along the boundary of an Unimproved Parcel; and/or;

2. A one hundred (100) foot wide strip of land around combustible Structure(s) located on an adjacent Improved Parcel (some or all of this clearance may be required on the Unimproved Parcel depending upon the location of the Structure on the Improved Parcel);

3. The Local Fire Official may mandate additional fuels management of an area more or less than the above-referenced widths or height, for the protection of public health, safety or welfare or the environment. The Local Fire Official shall determine appropriate clearance distances based upon a visual inspection of the parcel and shall consider all factors that place the Unimproved Parcel or 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 Unimproved Parcel or the Structure(s) is located;

D. Where the terrain, condition or environment on the Unimproved Parcel is such that it cannot or should not be disked or mowed, the Local Fire Official may require, or authorize, other means of Hazardous Vegetation removal.

Sec. G-IV 7.5 Enforcement

The Local Fire Official shall be the primary authority for enforcement of this Article, and shall administer and enforce the requirements as provided in this Article. The Local Fire Official shall, as more broadly defined below, exhaust all informal steps to resolve the abatement of Hazardous Vegetation and Combustible Materials on Unimproved Parcels in advance of using the administrative enforcement process set forth below. The Local Fire Official shall have the following responsibilities and authorities in the enforcement and administration of the provisions of this Article:

- A. Plan and conduct PRC 4291 inspections within the limits of available resources.
- B. Review the requirements of PRC 4291 and the provisions 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.
- C. Prepare and issue Notices to Abate, and such other notices as may be necessary to encourage voluntary compliance with the provisions of this Article.
- D. Conduct post-notice/pre-abatement inspections and documentation, and conduct post-abatement inspections and documentation.
- E. The Local Fire Official may, at his or her discretion issue an administrative or criminal citation for violations of this Article, in lieu of abating an Unimproved Parcel.

Sec. G-IV 7.6 Notice to Abate

Whenever the Local Fire Official determines, based on a planned PRC 4291 inspection, that an Unimproved Parcel is in violation of this Article and requires abatement, the Local Fire Official shall send the owner of record for the Unimproved Parcel a Notice to Abate. The Notice to Abate shall be in writing and shall:

- A. Identify the owner(s) of the Unimproved 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 Unimproved Parcel by its commonly used street address, if any, and identify the Unimproved Parcel by reference to the Assessor's Parcel Number, if any.
- C. Briefly describe the violation(s) on the Unimproved Parcel and identify the fuel modifications which are required to abate the violation(s) and bring the Unimproved 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 Section G-IV 7.9 of this Article.
- F. Contain a statement that, unless the legal owner or occupant abates the violation(s) and brings the Unimproved Parcel into compliance with this Article, or seeks an appeal within the time prescribed in the Notice, the Local Fire Official may abate the violation 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.

Sec. G-IV 7.7 Service of Notice to Abate

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 certified United States mail to the legal owner(s) of the parcel at his or her 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 Local Fire 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 Local Fire 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.

Sec. G-IV 7.8 Enforcement Process

Not less than thirty (30) days after the Notice to Abate is served, the Local Fire Official shall conduct a post-notice/pre-abatement inspection on the Unimproved Parcel and, if the required fuel modifications have not been performed, the Local Fire Official may require that the required fuel modifications be completed by the District, and the cost of enforcement and the abatement with administrative fee be attached to the property tax as a lien.

For parcels owned or controlled by public agencies, the Local Fire 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 State Public Resources Code.

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 Local Fire Official by delivering a written request for hearing to the Local Fire Official's local fire protection district office within thirty (30) days of the date of the Notice to Abate, together with payment of any appeal fee as may be duly adopted by the local fire protection district. 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 Local Fire Official, no further enforcement action will be taken until after the hearing body as 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 Local Fire Official as set forth in the Notice to Abate shall become final and conclusive on the thirty-first day following service of the Notice.

C. The hearing on the appeal shall occur not more the 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 both the Local Fire Official and the appellant.

Sec. G-IV 7.10 Hazardous Vegetation Abatement Hearing Body

A Hazardous Vegetation Abatement Hearing Body may be established by one or more Boards of Directors of local fire protection districts. The Hazardous Vegetation Abatement Hearing Body shall have the authority to amend, dismiss, or uphold a Notice to Abate by a majority vote.

Sec. G-IV 7.11 Abatement by Local Fire Official

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 Local Fire Official issuing the notice, or the agency of which he or she is an officer, may proceed with the abatement of the Hazardous Vegetation or Combustible Material and provide that it be removed by public officers 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.

The costs so assessed shall be limited to the actual costs incurred by the Local Fire Official in enforcing abatement upon the Unimproved Parcel. Such costs may include, but are not limited to, the costs of payments to the contractor, costs of site inspection, costs of notice, boundary determination, measurement, clerical, personnel, consultant, and other administrative costs.

Sec. G-IV 7.12 Abatement Penalties and Costs

Upon expiration of the time limits and appeal processes established by this Article, the Local Fire 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 Local Fire 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 Local Fire Official shall prepare a notice to be served on the affected parcels as provided in Section G-IV 7.7 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 Unimproved Parcel which 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 Local Fire Official will submit the account to the local fire protection district Board of Directors 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 local fire protection Board of Directors will hear and consider objections and protests to the account and proposed assessment or refund.

C. Hearing on Account and Proposed Assessment. At the time and place fixed in the notice, the local fire protection district Board of Directors will hear and consider the account and proposed assessment, together with objections and protests thereto. At the conclusion of the hearing, the local fire protection district Board of Directors 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 local fire protection district Board of Directors without further notice of hearing, or may set the matter for a *de novo* hearing in accordance with Government Code section 29845(h). The determination of the Board of Supervisors as to all matters contained therein shall be final and conclusive.

D. Notice of Lien. Upon confirmation of an assessment by the Board of Supervisors, the Local Fire 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 Local Fire 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).

E. Lien. Upon the recordation of a Notice of Lien, the amount claimed shall constitute a lien upon the described premises, pursuant to Section 25845 of the California Government Code. Such lien shall be at parity with the liens of state and county taxes, to the extent allowed by applicable law.

F. Collection with Ordinary Taxes. 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.

Sec. G-IV 7.13 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 officers named in this part or their deputies, or to refuse to allow any such officer or their deputies or employees, 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 officers or contractors in the work of a lawful inspection and ordered removal herein provided.

Sec. G-IV 7.14 Penalties for Violations

A. 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. Any person convicted of a misdemeanor under the provisions of this Code shall be punishable by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000.00).

B. Alternatively, the Local Fire Official may prosecute violations of this Article by civil action, including without limitation, issuance of an administrative citations.

C. Every violation of this Article which is determined to be an infraction or an administrative violation shall be punishable by (1) a fine of one hundred dollars (\$100.00) for a first violation, (2) a fine of two hundred dollars (\$200.00) for a second violation within one year; and (3) a fine of five hundred dollars (\$500.00) for each additional violation within one year.

Sec. G-IV 7.15 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 Nevada County.