

ORDINANCE NO. ()

**AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SONOMA, STATE OF CALIFORNIA, ESTABLISHING
REQUIREMENTS FOR THE REMOVAL OF FIRE DAMAGED DEBRIS FROM
PRIVATE PROPERTY FOLLOWING THE LNU LIGHTNING COMPLEX
FIRES**

URGENCY ORDINANCE: 4/5 VOTE REQUIRED

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

Section I. This ordinance shall be known as the LNU Lightning Complex Fires Cleanup Emergency Ordinance.

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

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

5. Standards are needed immediately to protect the environment and public health, and to facilitate coordinated and effective mitigation of the risks to the environment and public health from the health hazards generated in the LNU Lightning Complex Fires disaster.
6. On August 24, 2020, pursuant to California Health and Safety Code section 101080, the County Health Officer proclaimed a local health emergency due to the hazardous post-fire conditions.
7. On August 24, 2020, the County Health Officer issued an Emergency Order of the Sonoma County Health Officer Concerning Re-Entry and Prohibiting the Endangerment of the Community Through the Unsafe Removal, Transport, and Disposal of Fire Debris. The order states: “1. Property owners and the community should not enter the burn footprint of structures without Personal Protective Equipment. 2. Until the enactment of additional requirements to address the LNU Lightning Complex Fires disaster clean up, no cleanup activities of burned structures shall commence without the written authorization of the County of Sonoma's Department of Health Services, Environmental Health. 3. Until the enactment of additional requirements to address the LNU Lightning Complex Fires disaster clean up, no debris bins shall be provided to property owners for the purposes of the removal of fire debris without the written authorization of the County of Sonoma.”
8. It is essential that this ordinance become immediately effective in order to mitigate the harm that could be caused to the public health and safety and to the environment from improper disturbance, removal, and/or disposal of debris containing hazardous materials, and to facilitate the orderly response to the LNU Lightning Complex Fires disaster.

Section III. Removal of Fire Damaged Debris from Private Property.

1. Definitions.

- (a) Director. The term Director shall mean the Sonoma County Director of Environmental Health & Safety and her/his designee.
- (b) Removal of Fire Debris. The term “removal of fire debris” as used in this ordinance includes all cleanup of fire debris resulting from the LNU Lightning Complex Fires, including removal, transport and disposal of fire debris, but it does not include the removal of personal property that is not fire debris from residential sites.
- (c) Cleanup Requirements. The term “cleanup requirements” means CalRecycle guidance for private debris removal, as modified by the Director to establish requirements applicable to the LNU Lightning Complex Fires disaster in Sonoma County.

- (d) Board. The term “Board” means the board of supervisors.
- (e) Ordinance. The term “Ordinance” means this LNU Lightning Complex Fires Cleanup Emergency Ordinance.

2. Term of this Ordinance.

This Ordinance shall take effect immediately upon adoption and shall remain in effect until the later of the cleanup of all fire debris on all fire-damaged properties from the LNU Lightning Complex Fires or the completion of all enforcement matters related to this Ordinance, if any.

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

No removal of fire debris shall occur from private property without (1) an initial hazardous materials inspection meeting applicable Department of Toxic Substances Control guidelines and (2) authorization under this Ordinance.

4. Removal of Fire Debris.

- (a) Cleanup Requirements. The Director shall adopt cleanup requirements consistent with CalRecycle guidelines, as determined by the Director. The Director may modify, interpret, or clarify these requirements to meet emergency cleanup needs.
- (b) Application. The Director shall adopt an application that discloses the appropriate licensed contractors and appropriate plans to meet the cleanup requirements. Property owners with damaged or destroyed structures from the LNU Lightning Complex Fires shall submit the required application to the Director. Removal of fire debris from private property shall not begin until the Director approves the application. The Director may rely upon the expertise of other County departments in deciding whether to approve the application. The Director shall approve or disapprove the application of a property owner based on the adopted cleanup requirements.
- (c) Permit. The approved application constitutes a permit to conduct the work described in the application.
- (d) Certification. Upon completion of the work described in the approved plans, the property owner shall submit a certification of successful completion of the work to the Director. The Director shall approve the certification if the property meets the adopted cleanup requirements.
- (e) Notwithstanding any contrary provision in Sonoma County Code Chapter 7, no county demolition permit shall be required for debris removal work for

which the Director has issued a permit or other approval pursuant to this Ordinance.

- (f) The Director may grant conditional exemptions to the application and certification requirements for small structures.

5. Hold on Building Permits.

- (a) No building permit may be acted on for parcels with fire debris from the LNU Lightning Complex Fires until the Director approves the certification required by this Ordinance that cleanup has been completed.
- (b) Any issued County of Sonoma building permit to repair or reconstruct a fire damaged structure or private infrastructure shall be held in abeyance until fire debris cleanup is completed on the affected property and the Building Official receives confirmation by the Director of an approved certification.

6. Deadlines and Enforcement.

- (a) With the concurrence of the County Administrator, the Director may set cleanup application deadlines by public means, including posting at the County Center and posting on the County website. The Director may modify these deadlines in individual cases based on extenuating circumstances.
- (b) Properties with fire debris from the LNU Lightning Complex Fires that lack an approved application by the application deadlines set pursuant to this Ordinance are a nuisance and health hazard, and may be subject to abatement.
- (c) With the concurrence of the County Administrator, the Director may set cleanup completion deadlines by public means, including posting at the County Center and posting on the County website. The Director may modify these deadlines in individual cases based on extenuating circumstances.
- (d) Properties on which cleanup work for the LNU Lightning Complex Fires has not been completed by the deadline set by the Board are a nuisance and health hazard, and may be subject to abatement.
- (e) Enforcement and Abatement.

- 1. General Enforcement Action. When the Director determines that there is a violation of this Ordinance, the Director may initiate an enforcement action using the process set forth in Section 1-7.3 of the Sonoma County Code and may seek the imposition of costs and civil penalties. Nothing in this provision is intended to prevent alternate enforcement mechanisms, including but not limited to, health officer orders pursuant to Health & Safety

Code section 101040. Violation of this ordinance shall be an infraction, and a knowing violation may be prosecuted as either an infraction or a misdemeanor. The civil penalties for non-compliance with this ordinance or any order issued pursuant to this ordinance shall be those set forth in Government Code section 25132.

2. Summary Abatement. Pursuant to the authority of Cal. Const., art. XI. Section 7: Health & Safety Code Section 101040, Government Code Section 25845, Sonoma County Code sections 1-7, 11A-11, 11a-12 and 29-17, if the Director determines that a violation of this ordinance has created an emergency condition that seriously endangers the public health or safety, the County may abate the condition within the unincorporated territory of the County of Sonoma. The costs shall be charged to the property owner(s) and the County may, at its option, recover the same in an administrative or civil action. Such charges shall be in addition to any penalty for a violation of this Ordinance.
 - i. Pre-Abatement Notice. Unless emergency conditions preclude doing so, the Director shall issue a Summary Abatement Notice and Order with owner(s) as listed on the last equalized tax roll. A summary of the Notice and Order shall be posted in a conspicuous location on the property to be abated at least 10 days prior to the summary abatement action.
 - ii. 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 Health Officer no later than 10 days from the date of mailing of the Notice and Order. The written appeal shall state the basis for the appeal. The Health Officer shall review the appeal and shall issue a written decision no later than 10 days after receipt. The Health Officer's Decision shall uphold, rescind or modify the determination of the Notice and Order. The Health Officer's Decision on the appeal shall be final. Failure to appeal within the time prescribed shall constitute a waiver of the right to contest the summary abatement.
 - iii. Post Abatement Notice. After the summary abatement is completed, the Director shall serve the property owner(s) with a post abatement notice that sets forth: (a) The actions taken by the County; (b) the reasons for the actions; (c) a statement of the costs, expenses and

attorney fees, if any, of the abatement, and notice of the County's intent to collect those costs; and (d) the right to appeal the costs determination within 10 days of the notice. If the property owner is responsible for any costs, expenses or attorney fees, such costs shall become a lien against the property and a Notice of Abatement Lien may be recorded.

- iv. Post Abatement Costs Appeal. If the property owner(s) or anyone with a legal interest in the property submits a timely costs appeal, the County shall schedule an administrative hearing on the matter and provide the appealing party with reasonable notice of the hearing. The hearing officer shall conduct an administrative hearing where each party shall have the opportunity to present evidence and the County shall have the obligation to establish that the costs, including expenses and attorney fees, if any, incurred for the summary abatement were necessary by a preponderance of the evidence. After the hearing, the hearing officer shall issue a written decision and order that shall be served upon the appealing party within 30 days of the hearing unless extended by agreement of the parties.
3. 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.
4. Remedies Not Exclusive. The remedies identified are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided in this chapter shall be cumulative and not exclusive.

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

Section V. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby

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

Section VI. This Ordinance shall be and the same is hereby declared to be in full force and effect immediately upon its passage by a four-fifths (4/5) or greater vote. 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 Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced and passed on the 1st day of September, 2020, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Rabbitt: ___ Zane: ___ Gore: ___ Hopkins: ___ Gorin: ___

Ayes: _____ Noes: _____ Absent: _____ Abstain: _____

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Sheryl Bratton,
Clerk of the Board of Supervisors