

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**AN UNCODIFIED URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ESTABLISHING
REGULATIONS FOR AND REQUIRING REMOVAL OF FIRE DAMAGED DEBRIS
AND OTHER HAZARDS FROM PRIVATE PROPERTY IN UNINCORPORATED SAN
MATEO COUNTY RESULTING FROM THE CZU AUGUST LIGHTNING COMPLEX
FIRES AND DECLARING THE URGENCY THEREOF**

SECTION 1. FINDINGS.

The Board of Supervisors of the County of San Mateo (the “Board”) hereby makes the following findings in support of the immediate adoption and application of this urgency ordinance (the “Ordinance”):

WHEREAS, beginning on August 15, 2020, a wildfire event identified as the CZU August Lightning Complex Fires (the “Fires”), which appear to have been caused by lightning strikes related to atypical weather patterns, burned over 22,755 acres and damaged or destroyed over 55 structures in San Mateo County, most of which constituted single-family residences, creating hazardous debris in the process; and

WHEREAS, on August 18, 2020, the Governor of the State of California declared a statewide emergency due to hundreds of fires actively burning throughout California, which have collectively burned hundreds of thousands of acres; and

WHEREAS, on August 19, 2020, the Board proclaimed a local emergency under Government Code sections 8558 and 8630 based on conditions of disaster and extreme peril and the imminent threat to the County’s residents and environment relating to the Fires burning in and near San Mateo County; and

WHEREAS, on September 9, 2020, the San Mateo County Health Officer declared a local health emergency due to the hazardous post-fire conditions created by the Fires at various locations in the southern portion of San Mateo County; and

WHEREAS, on September 15, 2020, the Board ratified the declaration of a local health emergency due to the conditions of extreme peril caused by the Fires; and

WHEREAS, on September 25, 2020, the San Mateo County Health Officer issued “[Order] Prohibiting Unsafe Removal, Transport, and Disposal of Fire Debris and Other Hazardous Materials” (“Health Officer Order”), (1) prohibiting property owners, tenants and members of the public from entering the burn footprint of structures without Personal Protective Equipment, and (2) prohibiting the commencement of cleanup activities of burn structures and the provision of debris bins to property owners for removal of fire debris, without the authorization of the Director of the Environmental Health Services Division of San Mateo County Health (“Environmental Health”), unless or until additional orders are issued to address the Fires emergency cleanup; and

WHEREAS, the potential for widespread toxic exposures and threats to public health and the environment continue to exist in the aftermath of a major wildfire disaster; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, exposure to hazardous substances may lead to acute and chronic health effects, and may cause long-term public health and environmental impacts; and

WHEREAS, 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; and

WHEREAS, dead and dying trees damaged by the Fires 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; and

WHEREAS, the anticipated start of the rainy season offers little time to mitigate further environmental contamination resulting from the Fires, including contamination of the watershed, and, therefore, time is of the essence in removing hazardous waste and other fire debris from affected properties; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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 and fire debris resulting from the Fires, to create and implement clear standards and procedures for removal fire debris, and to facilitate coordinated, timely, and effective mitigation of the risks to public health and the environment from the health hazards generated by the Fires.

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo ordains as follows:

SECTION 2. DEFINITIONS.

For purposes of this Ordinance, the following definitions shall apply:

- (a) “Board” means the Board of Supervisors of the County of San Mateo.
- (b) “Consolidated Debris Removal Program” means the fire debris removal program operated by the California Office of Emergency Services (“CalOES”) for the CZU August Lightning Complex Fires in conjunction with other State and Federal agencies and involving the removal and disposal of wildfire debris on eligible private property at no cost to the property owner.
- (c) “Director” means the Director of the Environmental Health Services Division of San Mateo County Health, or designee.
- (d) “Fire debris” means structural debris or ash debris from structures that were damaged or destroyed in the Fires. It does not include vegetative ash.

- (e) "Fires" means the 2020 CZU August Lightning Complex Fires.
- (f) "Hazard Tree" means a tree that has been so damaged by the Fires that its structural integrity is compromised and it either: (1) poses an immediate threat of falling onto work crews or obstructing their access to the debris clearance site, or (2) presents a threat to public health or safety due to risk of falling onto a public right of way or public infrastructure.
- (g) "Health Officer" means the San Mateo County Public Health Officer or designee.
- (h) "Ordinance Code" means the San Mateo County Ordinance Code.
- (i) "Private Contractor Program" means the program for inspection, removal, and disposal of fire debris established by the County for property owners who do not participate in or whose parcels are ineligible for inclusion in the Consolidated Debris Removal Program.
- (j) "Removal of fire debris" means the cleanup of fire debris resulting from CZU August Lightning Complex Fires, including removal, transport and disposal of fire debris, but it does not include the removal of personal property from residential sites unless such removal of personal property involves the cleanup and removal of ash resulting from the Fires.
- (k) "Right-of-Entry Permit" means the County of San Mateo Right-of-Entry Permit for Debris and Hazard Tree Removal on Private Property approved by CalOES for use in the removal of fire debris under the Consolidated Debris Removal Program.

SECTION 3. APPLICABILITY.

This Ordinance shall apply to all private properties in the unincorporated area of the County of San Mateo that contain fire debris resulting from structures that were

damaged or destroyed in the Fires, Hazard Trees, and/or other fire debris or hazards for which removal is required by rules or regulations issued by the Director under this Ordinance.

SECTION 4. PROHIBITION ON UNAUTHORIZED REMOVAL OF FIRE DEBRIS.

Hazardous materials resulting from damaged or destroyed structures on private property subject to this Ordinance may only be removed through the Consolidated Debris Removal Program or with prior authorization by the Director under the Private Contractor Program.

SECTION 5. REMOVAL OF FIRE DEBRIS THROUGH THE CONSOLIDATED DEBRIS REMOVAL PROGRAM.

- (a) Owners of parcels eligible for inclusion in the Consolidated Debris Removal Program are encouraged to participate in the Consolidated Debris Program, which provides for the removal of fire debris and Hazard Trees at no cost to the property owner.
- (b) The property owner or the property owner's authorized agent must execute a Right-of-Entry Permit to participate in Phase 2 of the Consolidated Debris Removal Program, involving the removal of fire debris other than or in addition to household hazardous waste as well as Hazard Trees. The Right-of-Entry Permit shall function as the sole permit and authorization for participation in Phase 2 of the Consolidated Debris Removal Program.
- (c) Notwithstanding any contrary provision in the Ordinance Code, no County approvals or permits for removal of fire debris are required for properties participating in the Consolidated Debris Removal Program, other than the Right-of-Entry Permit.

SECTION 6. REMOVAL OF FIRE DEBRIS THROUGH THE PRIVATE CONTRACTOR PROGRAM.

- (a) A Private Contractor Program is established, under the supervision of the Director, for those property owners who elect not to participate in or whose parcels are ineligible for inclusion in the Consolidated Debris Removal Program.
- (b) The Private Contractor Program shall require an application that discloses the licensed contractors who will perform the debris removal work as well as plans that demonstrate that the standards adopted for the Private Contractor Program will be met. Owners of parcels subject to this Ordinance who do not participate in the Consolidated Debris Removal Program must submit the required application to the Director. Removal of fire debris from damaged or destroyed structures 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.
- (c) The cleanup standards for the Private Contractor Program, including for the removal of debris from fire-damaged or destroyed structures, are the same standards used in the Consolidated Debris Program.
- (d) For the Private Contractor Program, the property owner and their licensed contractor must evaluate and propose appropriate mitigations for safety of debris removal crews, including the evaluation and removal of any hazards, such as Hazard Trees as determined by a certified arborist. To the extent a Hazard Tree is also “Heritage Tree” as defined in Section 11.050 of the San Mateo County Ordinance No. 2427, the property owner and their licensed contractor must comply with those requirements.

- (e) The approved application constitutes a permit to conduct the work described in the application.
- (f) Upon completion of the work described in the approved application, the property owner shall submit a certification of successful completion of the work to the Director. The Director shall approve the certification the property meets adopted cleanup standards.
- (g) The Director may establish and grant conditional exemptions from the application and certification requirements in this Section 6 for small structures or other structures that pose a minimal risk to human health and the environment. Property owners shall be required to submit an application for a condition exemption and obtain approval by the Director prior to initiating removal of fire debris covered by the exemption.
- (h) Notwithstanding any contrary provision in the Ordinance Code, no County demolition or grading permit shall be required for private fire debris removal work for which the Director has issued an approval allowing such work to proceed.

SECTION 7. POWER OF DIRECTOR TO MAKE ADDITIONAL REGULATIONS.

The Director is hereby authorized to make and adopt all rules, regulations and guidelines as are necessary to clarify, implement, administer, and enforce this Ordinance.

SECTION 8. HOLD ON BUILDING PERMITS.

- (a) No building permit may be issued to repair or reconstruct a fire-damaged structure, and any previously issued building permit to repair or reconstruct a fire-damaged structure shall be stayed and may not be acted upon, until the property owner or applicant submits either a copy of certification of successful completion under the Consolidated Debris

Removal Program issued by Environmental Health or a copy of the certification of successful completion provided for under Section 6(f) of this Ordinance to the County Building Official that fire debris removal on the subject parcel has been completed.

- (b) This Section shall not apply to permits or approvals that would otherwise be needed for removal of fire debris or for temporary occupancy in accordance with Section 9 of this Ordinance.

SECTION 9. TEMPORARY OCCUPANCY OF AFFECTED PARCELS.

- (a) No person shall temporarily occupy private property subject to this Ordinance until removal of fire debris required under this Ordinance is completed on the affected parcel, except pursuant to order from the Health Officer or with approval from the Health Officer, or designee, and after obtaining all necessary permits from County Planning and Building Department.
- (b) Residents shall not be present on the property in the vicinity of debris removal operations during active removal of the debris. Residents must be prepared to vacate the vicinity of debris removal operations once they commence.
- (c) Nothing in this Section shall prevent residents from occupying existing residential structures on fire-affected parcels that were not damaged or destroyed by the Fires or aftermath of the Fires, provided that (i) residents will not disturb other structural fire debris on the property, and (ii) said existing residential structures can be safely occupied pursuant to applicable rules, regulations and guidelines issued by the Director under Section 7 of this Ordinance.

SECTION 10. DEADLINES.

- (a) The Director shall determine and implement deadlines for owners of parcels affected by the Fires to file a Right-of-Entry Permit for participation in the Consolidated Debris Removal Program or an application for participation in the Private Contractor Program, as well as deadlines for the completion of work in the Private Contractor Program. The Director may modify these deadlines in individual cases based on demonstration of hardship.
- (b) Properties with fire debris from the Fires whose owners have not submitted a Right-of-Entry Permit for the Consolidated Debris Removal Program or an application for participation in the Private Contractor Program by the deadline set by the Director pursuant to subsection (a) of this Section are a public nuisance and health hazard, and such nuisance may be abated pursuant to this Ordinance or other applicable provisions of the Ordinance Code.
- (c) Properties on which cleanup work from the Fires has not been completed by the deadline set by the Director pursuant to subsection (a) of this Section are a public nuisance and health hazard, and such nuisance may be abated pursuant to this Ordinance or other applicable provisions of the Ordinance Code.
- (d) The Board's intent is to facilitate orderly remediation of a large-scale disaster. Nothing in this Ordinance shall limit the authority of the County to abate hazards more quickly when required by exigent circumstances. Moreover, nothing in this Ordinance shall limit the authority of the County Health Officer to require preventative measures as defined in California Health and Safety Code section 101040 or other applicable law as the Health Officer deems necessary.

SECTION 11. ENFORCEMENT AND ABATEMENT.

- (a) 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 Chapter 1.40 of the Ordinance Code and may seek the imposition of costs and civil penalties. Nothing in this Section is intended to prevent alternate enforcement mechanisms, including, but not limited to, Health Officer orders, pursuant to applicable law.
- (b) Summary Abatement. Pursuant to the authority of Article XI, Section 7 of the California Constitution, California Health and Safety Code section 101040, California Government Code section 25845, and the Ordinance Code, if the Director determines that a violation of this Ordinance has created an emergency condition which seriously endangers the public health or safety, the County may abate the condition. The costs shall be charged to the property owners(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 Chapter.
1. Pre-Abatement Notice. Unless emergency conditions preclude doing so, the Director shall issue a Summary Abatement Notice and Order with reasonable notice. The Notice and Order shall be mailed to the property owner(s) as listed on the last equalized tax roll and any updated address the property owner(s) has provided to the County. A summary of the Notice and Order shall be posted in a conspicuous location on the property to be abated at least 10 calendar days prior to the summary abatement action.
 2. Appeal and Waiver. The property owner(s) or any person or entity having a legal interest in the property may submit a written appeal

of the Director's Order to the Health Officer no later than 10 calendar days from the date of mailing of the Notice and Order. The written appeal shall state the basis for the appeal. The Health Officer shall review the appeal and shall issue a written decision (the "Decision") no later than 10 calendar days after receipt. The Decision shall uphold, rescind, or modify the determination of the Notice and Order. The Decision on the appeal shall be final. Failure to appeal within the time prescribed shall constitute a waiver of the right to contest the summary abatement.

3. Post-Abatement Notice. After the summary abatement is completed, the Director shall serve the property owner(s) with a post-abatement notice that sets forth: (1) the actions taken by the County; (2) the reasons for the actions; (3) a statement of the costs, expenses an attorney's fees, if any, of the abatement and notice of the County's intent to collect those costs; and (4) the right to appeal the costs determination within 10 calendar days of the notice. If the property owner(s) is responsible for any costs, expenses, or attorney's fees, such costs shall become a special assessment lien against the property and a Notice of Abatement Lien may be recorded. Any civil penalties assessed as part of this process shall not be recorded as a special assessment but shall instead be a personal obligation of the property owner(s) and collected on the unsecured tax roll.
4. Post-Abatement Costs Appeal. If the property owner(s) or anyone with a legal interest in the property submits a timely costs appeal, the County shall schedule an administrative hearing on the matter and provide the appealing party with reasonable notice of the

hearing. The hearing officer shall conduct an administrative hearing where each party shall have the opportunity to present evidence and the County shall have the obligation to establish that the costs, including expenses and attorney's fees, if any, incurred for the summary abatement were necessary by a preponderance of the evidence. After the hearing, the hearing officer shall issue a written decision and order that shall be served upon the appealing party within 30 calendar days of the hearing unless extended by agreement of the parties. If the hearing officer determines that the property owner(s) is responsible for any costs, expenses, or attorney's fees, such costs shall become a special assessment lien against the property and a Notice of Abatement Lien may be recorded. Any civil penalties assessed as part of this process shall not be recorded as a special assessment but shall instead be a personal obligation of the property owner(s) and collected on the unsecured tax roll.

- (c) Judicial Enforcement Action. The Office of County Counsel is authorized to initiate judicial enforcement as to a violation of any provision of this Ordinance without further Board approval.
- (d) Remedies Not Exclusive. The remedies identified are in addition to and do not superseded or limit any and all other remedies, civil or criminal. The remedies provided in this Ordinance shall be cumulative and not exclusive.

SECTION 12. SEVERABILITY.

If any provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, it is the intent of the Board that such invalid provision(s) be severed from the remaining provisions of this Ordinance.

SECTION 13. CEQA NOT APPLICABLE.

Adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to California 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. It is also exempt under 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 California Government Code.

SECTION 14. AUTHORITY; URGENCY STATEMENT.

The Board hereby finds and declares all that the recitals in Section 1 of the Ordinance are adopted as findings of the Board, and the Ordinance is enacted for the purpose of facilitating the safe and timely removal of fire debris and other hazards from private property damaged by the Fires.

SECTION 15. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption by a four-fifths vote of the Board as an urgency ordinance. This is based on the Board finding that this Ordinance is adopted in compliance with Government Code section 25123(d) and that it is necessary for the protection of the public peace, health, or safety for the reasons contained in the findings set forth in the Ordinance. The Ordinance shall remain in effect until December 31, 2022, unless repealed or extended by the Board.

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