



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** COUNTY MANAGER

**File #:** 20-924

Board Meeting Date: 12/8/2020

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**Special Notice / Hearing:** None  
**Vote Required:** 4/5

**To:** Honorable Board of Supervisors

**From:** Michael P. Callagy, County Manager

**Subject:** Urgency Ordinance for Removal of Wildfire Debris and Other Hazards Related to the 2020 CZU August Lightning Complex Fires

**RECOMMENDATION:**

Adopt an uncodified urgency ordinance establishing regulations for and requiring the 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 urgency thereof, and waive the reading of the ordinance in its entirety.

**BACKGROUND:**

The CZU August Lightning Complex Fires (the "Fires") began burning on August 15, 2020, and before being fully contained on September 28, 2020, burned 86,509 acres across both San Mateo and Santa Cruz Counties. The Fires damaged or destroyed more than 55 structures in unincorporated San Mateo County, generating structural debris and causing displacement of owners and occupants of the affected properties.

Due to the scope of the disaster caused by the Fires, on August 18, 2020, the Governor proclaimed a State of Emergency and declared the County eligible for a Fire Management Assistance Grant and other relief programs. Further, 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. In addition, on August 22, 2020, the President of the United States declared the existence of a major disaster in the State of California and ordered Federal aid to supplement State and local recovery efforts in the areas affected by wildfires, including those in San Mateo County.

On September 9, 2020, the County Health Officer declared a local health emergency due to the hazardous post-fire conditions. On September 15, 2020, the Board ratified this declaration of a local health emergency. On September 25, 2020, the County Health Officer issued an "[Order] Prohibiting Unsafe Removal, Transport, and Disposal of Fire Debris and Other Hazardous Materials" ("Health Officer Order"). The Health Officer Order prohibits property owners, tenants and members of the public from entering the burn footprint of structures without Personal Protective Equipment. In

addition, the Health Officer Order prohibits 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.

Debris and ash from structures burned in the Fires pose a severe and imminent threat to public health and the environment, creating the potential for widespread toxic exposures, contamination of the watershed, and release of dangerous ash, toxic materials, and other fire debris throughout the community and the environment. The burning of residential and other structures causes combustion of building materials, paint, household items, and other chemicals, resulting in dangerous ash contaminated with asbestos, heavy metals, and other hazardous materials. Exposure to these hazardous substances may cause acute and long-term health effects. Without timely and effective cleanup, residents of these properties may be exposed to hazardous substances directly and through contaminated drinking water supplies. Further, the improper handling of hazardous waste generated by the Fires can expose workers to toxic materials, and the improper transport and disposal of hazardous waste may spread hazardous substances through the community and environment. The need to properly remove hazardous waste and other dangerous ash and debris from these properties is particularly urgent, as the anticipated start of the winter rainy season threatens to further contaminate the environment, including the watershed, and exacerbate health risks.

Likewise, trees that have been damaged or destroyed by the Fires and are at risk of falling may threaten the health, safety, and welfare of workers conducting debris removal. Removal of these “hazard trees” is necessary to allow for safe and efficient completion of debris removal work.

For these reasons, the County should directly regulate the removal of hazardous waste and other ash and debris from structures damaged or destroyed in the Fires and provide clear and enforceable requirements and deadlines for cleanup of private properties.

#### **DISCUSSION:**

The proposed Urgency Ordinance requires that all property owners facilitate timely clean-up of fire debris of effected properties, so that they are made safe and ready for reconstruction and/or repair, the health of residents is protected and environmental contamination is mitigated. It does so by requiring property owners participate in one of two programs: a publicly funded program or a private program. The publicly-funded debris removal program will be operated by State and Federal agencies at no direct cost to residents. It also provides a mechanism for safe temporary occupancy of affected properties by displaced residents.

The principal components of the Urgency Ordinance are set forth below:

#### **A. Publicly Funded Consolidated Debris Removal Program**

As a result of the Federal Emergency Management Agency (FEMA)’s inclusion of the County in its major disaster declaration for the State of California relating to fires occurring through the State over the past few months, County residents whose homes and certain other structures were damaged or destroyed by the Fires are eligible to participate in a publicly-funded Consolidated Debris Removal Program operated by State and Federal agencies at no cost to County residents.

The Consolidated Debris Removal Program consists of two phases: Phase 1 removal of household hazardous materials and Phase 2 removal of other structural fire debris, as well as certain other debris that threatens public safety, such as hazard trees. Phase 1 removal was automatic for owners of eligible properties. Eligible property owners can either opt into the Consolidated Debris Removal Program by executing a right-of-entry form allowing government agencies and their contractors onto their properties for the purpose of Phase 2 cleanup, or they can opt into the Private Contractor Debris Removal Program, which is described in Section B below.

Both Phase 1 and Phase 2 are entirely publicly funded; property owners bear no direct cost at all for participation in either phase of the Consolidated Debris Removal Program. No County permits or approvals will be required for participation in the Consolidated Debris Removal Program other than execution of the right-of-entry form for Phase 2. By executing the right-of-entry form, property owners agree to reimburse FEMA, through the County of San Mateo, with insurance proceeds that they receive for debris removal work conducted under the Consolidated Debris Removal Program to avoid duplication of benefits as required under federal law (See 42 U.S.C. § 5155; 44 C.F.R. § 204.62.) Participation in the Consolidated Debris Removal Program is strongly encouraged, as it provides for safe and timely removal of the fire debris at no direct cost to property owners. Right-of-entry forms must be submitted by December 15, 2020.

### **B. Private Contractor Debris Removal Program**

The Urgency Ordinance would establish a Private Contractor Debris Removal Program (the “Private Contractor Program”) for property owners who do not participate in the Consolidated Debris Program, or those who are not eligible to participate in the Consolidated Debris Removal Program, such as owners of non-residential properties.

To participate in the Private Contractor Program, property owners would have to complete an application and workplan identifying appropriate contractors, which must be approved by the Director of Environmental Health prior to the commencement of the debris removal work. Those participating in the Private Contractor Program are subject to meeting the same standards used in the Consolidated Debris Removal Program. In addition, 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.

After the work is completed, the property owner would submit a certification to the Director for approval, at which point the property would be considered safe and ready for rebuilding. The Urgency Ordinance would also authorize the Director to establish and grant conditional exemptions from the application and workplan requirements for removal of structural debris that poses minimal risk to health and safety.

To protect the safety of workers and residents, the Urgency Ordinance requires that hazardous materials be properly removed from private properties before removal of other fire debris begins. Property owners who participate in the Private Contractor Program will be required to show that the property has been cleared of hazardous materials prior to initiating further debris removal work. Clearing of hazardous materials requires pre-approval from Environmental Health as specified in the Health Officer Order issued on September 25, 2020. Unlike property owners who opt into Phase 2 of the Consolidated Debris Removal Program, property owners will not receive government assistance for debris removal work that they undertake through the Private Contractor Program.

### **C. Temporary Occupancy of Affected Private Property**

Due to the presence of hazardous materials from structure fires, restrictions on temporary occupancy of affected properties with damaged or destroyed homes are needed. At the same time, there may be an immediate need for housing to accommodate persons displaced by the Fires. To facilitate temporary occupancy and still maintain the safety of residents, the Urgency Ordinance allows for temporary occupancy of affected properties either authorized under order from the Health Officer or with approval from the Health Officer, or designee, and after all necessary permits from the County Planning and Building Department are obtained. However, to help ensure their protection from hazardous ash and debris, residents must vacate the vicinity of debris removal operations while active debris removal is taking place. Finally, the Urgency Ordinance allows for residents to occupy existing residential structures on affected properties that were not damaged or destroyed by the Fires, provided that residents do not disturb other structural fire debris on the property and those residential structures can be safely occupied pursuant to rules, regulations and guidelines issued by the Director of Environmental Health.

#### **D. Deadlines and Enforcement**

Given the urgency with which debris removal must occur, the Urgency Ordinance would require the Director of Environmental Health to establish deadlines for participation in the Consolidated Debris Removal Program or the Private Contractor Program, as well as completion of debris removal work under the Private Contractor Program. To help ensure that property owners do not begin rebuilding before it is safe to do so, the Urgency Ordinance suspends the issuance of building permits for affected properties until cleanup required by the Ordinance is completed. The Urgency Ordinance also authorizes the County to enforce cleanup requirements and to carry out summary abatement of emergency conditions that seriously endanger public health or safety.

Also, based on the imminent threat to the safety and welfare of the community and the environment caused by the Fires, there is also a need for immediate enforcement as to those properties with owners who have elected not to participate in either the Consolidated Debris Removal Program or the Private Contractor Program. The proposed Urgency Ordinance provides enforcement mechanisms for those unwilling to remediate debris on their properties, including summary abatement and authorization for judicial enforcement, where appropriate, as well as remedies including the recovery of all clean-up costs, expenses, and attorney's fees incurred in pursuing an abatement action.

The County Manager's Office is the lead department responsible for the overall management of the debris removal process. In this role, the County Manager's Office will rely on the support of, and delegate responsibility to Environmental Health on matters related to the health and safety of the public, the environment, and septic and well matters, the Planning and Building Department on matters related to engineering review, and other County departments as required.

If adopted, this Urgency Ordinance would go into effect immediately and would remain in effect until December 31, 2022, unless repealed or extended by the Board.

#### **FISCAL IMPACT:**

There is no direct financial impact to the County from this Urgency Ordinance. Staff time associated with the implementation of this Urgency Ordinance will be absorbed by County departments, and may be recouped from FEMA public assistance funding for County wildfire recovery.

