

ORDINANCE NO. 1360

**AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF TRINITY
WHICH IMPLEMENTS THE REQUIREMENTS FOR FIRE DEBRIS AND HAZARD
TREE REMOVAL KNOWN AS THE 2021 TRINITY COUNTY LIGHTNING FIRES
URGENCY ORDINANCE**

The Board of Supervisors of the County of Trinity, 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 Trinity (“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 protect against an immediate threat to the public safety, health, and welfare, 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. The wildfire event known as the July 2021 Lightning Fires began on July 29, 2021.
- E. The July 2021 Lightning Fires destroyed structures and threatened numerous residences and thousands of acres of valuable wildland and watershed resulting in evacuation and displacement of residents, road closures, areas of isolation, damage to property and utility systems, damage to critical infrastructure and endangerment of species, and on July 31, 2021, the Director of the Office of Emergency Services (OES) proclaimed the existence of a local emergency because of the July 2021 Lightning Fires. The Board of Supervisors ratified the Director of OES proclamation on August 3, 2021.
- F. The Trinity County Health Officer proclaimed on August 8, 2021 the existence of a local health emergency in the County due to hazardous waste in the form of contaminated debris from hazardous waste/materials and structural debris from the July 2021 Lightning Fires and due to contamination of residential food and water supply.
- G. On August 10, 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 Trinity, due to the fire(s) around the State, including the Monument and McFarland fires, in the County of Trinity.
- H. In destroying private structures, the July 2021 Lightning fires, the Monument Fire, McFarland Fire, and River Complex and other fires, have created an accumulation of Fire

Debris, much of which has been determined to be contaminated with heavy metals and asbestos.

- I. 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.
- J. 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.
- K. Exposure to hazardous substances may lead to acute and chronic health effects, and may cause long-term public health and environmental impacts.
- L. 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.
- M. Dead and dying trees damaged by the July 2021 Lightning 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.
- N. The anticipated start of the rainy season offers little time to mitigate further environmental contamination resulting from the Fire, including contamination of the watershed, and, therefore, time is of the essence in removing hazardous waste, Fire Debris and Hazard Trees from affected properties.
- O. 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.
- P. 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.
- Q. 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 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 July 2021 Lightning Fires.

Section II. Definitions

- A. **Alternative Program.** 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 Trinity County Board of Supervisors.
- C. **County.** The County of Trinity.
- D. **County Building Official.** The Trinity County Director of Building and Planning, or designee.
- E. **County Health Officer.** The Trinity County Public Health Officer.
- F. **Director.** The Director of Environmental Health and Safety, or any person as designated by the Chief Administrative Officer of the County.
- G. **Fire Debris.** Ash or other debris, resulting from the July 2021 Lightning Fires that is intended to be discarded but does not include structures or portions thereof.
- H. **Hazard Trees.** 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.** As used in this article includes all cleanup of debris from structures and Hazard Trees resulting from the July 2021 Lightning Fires, 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 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) as approved by the California Office of Emergency Services for use in the cleanup after the July 2021 Lightning Fires.
- K. **State Debris and Hazard Tree Removal Program or State Program** The Fire Debris and Hazard Trees removal program operated by the California Office of Emergency Services ("Cal OES") for the July 2021 Lightning Fires 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 III. Effective Date

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 July 2021 Lightning Fires or the completion of all enforcement matters related to this Ordinance, if any.

Section IV. Prohibition on Removal of Fire Debris from Private Property

No Removal of Fire Debris and 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 V. 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. Administration. 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 [5.B.ii] of this Ordinance. Such properties that have Fire Debris from structures damaged or destroyed in the July 2021 Lightning Fires or Hazard Trees damaged or destroyed in the July 2021 Lightning Fires 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 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 July 2021 Lightning Fires 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 July 2021 Lightning Fires 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 and enforcement, pursuant to Trinity County Code Section 8.90, and other applicable laws.
 - ii. Summary Abatement. In addition to any other nuisance abatement procedures provided by law, the Director and County Health Officer and their designee are authorized to enter onto any property deemed a public nuisance under this ordinance. If the County Health Officer finds that the property constitutes an immediate threat to public health or safety, the Director 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. 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 ten (10) 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 Director's designee shall review the appeal, if the appeal is timely, and shall issue a written decision no later than ten (10) 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 with in the time prescribed shall constitute a waiver of the right to contest the summary abatement.

c. 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 sixty (60) 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 sixty (60) days. The post-abatement notice shall be delivered by Untied 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 VI. 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 July 2021 Lightning Fires 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.

Section VII. Severability


If any provision of this Ordinance or the application thereof to any person, property, or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provisions or application thereof, and to this end, the provisions of this interim Ordinance are hereby declared to be severable.

Section VIII. Publication

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 Trinity Journal, a newspaper of general circulation published in the County of Trinity State of California. A certified copy of the full text of this Ordinance shall be posted in Trinity Journal, a newspaper of general circulation published in the County of Trinity State of California, along with the names of those Supervisors voting for and against the Ordinance.

Introduced, passed and enacted this 30th day of September 2021, by the Board of Supervisors of the County of Trinity by motion, second (Groves/Frasier), and the following vote:

AYES: Supervisors Frasier, Groves, Cox, Gogan, and Brown
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None



JEREMY BROWN, CHAIRMAN
Board of Supervisors
County of Trinity
State of California

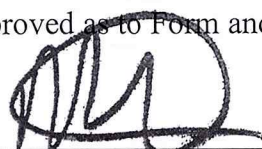
ATTEST:

RICHARD KUHN, Psy.D
Clerk of the Board of Supervisors

By: 

Deputy

Approved as to Form and Legal Effect:



Margaret E. Long, County Counsel