

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ADOPTED PURSUANT TO GOVERNMENT CODE SECTION 25123, ESTABLISHING REGULATIONS FOR THE CONDUCT OF WILDFIRE DEBRIS REMOVAL, RESULTING FROM THE 2020 MONTEREY COUNTY FIRES IN THE UNINCORPORATED AREA

County Counsel Summary

This urgency ordinance establishes regulations for the conduct of debris removal by property owners from properties damaged by the 2020 fires in Monterey County. The regulations are applicable to property owners opting out of Phase 2 of the debris removal program sponsored by the State of California. This ordinance is an urgency ordinance pursuant to Government Code section 25123 and will take effect immediately upon adoption.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey (“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 River Fire began on August 16, 2020, and destroyed structures and threatened numerous residences and hundreds 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 August 17, 2020, the County Administrative Officer (CAO) proclaimed the existence of a local emergency because of the River Fire.

E. The Board of Supervisors ratified the CAO proclamation on August 18, 2020, and further proclaimed a local emergency because of the wildfire known as the Carmel Fire that began on August 18, and that wildfire also destroyed structures and threatened numerous residences and hundreds 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.

F. On August 18, 2020, pursuant to Government Code section 8625, California Governor Newsom declared a state of emergency in the state of California, and in the County of Monterey, due to the fires around the state including the River Fire in the County of Monterey.

G. The wildfire known as the Dolan Fire began on August 19, 2020, and on August 21, 2020, the CAO proclaimed the existence of a local emergency due to the Dolan Fire which had destroyed structures and threatened numerous residences and hundreds 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; on August 25, 2020, the Board of Supervisors ratified the CAO proclamation of a local emergency regarding the Dolan Fire.

H. As of October 12, 2020, the River Fire burned over 48,000 acres, destroyed and damaged 43 homes, and is 100% contained, the Carmel Fire burned almost 6,700 acres, destroyed and damaged 80 homes, and is 100% contained, and the Dolan Fire burned over 124,924 acres, and is 98% contained.

I. In destroying private buildings, the River, Carmel and Dolan Fires (collectively, the “Monterey County Fires”) have created an accumulation of ash debris, much of which has been determined to be contaminated with heavy metals and asbestos.

J. 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.

K. 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.

L. 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.

M. The circumstances of the accumulation of this contaminated debris as a result of the Monterey County Fires, by reason of the magnitude, are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single local government and will require the combined forces of a mutual aid region or regions to abate.

N. Pursuant to the provisions of section 101080 of the California Health and Safety Code, the Monterey County Health Officer proclaimed a local health emergency on September 3, 2020, and found that conditions that increase risk of exposure to hazardous waste and threaten the health and safety of the public existed in the areas burned by the Monterey County Fires, and pursuant to the provisions of section 101085 of the California Health and Safety Code, Monterey County is in need of other political subdivisions and State agencies to provide mutual aid, including personnel, equipment and other available resources.

O. In accordance with the powers and duties of the local health officer vested by sections 101085 and 101310 of the California Health and Safety Code, the County Health Officer ordered that all assisting state agencies, in particular the State Department of Toxics Substance Control, Office of Emergencies Services, the California Department of Resources Recycling and Recovery, and all appropriate County agencies, in particular the Environmental Health Bureau of the Monterey County Health Department, utilize and employ personnel, equipment, and facilities for the performance of any and all activities consistent with the direction of the Incident Commanders for the Monterey County Fire incidents.

P. The County Health Officer further ordered that all persons are to heed the directions of emergency officials with regard to this emergency in order to protect their health and safety, including temporary or extended evacuations of identified dwelling units during hazardous waste demolition and removal efforts, further and/or expanded access restrictions on property owners and the public into areas identified to be contaminated, and the removal of contaminants and debris of those parcels of which an agreement as to the remediation efforts has not been determined or identified by the respective property owners.

Q. Due to the Monterey County Board of Supervisors not meeting in time to ratify the proclamation of local health emergency, the County Health Officer declared a second Local Health Emergency on September 10, 2020, with the same terms and provisions as his Local Health Emergency of September 3, 2020

R. On September 15, 2020, the Board of Supervisors ratified the Local Health Emergency issued by the Health Officer, which emergency was continued by the Board of Supervisors on October 13, 2020.

S. The State of California, in cooperation with the Federal Emergency Management Agency and the federal Environmental Protection Agency, has prepared a Government Sponsored Debris Removal Program (“Government Program”) for those properties affected by the Monterey County Fires.

T. Phase 1 of the Government Program involves removal and disposal of the household hazardous materials on damaged property, including debris containing heavy metals and asbestos, and other hazardous substances; Phase 1 is mandatory at no cost to property owners, and property owners may not opt out of Phase 1.

U. Phase 2 of the Government Program involves removal of other debris from the damaged properties, also at no out-of-pocket cost to the property owners; however, property owners may opt out of Phase 2 as more specifically set forth herein.

V. Because property owners may opt out of Phase 2, and in order to ensure that such debris is safely removed and appropriately disposed, it is necessary and appropriate for Monterey County to adopt urgency regulations governing debris removal and disposal that would otherwise be included in Phase 2 but will be performed by property owners.

SECTION 2. APPLICABILITY

This ordinance applies in the unincorporated area of the County of Monterey.

SECTION 3. REMOVAL OF WILDFIRE DAMAGED DEBRIS FROM PRIVATE PROPERTY

A. Definitions.

(i) “Board” means the board of supervisors.

(ii) “Debris Removal Application” means the application described in Section 3.F.iii, below.

(iii) “Director” means the Director of the Environmental Health Bureau, or his/her designee.

(iv) “Opt-Out Agreement” means the Opt-Out Acknowledgment and Waiver executed by the Owner expressing the intent to opt out of Phase 2, agreeing to abide by the requirements of this Ordinance, and waiving any liability against the County, and federal and state governments for the actions of the Owner in the Removal of Wildfire Debris.

(v) "Ordinance" means this Ordinance.

(vi) “Owner” means the legal owner of a parcel of property or, as applicable, an authorized representative of the owner.

(vii) “Government Program” means the Removal of Wildfire Debris program sponsored and implemented by the State of California in cooperation with the Federal Emergency Management Agency and the federal Environmental Protection Agency.

(viii) “Phase 1” means the first phase of the Government Program, and involves removal and disposal of household hazardous materials on wildfire damaged private property, including debris containing heavy metals and asbestos, and other hazardous substances, at no out-of-pocket cost to the Owner.

(ix) “Phase 2” means the second phase of the Government Program, and involves removal and disposal of all other wildfire debris on private property at no out-of-pocket cost to the Owner.

(x) “Private Program” means the program allowing Owners to utilize private contractors in lieu of participating in Phase 2, as more fully described in this Ordinance.

(xi) “Removal of Wildfire Debris” as used in this ordinance includes all cleanup of wildfire debris resulting from the Monterey County Fires, including removal, transport and disposal of wildfire debris as permitted or allowed by this Ordinance, but it does not include the removal of personal property that is not wildfire debris from residential sites.

(xii) “Right of Entry Permit” means a permit executed by an Owner allowing entry to the Owner’s property by federal, state or local employees or agents for the purpose of implementing Phase 2.

(xiii) “Wildfire Debris Removal Requirements” means the requirements for wildfire debris removal as may be established by the Director.

B. Term.

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

C. Prohibition on Removal of Wildfire Debris from Private Property.

No debris resulting from the Wildfires shall be removed from private property without a hazardous materials inspection conducted by the U.S. Environmental Protection Agency, the California Department of Toxic Substances Control through the Government Program, or by an entity approved through the Private Program.

D. Mandatory Participation in Phase 1: Household Hazardous Waste Removal.

Owners must participate in Phase 1 and may not opt-out of participation in that phase of the Program.

E. Removal of Wildfire Debris Through Phase 2: Debris Removal and Clean-Up.

(i) Owners are urged to participate in Phase 2 as it results in Removal of Wildfire Debris at no out-of-pocket cost to the Owner; notwithstanding any provision outlined in 44 CFR § 206.191 “Duplication Of Benefits.” Owners choosing to opt-out of Phase 2 assume the responsibility of removal of debris at their own expense and consequence.

(ii) The Owner or designee must execute a required Right of Entry Permit in order to participate in Phase 2. Owners may opt-out of participation in Phase 2 provided they comply with the requirements set forth below.

(iii) Notwithstanding any contrary provision in the Monterey County Code, no County approvals or permits for fire debris removal are required for properties participating in the Government Program, other than the Right-of-Entry Permit.

F. Removal of Wildfire Debris Through the Private Program.

(i) The County hereby establishes a Private Program, under the supervision of the Director, for those Owners that opt-out of Phase 2. The County shall utilize the Government Program standards, as well as any applicable Federal standards, as the standards for the Private Program. The Director shall formulate rules and regulations for the administration of the Private Program necessary to efficiently remove hazardous fire debris from the community.

(ii) Wildfire Debris Removal Requirements. The Director shall adopt Wildfire Debris Removal Requirements consistent with CalRecycle guidelines, or other applicable statutes and regulations, as determined by the Director. The Director may modify, interpret, or clarify these requirements to meet emergency cleanup needs. The Wildfire Debris Removal Requirements may include an initial hazardous materials inspection meeting applicable Department of Toxic Substances Control guidelines.

(iii) Debris Removal Application, Plans, Opt-Out Agreement, and Demolition Permit Required. The Director shall prescribe a Debris Removal Application that discloses the appropriate licensed contractors and appropriate plans to meet the Wildfire Debris Removal Requirements, including a deadline by which the Removal of Wildfire Debris pursuant to the application is to be completed. Owners with damaged or destroyed structures or property from the Monterey County Fires shall submit the required application. In addition, Owners must execute an Opt-Out Agreement in the form prescribed by the Director, and must apply for a demolition permit from the Monterey County Resource Management Agency (or its successor department).

(iv) Removal of Wildfire Debris from private property shall not begin until the Director approves the application, the Opt-Out Agreement is executed, and the demolition permit is issued. The Director may rely upon the expertise of other departments in deciding whether to approve the application. The Director shall approve or disapprove the application of an Owner based on the adopted Wildfire Debris Removal Requirements.

(v) Permits Required. The approved application and demolition permit constitute the necessary permits to conduct the work described in the application.

(vi) Certification Required. Upon completion of the work described in the approved plans, the 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 Wildfire Debris Removal Requirements.

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

G. Suspension of Building Permits Issuance.

(i) No building permit may be issued for parcels with fire debris from the Monterey County Fires until the Director approves the certification required by this Ordinance that cleanup has been completed.

(ii) Any building permit previously issued 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.

H. Deadlines and Enforcement.

(i) With the concurrence of the County Administrative Officer or designee, the Director may set Debris Removal Application and Opt-Out Acknowledgment and Waiver deadlines by public means, including posting at the County Administrative Building, Health Department, Resource Management Agency, and posting on the County website. The Director may modify these deadlines in individual cases based on extenuating circumstances.

(ii) Properties with wildfire debris from the Monterey County Fires that lack an approved Debris Removal Application by the application deadlines set pursuant to this Ordinance are a nuisance and health hazard, and may be subject to abatement.

(iii) Properties on which cleanup work for the Monterey County Fires has not been completed by the deadline set in the approved Debris Removal Application, or as otherwise determined by the Board, are a nuisance and health hazard, and may be subject to abatement.

(iv) Enforcement and Abatement.

(a) General Enforcement Action. When the Director determines that an activity is being performed in violation of this Ordinance, the Director may initiate an enforcement action using the process set forth in Chapters 1.20 or 1.22 of the Monterey 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.

(b) Summary Abatement. Pursuant to the authority of Cal. Const., art. XI, Section 7; Health & Safety Code Section 101040; Government Code Section 25845; and, Chapter 16.30 of the Monterey County Code, 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 Monterey. The costs shall be charged to the 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.

(c) Pre-Abatement Notice. Unless emergency conditions preclude doing so, the Director shall issue a Summary Abatement Notice and Order to the Owner(s) that applied for the Debris Removal Application, or as may be listed on the last equalized tax roll for

the relevant property. 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.

(d) **Appeal and Waiver.** The 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 Monterey County 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.

(e) **Post Abatement Notice.** After the summary abatement is completed, the Director shall serve the Owner(s) that applied for the Debris Removal Application, or as may be listed on the last equalized tax roll for the relevant property, with a post abatement notice that sets forth: (I) the actions taken by the County; (II) the reasons for the actions; (III) 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 (IV) 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's fees, such costs shall become a lien against the property and a Notice of Abatement Lien may be recorded.

(f) **Post Abatement Costs Appeal.** If the Owner(s) or any person or entity having a legal interest in the property submit 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.

(g) **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.

(h) **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 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”) pursuant to Public Resources Code Sections 21080(b)(3) and (b)(4) regarding projects to maintain, repair, restore, or replace property or facilities damaged or destroyed as a result of a declared disaster, or 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 5. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 6. EFFECTIVE DATE

In light of the Findings and Declarations set forth in this Ordinance, the Board declares that this Ordinance is adopted in compliance with Government Code Section 25123 and is necessary as an urgency measure for immediately preserving the public health, safety, and welfare. This Ordinance shall take effect immediately upon adoption for the reasons set forth herein.

PASSED AND ADOPTED this 27th day of October, 2020, by the following vote:

AYES:

NOES:

ABSENT:

Christopher Lopez
Chair, Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

Leslie J. Girard
County Counsel