

ORDINANCE NO. 5355

URGENCY ORDINANCE ADDING CHAPTER 7.140 TO THE SANTA CRUZ COUNTY CODE TO ADDRESS REQUIREMENTS FOR THE REMOVAL OF FIRE DAMAGED DEBRIS FROM PRIVATE PROPERTY RELATED TO THE CZU AUGUST LIGHTNING COMPLEX FIRES

The Board of Supervisors of the County of Santa Cruz hereby finds and declares the following:

WHEREAS, beginning on August 15, 2020, a wildfire event identified as the CZU August Lightning Complex Fires (“Fires”) burned over 85,000 acres and damaged or destroyed over one thousand structures in Santa Cruz County, most of which constituted single-family residences, creating an enormous amount of 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 County’s Director of Emergency Services proclaimed the existence of a local emergency due to the conditions of extreme peril caused by the Fires; and

WHEREAS, on August 25, 2020, the Board of Supervisors ratified the proclamation of the local emergency and extended it through the date the Board declares it to be terminated; and

WHEREAS, on August 26, 2020, the County’s Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the Fires, including the dangers associated with ash, damaged structures, and toxic debris; and

WHEREAS, on September 1, 2020, the Board of Supervisors ratified the declaration of a local health emergency and extended it for 30 days; and

WHEREAS, on September 15, 2020, and October 6, 2020, the Board of Supervisors adopted resolutions extending the proclamation of a local emergency and the declaration of a local health emergency for 30 days; and

WHEREAS, the potential for widespread toxic exposures and threats to public health and the environment exist in the aftermath of a major wildfire disaster, and debris and ash from residential structure fires contain hazardous substances which 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, uncontrolled hazardous materials and debris pose significant threats to public health through inhalation of dust particles and contamination of drinking water supplies; in addition, 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, it is necessary to immediately create and implement a program that includes clear standards and procedures for removal of fire debris in order to protect the public health and environment, and to facilitate coordinated and effective mitigation of the risks to the public health and environment from the health hazards generated by the Fires; 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, the Board finds that based on the recitals above urgent action is required to amend the Santa Cruz County Code to protect public health, safety, and welfare, specifically by adopting an ordinance to address debris removal from the Fires;

NOW, THEREFORE, the Board of Supervisors of the County of Santa Cruz ordains as follows:

SECTION I

The foregoing recitals are adopted as findings of the Board of Supervisors of the County of Santa Cruz as though set forth within the body of this ordinance.

SECTION II

Chapter 7.140 is hereby added to the Santa Cruz County Code, to read as follows:

CHAPTER 7.140

CZU AUGUST LIGHTNING COMPLEX FIRES DEBRIS REMOVAL

Sections:

- 7.140.010 Purpose.**
- 7.140.030 Definitions.**
- 7.140.050 Effective Period.**
- 7.140.070 Prohibition on Private Removal of Fire Debris Without Pre-Approval.**

- 7.140.090 Removal of Fire Debris Through the Government Program.**
- 7.140.110 Removal of Fire Debris Through the Private Contractor Program.**
- 7.140.130 Hold on Building Permits.**
- 7.140.150 Deadlines and Enforcement.**
- 7.140.170 Judicial Enforcement Actions.**
- 7.140.190 Remedies Not Exclusive.**
- 7.140.210 Severability.**

7.140.010 Purpose.

This Chapter is enacted for the purpose of facilitating the safe removal of fire debris on private property damaged in the 2020 CZU August Lightning Complex Fires in the County of Santa Cruz.

7.140.030 Definitions.

- (A) “Private Contractor Program” means the program for inspection, removal, and disposal of fire debris established by the County for property owners that do not participate in the Government Program.
- (B) “Board” means the County Board of Supervisors.
- (C) “Director” means the Director of the Environmental Health Division of the Santa Cruz County Health Services Agency or their designee.
- (D) “Government 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.
- (E) “Health Officer” means the Santa Cruz County Public Health Officer or their designee.
- (F) “Fires” means the 2020 CZU August Lightning Complex Fires.
- (G) “Qualifying Structure” means any structure that was damaged or destroyed in the Fires that CalOES determines should be included in the Government Program.
- (H) “Right-of-Entry Permit” means the County of Santa Cruz’s Debris Removal Right-of-Entry Permit (for providing debris removal on private property) approved by CalOES for use in the removal of fire debris.

7.140.050 Effective Period.

This Chapter shall be in effect immediately upon adoption and shall remain in effect until the removal of fire debris has been completed on all properties damaged by the Fires.

7.140.070 Prohibition on Private Removal of Fire Debris Without Pre-Approval.

No debris resulting from the Fires 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 Contractor Program.

7.140.090 Removal of Fire Debris Through the Government Program.

(A) Effect of the Right-of-Entry Permit. The Right-of-Entry Permit shall function as the sole permit and authorization for participation in the Government Program.

(B) Notwithstanding any contrary provision in the Santa Cruz 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.

7.140.110 Removal of Fire Debris Through the Private Contractor Program.

(A) The County hereby establishes a Private Contractor Program, under the supervision of the Director, for those property owners that do not participate in the Government Program. The County shall utilize the Government Program standards, as well as any applicable Federal standards, as the standards for the Private Contractor Program. The Director shall formulate rules and regulations for the administration of the Private Contractor Program necessary to efficiently remove hazardous fire debris from the community.

(B) The Private Contractor Program shall require an application that identifies the appropriate licensed contractors who will perform the work and plans that demonstrate the standards established in the Private Contractor Program will be met. Work shall not begin until the County approves the application. The Director may rely on the subject matter expertise of multiple County departments in deciding whether to approve the application.

(C) For those property owners participating in the Private Contractor Program, the County shall issue a certificate of completion of debris removal after confirming the following: (1) the debris removal work on the property meets or exceeds applicable Government Program and Federal standards for debris removal; and (2) the property owner completely removed and disposed of any structure foundations, or the property owner confirmed in writing that they intend to re-use the foundations if approved by the County Building Official at a later date, but will remove the foundations if the County Building Official withholds such approval (most foundations may not be re-used because they have been structurally compromised by the fire; if not approved for re-use the foundation must be removed by the property owner at their expense under a valid demolition permit after a certificate of completion has been issued).

(D) Notwithstanding any contrary provision in the Santa Cruz County Code, no County demolition permit shall be required for participation in the Private Contractor Program or before completing debris removal work approved by the Director.

7.140.130 Hold on Building Permits.

Any issued County of Santa Cruz building permit to repair or reconstruct a fire damaged structure or private infrastructure shall be held in abeyance and not acted upon until fire debris removal is completed on the affected property and such completion is confirmed in writing to the County Building Official, either through the Government Program or through the Private Contractor Program.

7.140.150 Deadlines and Enforcement.

(A) The Director shall select and implement deadlines for property owners to file a Right-of-Entry Permit for participation in the Government Program or an application for participation in the Private Contractor Program. The deadline selected shall be no earlier than 30 days and no later than 60 days from the date this Chapter becomes effective.

(B) Properties with ash and debris from the Fires whose owners have not filed a Right-of-Entry Permit for the Government Program or an application for the Private Contractor Program by the deadline set by the Director may be declared a public nuisance and health hazard, and such nuisances may be abated pursuant to this Chapter or other provisions of the County Code as applicable.

(C) The Director may set deadlines for the completion of work in the Private Contractor Program that give property owners at least 60 days from approval to complete necessary work. Properties that contain ash and debris from the Fires after that deadline may be declared a public nuisance and health hazard, and such nuisances may be abated pursuant to this Chapter or other provisions of the County Code as applicable.

(D) The Board's intent is to facilitate orderly remediation of a large-scale disaster. Nothing in these deadlines shall limit the authority of the County to abate hazards more quickly where required by exigent circumstances. Moreover, nothing in this Chapter shall limit the authority of the Health Officer to require any preventive measures as defined in California Health and Safety Code Section 101040 as the Health Officer determines necessary.

(E) Enforcement and Abatement.

(1) General Enforcement Action. When the Director determines that an activity is being performed in violation of this Chapter, the Director may initiate an enforcement action using the process set forth in the Santa Cruz County Code and may seek the imposition of costs and civil penalties pursuant to the Santa Cruz County Code. Nothing

in this provision is intended to prevent alternate enforcement mechanisms, including but not limited to, Health Officer orders pursuant to California Health and Safety Code Section 101040.

(2) 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 Santa Cruz County Code, if the Director determines that a violation of this Chapter has created an emergency condition which seriously endangers the public health or safety, the County may abate the condition within the unincorporated territory of the County of Santa Cruz. 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.

(a) 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.

(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 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.

(i) 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 and attorney's fees, if any, of the abatement and notice of the County's intent to collect those costs; and (4) 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.

- (ii) 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.

7.140.170 Judicial Enforcement Actions.

The County Counsel is authorized to initiate judicial enforcement as to a violation of any provision of this Chapter without further Board approval.

7.140.190 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.

7.140.210 Severability.

If any provision herein is held to be invalid, all remaining portions of this Chapter shall remain in full force and effect, and to that end the provisions of this Chapter shall be deemed to be severable.

SECTION III

The 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 IV

The Board of Supervisors finds and determines for the reasons stated in the recitals that adoption of this ordinance is for the immediate preservation of the public peace, health or safety, as those terms are defined in California Government Code Section 25123(d).

SECTION V

The Board of Supervisors further finds and determines in its reasonable discretion on the basis of the entire record before it that the proposed addition of Chapter 7.140 is consistent and compatible with and will not frustrate the objectives, policies, general land uses, and programs specified in the General Plan and Local Coastal Program.

SECTION VI

Should any section, clause, or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

SECTION VII

This urgency ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the Board of Supervisors.

PASSED AND ADOPTED this 20th day of October, 2020, by the Board of Supervisors of the County of Santa Cruz by the following vote:

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AYES: SUPERVISORS Leopold, Coonerty, Friend, McPherson, Caput
NOES: SUPERVISORS None
ABSENT: SUPERVISORS None
ABSTAIN: SUPERVISORS None

GREG CAPUT
Chairperson of the Board of Supervisors

Attest: **SUSAN GALLOWAY**
Clerk of the Board

APPROVED AS TO FORM:

_____10/14/2020 (AMS# 9688)
Office of the County Counsel

cc: County Administrative Office
Health Services Agency
Environmental Health
Planning Department