

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL

FROM: SUE GALLAGHER, CITY ATTORNEY
JOHN FRITSCH, ASSISTANT CITY ATTORNEY
CITY ATTORNEY'S OFFICE

SUBJECT: URGENCY ORDINANCE TO PROVIDE FOR CLEAN-UP OF
PARCELS THAT CONTAIN FIRE DEBRIS AND DESTROYED
STRUCTURES AND THAT ARE NOT COMMITTED TO THE
CONSOLIDATED DEBRIS REMOVAL PROGRAM OR TO A
PRIVATE SANTA ROSA FIRE CLEAN-UP APPLICATION

AGENDA ACTION: URGENCY ORDINANCE

RECOMMENDATION

It is recommended by the City Attorney that the Council adopt one of three alternative ordinances to provide for the clean-up of properties that contain fire debris and a destroyed structure and that are not yet committed to either the government sponsored Consolidated Debris Removal Program or a private Santa Rosa Fire Clean-up Application and Work Plan. The three alternatives are:

1. Ordinance declaring such fire debris to be a public nuisance; delegating authority to the Chief Building Official to identify those parcels that contain a public nuisance due to fire debris and the absence of a clean-up plan; and delegating authority to the Chief Building Official to cause those identified parcels to be cleared by the United States Army Corps of Engineers after two weeks notice.
2. Ordinance declaring such fire debris to be a public nuisance; delegating authority to the Chief Building Official to identify those parcels that contain a public nuisance due to fire debris and the absence of a clean-up plan; and authorizing the Chief Building Official to apply to the Superior Court for an inspection and abatement warrant, and upon issuance of such warrant, to inspect and clean the identified parcels utilizing the services of either the United States Army Corps of Engineers or private contractors.
3. Ordinance declaring such fire debris to be a public nuisance; delegating authority to the Chief Building Official to identify those parcels that contain a public nuisance due to fire debris and the absence of a clean-up plan; and directing the

City Attorney to bring a civil action in the Superior Court against the owner of the property to enjoin the maintenance of the public nuisance and to compel private action to clear the property.

EXECUTIVE SUMMARY

Beginning on the evening of October 8, 2017, and continuing for days thereafter, a series of wildfire events damaged or destroyed thousands of residential and commercial structures within the City of Santa Rosa. On October 9, 2017, the City Manager, in his capacity as Director of Emergency Services, proclaimed the existence of local emergency in the City of Santa Rosa. That proclamation was ratified by the City Council on October 13, 2017.

On October 23, 2017, the Sonoma County Health Officer Karen Milman, MD, MPH issued an emergency order finding, in part, that (a) the fires created hazardous waste conditions in Sonoma County in the form of contaminated fire debris from household hazardous waste/materials and structural debris resulting from the destruction of thousands of structures; and (b) this hazardous waste debris poses a substantial present or potential hazard to human health and the environment unless its removal and disposal is performed in a manner that will protect the public health and safety.

In light of the scope and intensity of the hazards, owners of residential parcels affected by the fire were offered two different paths for the clean-up and removal of fire debris. The Consolidated Debris Removal Program is a clean-up and wildfire debris removal service performed by the United States Army Corps of Engineers ("USACE") and paid for with public funds, with contributions from property owner's insurance related to debris removal, if any. To participate in the Consolidated Program, a property owner must submit a Right of Entry form ("ROE"). The last day for an owner to submit an ROE was November 13, 2017.

Alternatively, property owners could pursue a private clean-up of their property subject to the City's review and oversight. Private clean-ups must be undertaken in a manner protective of public health and must meet essentially the same standards as utilized in the Consolidated Program. Before undertaking a private clean-up, a property owner must submit a Santa Rosa Fire Clean-Up Application ("Application") and Work Plan to the City's Planning and Economic Development Department for review and approval. The last day for an owner to submit a private Application and Work Plan was November 22, 2017.

As of the date of this report, approximately 84 parcels within the City have not yet committed to either the Consolidated Debris Removal Program or a private clean-up plan. To protect the public health and the environment, those remaining uncommitted

URGENCY ORDINANCE TO PROVIDE FOR CLEAN-UP OF PARCELS
PAGE 3 OF 6

parcels must be cleared of ash and debris promptly and with all appropriate health and safety precautions.

The attached ordinances offer three alternative procedures as outlined below.

BACKGROUND

On October 8, 2017, and continuing for days thereafter, a series of wildfire events, identified as the Tubbs and Nuns Canyon Fires burned over 100,000 acres in Sonoma County and damaged or destroyed approximately 3,000 homes and numerous commercial structures within the City of Santa Rosa.

On October 9, 2017, the City Manager, in his capacity as Director of Emergency Services, proclaimed the existence of a local emergency when the City of Santa Rosa was affected and likely to remain affected by fire, a public calamity, and the City Council was not in session, pursuant to City Code Section 2-24.050.

On October 9, 2017, Governor Edmund G. Brown, Jr. declared a State of Emergency in Butte, Lake, Napa, Orange, Mendocino, Nevada, Sonoma, and Yuba Counties due to fires.

On October 10, 2017, the federal government issued a Major Disaster Declaration for the State of California as a result, in part, of the devastation caused by the fires in Sonoma County.

On October 13, 2017, the City Council passed Resolution No. RES-2017-201 ratifying the Proclamation of the Existence of a Local Emergency issued by the Director of Emergency Services until such time as the Council determines that the emergency conditions have been abated.

On October 18, 2017, Governor Edmund G. Brown, Jr. issued Executive Order B-43-17 to assist in streamlining recovery efforts in communities throughout the State that have been impacted by wildfires during October 2017.

On October 23, 2017, the Sonoma County Health Officer Karen Milman, MD, MPH, issued an emergency order, entitled "Emergency Order of the Sonoma County Health Officer Prohibiting the Endangerment of the Community Through the Unsafe Removal, Transport, and Disposal of Fire Debris," finding, in part, that:

- The Sonoma Complex Fire has created hazardous waste conditions in Sonoma County in the form of contaminated debris from household hazardous waste/materials and structural debris resulting from the destruction of thousands of structures;

URGENCY ORDINANCE TO PROVIDE FOR CLEAN-UP OF PARCELS
PAGE 4 OF 6

- This hazardous waste debris poses a substantial present or potential hazard to human health and the environment unless its removal and disposal is performed in a manner that will protect the public health and safety.

Beginning on October 17, 2017, inspectors conducted a field assessment of site conditions on all parcels in the City of Santa Rosa affected by the fire. The field assessment consisted of a visual inspection of each parcel known to be or potentially affected by the fires. Each parcel was identified by Assessor's Parcel Number, street address, and by the name and address of the owners of record. The inspectors determined the conditions on each parcel and prepared a written report.

Owners of the affected residential parcels were offered two different paths for the clean-up and removal of ash and debris. The California Office of Emergency Services and the Federal Emergency Management Agency together offered the Consolidated Debris Removal Program ("Consolidated Program"), a clean-up and wildfire debris removal service performed by the United States Army Corps of Engineers ("USACE") and paid for with public funds, with contributions from the property owner's insurance related to debris removal, if any. The USACE's practice is to clear the property down to clean soil, including removal of foundations and often several inches of dirt below. Soil testing is completed to ensure that the parcel meets approved environmental standards. As noted above, in order to participate in the Consolidated Program, a property owner must submit a Right of Entry form ("ROE"). The last day for an owner to submit an ROE was November 13, 2017, although late-filed ROEs are being considered on a case-by-case basis.

As an alternative, property owners may choose to undertake the clean-up and debris removal at their own expense subject to City oversight. The property owner must submit a Santa Rosa Fire Clean-Up Application ("Application") and Work Plan to the City's Planning and Economic Development Department for approval. The scope of work under the Application and Work Plan includes a certification that, upon completion of the Work Plan, the parcel meets essentially the same environmental standards applied to the USACE scope of work. The private scope of work, however, does not require removal of foundations, although future re-use of foundation elements requires certification by a licensed engineer prior to issuance of a building permit. The last day for an owner to submit a private Application and Work Plan was November 22, 2017. The City is, however, considering late-filed applications on a case-by-case basis.

There has been substantial publicity regarding the necessity for clean-up and wildfire debris removal, the availability of the Consolidated Program and its deadline of November 13, 2017, and the Application and Work Plan process and its deadline of November 22, 2017. These have been the subject of intense public notice, discussion

and debate in the County of Sonoma and the City of Santa Rosa. In collaboration with the County, City staff have participated in numerous community meetings, have developed and distributed extensive FAQ's, have created and maintained a comprehensive information site at <https://www.sonomacountyrecovers.org/>, have established a dedicated hotline and email address that fielded hundreds of inquiries, and have issued reminder calls and notices. There have been multiple *Press Democrat* newspaper articles, television coverage on multiple channels, radio coverage on multiple channels, and updates on the City of Santa Rosa web site. Even after this comprehensive public outreach, however, there still remain approximately 85 parcels not yet committed to either path toward clean-up.

ANALYSIS

It is essential that all properties be cleared of ash and debris within the areas affected by the fires. The debris contains hazardous and toxic materials left from burned building materials, vehicles, electronics, paint, cleaning solutions, and other common household products. The debris must be cleared, transported and disposed in a manner that protects the public health and the environment, and complies with all local, state and federal requirements. Time is critical given the risks of potential migration and contamination of adjacent properties, waterways, and the City's stormwater and wastewater systems as well as the risk of airborne toxins.

As noted above, the attached ordinances offer three alternative approaches:

1. The first ordinance would declare the ash and debris a public nuisance, direct staff to provide two weeks notice through all reasonable means, and upon expiration of the two week notice period, authorize USACE to enter the properties and undertake the clean-up. The USACE clean-up would be at no initial cost to the City. The properties would be cleared down to bare soil, including removal of all foundations. USACE has stated that it must receive the list of properties by the end of the business day on December 1st if properties are to be included in its work.
2. The second ordinance would declare the ash and debris a public nuisance, direct staff to prepare an application to the Superior Court for an inspection and abatement warrant to allow entry and clearing of private property, requesting a hearing in mid to late December. Upon issuance of the warrant, the ordinance would allow staff to engage USACE or private contractors to clear the identified parcels. If the work is done by private contractors, the City will bear the initial cost and may lien the property for cost recovery. If done by private contractors, the City may determine to allow foundations to remain.
3. The third ordinance would declare the ash and debris a public nuisance, and direct staff to file an enforcement action in Superior Court seeking an order to compel the property owner to clear the property of the public nuisance.

URGENCY ORDINANCE TO PROVIDE FOR CLEAN-UP OF PARCELS
PAGE 6 OF 6

Given the urgency of clearing hazardous materials, staff recommends that, whichever ordinance is selected, it be considered for adoption as an urgency ordinance. Government Code Section 36937(b) allows an ordinance to take effect immediately, if it is an ordinance for the immediate preservation of public peace, health or safety, and it contains a declaration of the facts constituting the urgency. Section 8 of the Santa Rosa City Charter allows the City Council to adopt an urgency measure to take effect immediately upon its adoption if necessary to preserve the public peace, health or safety if such ordinance contains the reasons for its urgency. Such an urgency measure requires a five-sevenths vote of the City Council for adoption and shall be in effect immediately upon its adoption.

BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable.

FISCAL IMPACT

Fiscal impact is currently unknown.

ENVIRONMENTAL IMPACT

Adoption of these urgency ordinances is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(3) regarding repairs and replacement work after a state-declared disaster and Section 21080(b)(4) regarding 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, and Section 15269(c) regarding specific actions necessary to prevent or mitigate an emergency.

ATTACHMENTS

- Ordinance

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