

ORDINANCE NO. ORD-2017-021

URGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA DECLARING FIRE DEBRIS AND DESTROYED STRUCTURES ON PARCELS IN THE CITY THAT ARE NOT SUBJECT TO THE CONSOLIDATED DEBRIS REMOVAL PROGRAM OR TO A SANTA ROSA FIRE CLEAN-UP APPLICATION AND WORK PLAN TO BE A PUBLIC NUISANCE; DELEGATING TO THE CHIEF BUILDING OFFICIAL THE AUTHORITY TO IDENTIFY SUCH PARCELS IN THE CITY; AND DELEGATING AUTHORITY TO THE CHIEF BUILDING OFFICIAL TO APPLY TO THE SUPERIOR COURT FOR AN INSPECTION AND ABATEMENT WARRANT AND, UPON ISSUANCE, TO INSPECT AND ABATE THE PUBLIC NUISANCE ON THOSE PARCELS

WHEREAS, on October 8, 2017, and continuing for days thereafter, a series of wildfire events, identified as the Tubbs and Nuns Canyon Fires (also known as the Sonoma Complex Fire) 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; and

WHEREAS, 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 of the City of Santa Rosa; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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;

- 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; and

WHEREAS, it is essential that all property owners ensure that all debris removal, transport and disposal is undertaken in a manner that protects the public health and safety and is consistent with all legal requirements; and

WHEREAS, 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; and

WHEREAS, improper handling can expose workers to toxic materials, and improper transport and disposal of fire debris can spread hazardous substances throughout the community; and

WHEREAS, standards and removal procedures are needed to protect the environment and public health, and to facilitate coordinated and effective mitigation of the risks posed by fire debris and ash and the hazardous substances contained therein; and

WHEREAS, beginning on October 17, 2017, California Office of Emergency Services 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 affected parcel was identified by Assessor's Parcel Number, street address and name and address of the owner(s) of record. A determination was made of the conditions on the parcel and a written report was prepared; and

WHEREAS, 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 ("CalOES") and Federal Emergency Management Agency ("FEMA") 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 scope of work performed by the USACE under the Consolidated Program includes foundation removal, and a certification that upon completion the affected parcel meets approved environmental standards; and

WHEREAS, 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 have been considered and accepted on a case-by-case basis; and

WHEREAS, 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 Planning and Economic Development Department for review and 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 foundation removal, although future re-use of foundation elements requires certification by a licensed engineer prior to issuance of a building permit; and

WHEREAS, the last day for a property owner to submit an Application and Work Plan to the City Planning and Economic Development Department was November 22, 2017, although the City has considered and accepted late-filed applications on a case-by-case basis; and

WHEREAS, 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; and

WHEREAS, the Chief Building Official of the City of Santa Rosa has the ability to identify parcels with destroyed residential structures and fire debris that are not subject to either the Consolidated Debris Removal Program or the Santa Rosa Fire Clean-up Application and Work Plan; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, such an urgency measure requires a five-sevenths vote of the City Council for adoption; and

WHEREAS, as provided herein, this Ordinance is intended to and shall take effect immediately upon its adoption; and

WHEREAS, adoption of this Ordinance 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 in 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; and

WHEREAS, the City Council has been provided with information upon which the findings and actions set forth in this Ordinance are based, allowing the Council to adopt this urgency ordinance to be effective upon adoption; and

WHEREAS, Government Code section 38771 provides that the City Council may, by ordinance, declare what constitutes a nuisance, and Government Code section 38773 provides for summary abatement of the nuisance; and

WHEREAS, for the reasons set forth above, this Ordinance is declared by the City Council to be necessary for preserving the public peace, welfare, health or safety and to avoid a current, immediate and direct threat to the peace, health, safety or welfare of the community and the recitals above taken together constitute the City Council's statements of the reasons for adopting this Ordinance on an urgency basis.

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Recitals.

The above recitals are true and correct, and are hereby incorporated by reference as though fully set forth herein.

Section 2. Urgency Findings.

The City Council hereby finds that the adoption of this ordinance is for the immediate preservation of the public peace, health and safety.

- A. The Sonoma Complex Fire destroyed thousands of residences and numerous commercial buildings in the City of Santa Rosa and the surrounding areas of Sonoma County.
- B. The potential for widespread toxic exposures and threats to public health and the environment exist in the aftermath of the Sonoma Complex Fire. Debris and ash from residential, commercial and other structure fires can contain hazardous materials.
- C. 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 materials such as paint, gasoline, cleaning products, pesticides, compressed gas cylinders, and chemicals may have been stored in homes and accessory structures. The combustion of these and other contents of burned structures can result in hazardous waste.
- D. Standards and removal procedures are needed immediately to protect the environment and public health, and to facilitate coordinated and effective mitigation of the risks to the environment and public health from the health hazards in the burn area.

- E. In the absence of timely and appropriate actions by the affected property owner, tailored enforcement procedures are needed to ensure the ability of the City of Santa Rosa to remediate the fire debris and ash on those privately owned properties.
- F. The rapidly approaching rainy season makes the need for immediate standards and procedures even more urgent for the purpose of providing a swift and coordinated response to minimize the migration of hazardous substances and to avoid rainwater runoff containing hazardous waste from moving onto neighboring properties and into waterways and/or the City's stormwater and sewer systems.
- G. The standards and removal procedures established and required by this ordinance are needed to take effect immediately in order to mitigate the harm that could be caused to the public health and safety, and to the environment from improper disturbances, removal and/or disposal of debris.

Section 3. Definitions.

- A. Affected Parcel: The phrase "Affected Parcel" as used in this ordinance means a privately owned parcel within the boundaries of the City of Santa Rosa containing fire debris and a destroyed structure(s) as a result of the Sonoma Complex Fires.
- B. Consolidated Debris Removal Program: The phrase "Consolidated Debris Removal Program" as used in this ordinance means the clean-up and wildfire debris removal program offered by the California Office of Emergency Services and Federal Emergency Management Agency, performed by the United States Army Corps of Engineers ("USACE") and paid for with public funds, with contribution from the property owner's insurance related to debris removal, if any.
- C. Santa Rosa Fire Clean-Up Application and Work Plan: The phrase "Santa Rosa Fire Clean-Up Application and Work Plan" as used in this ordinance means an application and proposed work plan submitted for approval to the Santa Rosa Planning and Economic Development Department, in accordance with Department policies and procedures, for clean-up and wildfire debris removal to be performed by the parcel owner at his or her own expense.
- D. Fire Debris: The term "Fire Debris" as used in this ordinance includes fire debris and ash from structures resulting from the Sonoma Complex Fire.
- E. Removal of Fire Debris: The term "removal of fire debris" or similar iteration such as "removing fire debris" as used in this ordinance includes all clean-up of fire debris, including removal, transport, and disposal of fire debris, but does not include the removal of identifiable personal property from residential sites unless such removal of such personal property is incidental to the cleanup and the removal of ash from the parcel.

- F. Council: The term “Council” as used in this ordinance means the City Council of the City of Santa Rosa.
- G. Department: The term “Department” as used in this ordinance means the Santa Rosa Planning and Economic Development Department.
- H. Itemized Report: The term “Itemized Report” or “Report” as used in this ordinance means the report of the inspection and abatement costs incurred by City as further described in Section 5.H.

Section 4. Declaration of Nuisance.

- A. Fire debris existing on an Affected Parcel is hereby declared a public nuisance if the City of Santa Rosa has not accepted an Application and Work Plan for the Affected Parcel, and the County of Sonoma has not accepted a valid Right of Entry in the Consolidated Debris Removal Program.
- B. Fire debris existing on an Affected Parcel is hereby declared a public nuisance if an Affected Parcel owner has submitted an Application and Work Plan, but (1) the Application and Work Plan are determined to be incomplete or inadequate by the Department and the Affected Parcel owner fails to cure the incompleteness or inadequacy in a timely manner; (2) the Affected Parcel owner fails to adhere fully to the approved plans, requirements and specifications as detailed in the Work Plan; (3) the Affected Parcel owner fails to meet any of the deadlines established in the Work Plan; or (4) the Affected Parcel owner fails to timely complete the Work Plan successfully.
- C. An employee with the authority to enforce this ordinance may rely on his or her personal knowledge of the facts giving rise to the public nuisance or on information provided to such employee by any other government entities or employees, or other information (including but not limited to aerial and satellite images) bearing a reasonable indicia of reliability.

Section 5. Enforcement of Ordinance and Debris Removal by City.

- A. The Council’s intent is to facilitate orderly remediation of a large scale disaster. Therefore, City of Santa Rosa intends to enforce this ordinance for the purpose of protecting the environment and public health. As such, the enforcement provisions contained in this ordinance are not exclusive, but are cumulative to all other remedies provided by law. Further, nothing in the deadlines contained in this ordinance shall limit the authority of the City to abate hazards more quickly where circumstances so warrant or to enforce the provisions of this ordinance through any other applicable code enforcement mechanism.
- B. The following City of Santa Rosa employees have the authority to enforce this ordinance: the Chief Building Official; the Director of the Planning and Economic

Development Department; the designee of either; any code enforcement officer, or any other employee designated by resolution of the Council.

- C. For purpose of protecting the environment and the public health, City of Santa Rosa may, in compliance with an Inspection and Abatement Warrant issued pursuant to subsection E, abate a public nuisance declared by this ordinance by removing fire debris and doing any other work necessary to remove the public health hazard caused by the fire debris.
- D. To enforce this ordinance, the Chief Building Official is delegated authority to identify Affected Parcels within the boundaries of the City of Santa Rosa that are a public nuisance because of the existence of fire debris, and the absence of a clean-up plan.
- E. To further enforce this ordinance, the Chief Building Official is delegated authority to apply to the Superior Court of California for an Inspection and Abatement Warrant pursuant to California Code of Civil Procedure section 1822.50 *et seq.* for each Affected Parcel, and, upon issuance, to cause the Affected Parcel to be inspected and the public nuisance to be abated by removal of fire debris.
- F. All costs of enforcement incurred by the City of Santa Rosa to enforce this ordinance, and costs of abatement of the public nuisance incurred by the City of Santa Rosa shall be the liability of the owner(s) of the Affected Parcel.
- G. To further enforce this Ordinance, the Chief Building Official is directed to keep an account of the cost incurred by City to inspect and abate the public nuisance on each Affected Parcel, and to prepare an Itemized Report of the costs incurred by City. The itemized Report shall be posted for at least three days on or near the chamber door of the Council together with a notice of the time when such Report shall be submitted to Council for confirmation. At the time fixed for receiving and considering the Report, the Council shall hear the same together with any objections which may be raised by the owner(s) of the Affected Parcel, and shall confirm the Report with any modifications or amendments made by Council.
- H. After confirmation of the Itemized Report, the Chief Building Official shall transmit the confirmed Report to the County of Sonoma Assessor and the Tax Collector, whereupon it shall be the duty of such officers to add the amounts to the assessment of the respective lots and parcels of land for municipal purposes. In the event the assessment for the abatement, rubbish removal, or any other assessment authorized by this chapter is placed on the tax roll, a charge of two dollars for administrative expenses, and a further charge to be computed by multiplying the composite interest rate earned by the City on invested funds (30 days before the assessment is forwarded to the Tax Collector) by the amount of the assessment, as calculated under the provisions of City Code Section 9-08.060, shall both be added to the assessment in order to compensate the City for the cost of effecting collection, and the monetary loss incurred by the City in having to extend its credit to a property owner who has failed to pay the original assessment within a

reasonable time. The amounts of the respective assessments shall be entered upon the tax roll opposite the respective parcels of land, and thereafter such amount shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes of the City.

- I. The Tax Collector of the City is authorized to receive the amount due for the cost of abating the nuisance pursuant to this ordinance, and to issue receipts therefor at any time after the confirmation of the Itemized Report and until 10 days before a copy of the Itemized Report shall be turned over to the County Tax Collector and Tax Assessor for placement on the County tax roll for collection.

Section 6. Environmental Determination. The Council finds that the adoption and implementation of this ordinance 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 in 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.

Section 7. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 8. Effective Date. This ordinance shall take effect immediately following its adoption.

IN COUNCIL DULY PASSED AND ADOPTED this 30th day of November, 2017.

AYES: (6) Mayor Coursey, Vice Mayor Tibbetts, Council Members Combs, Olivares,
Rogers, Sawyer
NOES: (0)
ABSENT: (1) Council Member Schwedhelm
ABSTAIN: (0)

ATTEST: _____ APPROVED: _____
Deputy City Clerk Mayor

APPROVED AS TO FORM:

City Attorney