

Additions are <u>underlined</u> . Deletions are <del>struck through</del> . Revision markers are noted in left or right margins as vertical lines.
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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS,  
STATE OF CALIFORNIA, AMENDING CHAPTER 8.36 (FIRE  
PROTECTION -- WEED AND RUBBISH ABATEMENT) OF TITLE 8  
(HEALTH AND SAFETY) OF THE NAPA COUNTY CODE REGARDING  
FIRE HAZARD ABATEMENT**

**WHEREAS**, On May 22, 2007, the Board of Supervisors of Napa County (“Board”) adopted Ordinance Number 1290 adding Chapter 8.36 to the Napa County Code which established requirements for abatement of nuisances that create fire hazards around structures; and

**WHEREAS**, on March 18, 2008, Chapter 8.36 was last amended by Ordinance 1303; and

**WHEREAS**, it is of paramount importance to protect lives and property from the threat of wildfire; and

**WHEREAS**, the Napa County Board of Supervisors now wishes to amend portions of Chapter 8.36 in order to improve the clarity and effectiveness of those Code provisions, and to enhance the protection and safety of Napa County citizens, their property, and first responders.

The Napa County Board of Supervisors, State of California, ordains as follows:

**SECTION 1.** Chapter 8.36 entitled Fire Protections – Weed and Rubbish Abatement, is hereby amended to read in full as set forth in Exhibit “A” to this ordinance.

**SECTION 2.** The adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) because the activity is not a project and meets the “general rule” as defined in Sections 15378 and 15061(b)(3) of the CEQA Guidelines. Adoption of the ordinance has no potential for resulting in physical changes to the environment, either directly or indirectly.

**SECTION 3.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Napa County Board of Supervisors hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

**SECTION 4.** This ordinance shall be effective thirty (30) days from and after the date of its passage.

**SECTION 5.** A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

The foregoing ordinance was introduced and read at a regular meeting of the Board of Supervisors of Napa County, State of California, held on the 9th day of July 2019, and passed at a regular meeting of the Board of Supervisors of Napa County, State of California, held on the 23rd day of July 2019, by the following vote:

AYES:	SUPERVISORS	_____
		_____
NOES:	SUPERVISORS	_____
ABSTAIN:	SUPERVISORS	_____
ABSENT:	SUPERVISORS	_____

NAPA COUNTY, a political subdivision of the  
State of California

\_\_\_\_\_  
RYAN GREGORY, Chair of the  
Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Shana A. Bagley (e-sign)</u> Deputy County Counsel</p> <p>By: <u>Erin Cossen</u> County Code Services</p> <p>Date: <u>6/20/2019</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____</p> <p>Processed By: _____</p> <p>Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: _____</p>
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I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON \_\_\_\_\_.

\_\_\_\_\_, DEPUTY  
JOSE LUIS VALDEZ, CLERK OF THE BOARD

## Chapter 8.36

### FIRE PROTECTION—~~WEED AND RUBBISH~~FIRE HAZARD ABATEMENT

#### Sections:

- 8.36.010 Title.
- 8.36.020 Purpose of provisions—Public nuisance findings.
- 8.36.030 Definitions.
- 8.36.040 Applicability of article.
- 8.36.050 Enforcement.
- 8.36.060 ~~Public~~Duty to maintain defensible space and abate public nuisances.
- 8.36.070 ~~Duty to remove—Date of removal of nuisances.~~ [Reserved.]
- 8.36.080 Adjacent property owner's responsibilities.
- 8.36.090 Order to abate.
- 8.36.100 Abatement by county personnel or private contractors.
- 8.36.~~110~~110 Notices to abate—Service of notice— and abatement order.
- 8.36.120 Requests for extension of time.
- 8.36.130 Appeal of ~~decision of enforcement officer.~~ order to abate.
- 8.36.140 ~~Appeals of abatement determination.~~ [Reserved.]
- 8.36.150 Abatement by county.
- 8.36.160 Cost of abatement.
- 8.36.170 Cost of abatement—Work by owner prior to county removal of nuisance.
- 8.36.180 ~~Appeal from determination of cost.~~ [Reserved.]
- 8.36.190 Placement of lien on property in event of non-payment.
- 8.36.200 Enforcement—Extent of duty to enforce.

#### 8.36.010 Title.

This chapter shall be known and may be referred to as the Napa County Fire Hazard Abatement Ordinance.

#### 8.36.020 Purpose of provisions—Public nuisance findings.

Pursuant to and in accordance with the determination made and the authority granted by the state under Section 14930 of the Health and Safety Code, the Napa County board of ~~the county~~supervisors makes the following findings and declarations:

A.—\_\_The uncontrolled growth and/or accumulation of ~~combustible vegetation or rubbish~~prohibited materials on parcels as defined in this chapter is hereby found to create a condition that is a fire hazard and potentially injurious to the health, safety, and general welfare of the public and first responders.

B.—\_\_The presence of such ~~combustible vegetation or rubbish~~prohibited materials within defensible space and in other locations as prohibited in this chapter is hereby declared to be a public nuisance ~~which~~that may be abated in accordance with the provisions of this chapter and other applicable provisions of the Napa County Code governing nuisance abatement. Nothing in this chapter shall replace or conflict with the authority of the county agricultural commissioner to eradicate noxious weeds under applicable sections of the California Food and Agricultural Code.

#### 8.36.030 Definitions.

"Combustible vegetation" means material that in its natural state will readily ignite, burn, and transmit fire ~~from native or landscape plants~~ to any structure or other vegetation. Combustible vegetation includes, but is not limited to, dry grass, brush, weeds, ~~green waste~~, dead or dying trees, litter, or other flammable vegetation that create a fire hazard.

"Defensible space" means ~~that the~~ the area described around a structure within a 100-foot radius or to the property line, whichever is less, in the which combustible vegetation and other prohibited materials must be treated, cleared, or reduced to slow the spread of fire to and from the structure.

"Defensible Space Guidelines" means the Napa County Defensible Space Guidelines which is adjacent to each side of a building or structure and must be cleared of all brush, flammable vegetation, or combustible growth, subject however to the exceptions set forth in the promulgated by Napa County Defensible Space Guidelines and the California Department of Forestry and Fire Protection. The Defensible Space Guidelines were adopted to establish minimum requirements for fuel treatments and for measures to ensure compliance with the requirements of this chapter and the obligations of property owners. In the event of any conflict between the provisions of this chapter and the Defensible Space Guidelines, the provisions of this chapter shall control.

"Enforcement officer" means the fire marshal, assistant fire marshal ~~or, engine company officer~~, fire inspector of the county, or any person designated by the fire chief to enforce this chapter. In the case of enforcement by a fire district, "enforcement officer" means the fire chief of the fire district.

"Fire hazard" shall mean any condition, arrangement, act, or omission ~~which that~~:

1. Increases, or may cause an increase increased risk of, hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing, or extinguishing fire; or

2. May obstruct, delay, hinder, or interfere with the operations of a fire department or the egress of occupants in the event of fire.

"Green waste" means and includes, but is not limited to, organic material such as ~~yard tree~~ and shrub trimmings, grass clippings, plant waste, leaves, untreated wood wastes, paper products, natural fiber products, mulch, and compost, but does not include growing plants.

~~"Occupied building" means a structure or building either potentially or actually occupied by persons on either a permanent or temporary basis including but not limited to residences or businesses.~~

"Parcel" means any contiguous quantity of land in the possession of, owned by, or recorded as the property of, the same person or entity, and which is located in the unincorporated area of ~~the county of Napa County~~.

"Prohibited materials" means combustible vegetation, green waste, rubbish, or weeds.

"Rubbish" means and includes, without limitation, all the following types of waste, ~~but is not restricted to nonputrescible wastes~~: paper, cardboard, grass clippings, ~~tree or shrub trimmings~~, wood, bedding, ~~crockery~~, rubber tires, construction waste, and similar waste materials.

"Structure" means any constructed building or ~~structure improvement~~ used for shelter, support, or any other use or occupancy.

~~"Weeds, as used in this chapter,"~~ means and includes any of the following:

1. Weeds which that bear seeds of a downy or wingy nature;
2. Sagebrush, chaparral, and any other brush or weeds which that attain such hard growth as to become, when dry, a fire hazard;
3. Weeds and grasses which that are otherwise noxious;
4. Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health; or

5. — Dry grass, stubble, brush, litter, or other flammable plant material ~~which~~that endangers the public safety by creating a fire hazard.

#### **8.36.040 Applicability of article.**

This chapter shall be applicable to all unincorporated areas of the county. It shall also apply within those unincorporated areas in independent fire districts having governing bodies other than the Napa County board of supervisors, provided that the governing body takes action to enforce this chapter by adopting an appropriate resolution authorizing the fire chief of the district to enforce the requirements of this chapter. If any part of this chapter is in conflict with any other part of this code, the more restrictive provision(s) shall control.

#### **8.36.050 Enforcement.**

The enforcement officer shall have the duty and power to enforce the provisions of this chapter.

#### **8.36.060 ~~Public~~Duty to maintain defensible space and abate public nuisances.**

Property owners shall maintain a defensible space as defined by this chapter and in the Defensible Space Guidelines. The following ~~are declared to be public nuisances~~ conditions within the unincorporated ~~areas~~area of the ~~county~~Napa County are declared to be nuisances and ~~it~~ shall be ~~the responsibility of~~abated by the owner of ~~the each parcel or~~ property, ~~upon which~~ where such nuisance exists, ~~to abate such nuisances~~conditions exist, at ~~his or her own~~the owner's sole expense ~~whenever they may exist during each fire season declared by the California Department of Forestry and Fire Protection;~~

A. — ~~The accumulation of combustible vegetation or rubbish~~presence of prohibited materials within ~~one hundred feet, or to the property line, whichever is less of~~the defensible space surrounding any ~~unoccupied structure;~~

B. — ~~The accumulation of combustible vegetation or rubbish within one hundred feet of any occupied building;~~

C. — ~~The accumulation of combustible vegetation or rubbish~~presence of prohibited materials on undeveloped parcels that are one acre or less in size;

~~D. —~~ C. ~~The accumulation~~presence of ~~combustible vegetation or rubbish~~prohibited materials that contribute to the fuel load or hinder the clearing of properties or delay ~~fire fighting~~firefighting operations on any parcel ~~when such accumulations create a fire hazard as determined by the enforcement officer;~~

~~E. —~~ D. A portion of any tree that extends within ten feet of the outlet of any chimney or stovepipe;

~~F. —~~ E. The accumulation of dead or dying wood in any tree adjacent to or overhanging a structure;

~~G. —~~ F. The ~~accumulation~~presence of ~~combustible vegetation or leaves~~prohibited materials on ~~a structure~~the roof or in the gutters; rain gutter of any structure.

~~H. —~~ G. The absence of a screen, constructed of nonflammable material with openings of not more than one-half inch in size, on any outlet of a chimney or stovepipe. The screen shall be constructed and installed in accordance with the California Building Standards Code.

~~8.36.070 Duty~~ H. The failure to remove — Date of removal of nuisances.

~~Removal of public nuisances described in Section 8.36.060 of this code shall be accomplished by June 1st of every year and such obligation continues until the end of the fire season as declared by the California Department of Forestry and Fire Protection. The~~ comply with the Napa County Defensible Space Guidelines ~~have been adopted to establish guidelines for fuel treatments that comply with the requirements of Section 8.36.060, which are incorporated herein by this reference.~~

#### **8.36.070 [Reserved.]**

#### **8.36.080 Adjacent property owner's responsibilities.**

When ~~an occupied building a structure~~ is less than one hundred feet from a property line and ~~combustible vegetation prohibited materials~~ on an adjacent parcel ~~presents~~present a fire hazard for the ~~occupied building structure~~, the property owner of the adjacent parcel where the fire hazard exists shall be responsible for clearing the area on that owner's ~~land which parcel that~~ is within one hundred feet of the ~~occupied structure and is needed, so as~~ to provide the necessary fire protection in the manner and to the extent required by the Napa County Defensible Space Guidelines.

#### **8.36.090 Order to abate.**

The enforcement officer may issue an order of abatement of a nuisance to ~~the owner of the affected~~any property owner whose parcel is the site of any violation of this chapter, by posting and delivering the order in the manner set forth in Section 8.36.110 of this chapter. The property owner shall have ~~twenty-one~~fourteen calendar days from the date of the order of abatement to abate the nuisance.

#### **8.36.100 Abatement by county personnel or private contractors.**

If ~~the~~a property owner to whom an abatement order has been issued, and to whom notice has been given by the enforcement officer in accordance with section 8.36.110 of this chapter, fails to comply with the order ~~of abatement~~, then the enforcement officer may summarily abate the nuisance and cause the ~~weeds, combustible vegetation, green waste, rubbish, and prohibited materials and/or other such accumulations~~conditions that violate this chapter to be removed or otherwise abated by county personnel. ~~Alternatively, the county may elect to contract with or private contractors to remove the weeds, combustible vegetation, green waste, rubbish, and other such accumulations hired by the county.~~

#### **8.36.110 Notices to abate—Service of notice, and abatement order.**

A.—Following a determination that a public nuisance of the type described as defined in Section 8.36.060 exists, notice to abate the fire hazard shall be provided by the enforcement officer or designee shall give notice of the abatement order, along with a copy of the abatement order itself, to the owner of the property where the nuisance exists in the following manner:

- 1.—By personal posting on each affected parcel; and
- 2.—By either:
  - a.—Personal delivery to the owner of ~~the each~~ affected ~~property parcel~~; or
  - 2.—By b. Delivery by First Class U.S. mail and by certified or registered mail, postage prepaid, return receipt requested, to the address of the owner of the each affected property parcel as the owner's address appears upon the current county equalized assessment; or
- 3.—By conspicuously posting upon the affected property. roll.

B.— The failure of the owner or any other person to receive ~~any~~the notice and abatement order required by this chapter to be given shall not affect the validity of any proceedings taken pursuant thereto, as long as the enforcement officer has complied with the notice procedures above.

C.— The notice shall be titled with the words "Notice to Abate Fire Hazard." The notice shall be in substantially the following form:

[MONTH DAY YEAR]

You are hereby notified that there is a condition that constitutes a fire hazard on the following described property owned by you:

~~—(Describe property by owner's address (if available) AND~~and APN ~~Number~~ as it appears upon the current county equalized assessment roll)

The nature of the fire hazard is as follows:

(Describe nature of fire hazard)

You are hereby notified that the Board of Supervisors has declared that such fire hazard constitutes a public nuisance and you are required to remove said fire hazard within ~~twenty-one (21)~~fourteen (14) calendar days of the date of this notice. If you fail to do so, the fire hazard will be removed by ~~the Napa County of Napa~~ and the cost of removal shall be assessed against your property and will constitute a lien upon said real property until paid. This charge representing the cost of removal will be in addition to the administrative charge imposed by section 8.36.160 of the Napa County Code.

D.— An appeal of the decision of the enforcement officer to abate the property may be filed in accordance with the procedures set forth in Section 8.36.130 of the Napa County Code.

E.— A request for extension of time may be made in accordance with the procedures set forth in Section 8.36.120 of the Napa County Code.

#### **8.36.120 Requests for extension of time.**

The owner of the parcel affected by the notice and abatement order may request an extension of time for the removal of prohibited materials. Said request shall be submitted to the enforcement officer within ten calendar days of the date the notice was sent, and posted on the property. The enforcement officer shall notify the property owner, in writing, within ten calendar days of the date of request for extension whether or not the extension shall be granted and, if granted, the new date by which the abatement shall take place.

#### **8.36.130 Appeal of ~~decision of enforcement officer~~order to abate.**

The owner of the parcel who wishes to contest the ~~decision~~issuance of an order to abate a nuisance by the enforcement officer ~~to abate~~ may file a written appeal to the fire chief. Any such appeal shall be filed with the clerk of the board within ten days of the date the notice was sent, and posted on the property. The written appeal shall include a statement of all facts supporting the appeal. The fire chief or ~~its~~ designee shall respond within ten calendar days of the filing of the appeal and the decision of the fire chief or ~~its~~ designee shall be in writing. An appeal to the fire chief is not deemed filed until it is delivered to the clerk of the board. The filing of such notice of appeal shall stay the effectiveness of the order of abatement until the appeal has been decided. The decision of the fire chief is final.

#### **8.36.140 ~~Appeals of abatement determination.~~[Reserved.]**

~~The owner of the parcel who wishes to contest the decision of the fire chief may file an appeal with the county safety officer. Any such appeal shall be filed with the clerk of the board within ten calendar days~~



~~of the decision of the fire chief pursuant to Section 8.36.130 of this chapter. The county safety officer shall schedule a hearing date that is not more than ten calendar days following the filing of the appeal with the clerk of the board. The county safety officer shall render a decision at the conclusion of the hearing or within seven calendar days of the conclusion of the hearing. The decision of the county safety officer shall be in writing and shall be final with no right of further appeal notwithstanding any other provision of this code. An appeal to the county safety officer is not deemed filed until it is delivered to the clerk of the board. The filing of such notice of appeal shall stay the effectiveness of the order of abatement until the appeal has been decided.~~

#### **8.36.150 Abatement by county.**

Unless a parcel owner files a timely appeal ~~is made, heard and allowed unless the appeal is upheld~~ by the fire chief ~~and safety officer, as the case may be, resulting in withdrawal of the order to abate~~, the county may have the public nuisance removed pursuant to Section 8.36.100 of this chapter.

#### **8.36.160 Cost of abatement.**

Any expense, including administrative expenses ~~which~~that the county incurs as a result of having ~~weeds, combustible vegetation, green waste, rubbish, prohibited materials~~ or other similar accumulations removed, or as a result of other steps necessary to abate a nuisance within the definition of Section 8.36.060 of this chapter, shall be charged to the parcel owner. The enforcement officer shall keep an itemized account of the cost of enforcing the provisions of this chapter. Upon completion of abatement, the enforcement officer shall prepare and serve upon the owner of the parcel as shown on the last equalized assessment roll, anyone known by the board to be in possession of the parcel, and all lien holders of record, a cost bill specifying:

- A.—    The work done, whether by county personnel or private contractors;
- B.—    The costs of administering the abatement including but not limited to the costs relating to the protest and appeals hearings;
- C.—    An itemized account of the costs and receipts of performing the work;
- D.—    The street address, assessor parcel number, or other description sufficient to identify the property affected;
- E.—    The amount of the assessment proposed to be levied against the property; and
- F.—    A statement that if an appeal is filed, ~~the county hearing officer~~fire chief will hear and consider objections and protests to the account and proposed assessment.

#### **8.36.170 Cost of abatement—Work by owner prior to county removal of nuisance.**

Any ~~person~~owner of a parcel for which an order to abate has been issued may have the ~~public~~ nuisance removed and abated at ~~his or her~~their own expense if ~~such abatement~~ is done/accomplished prior to the arrival of the person or persons the county has sent and designated to remove the nuisance. However, even if the owner takes such steps to eliminate the nuisance prior to the county's doing so, in any case in which an order to abate has been issued, the owner of the parcel shall be liable for the reasonable cost incurred by the county in enforcing the code and seeking abatement of the nuisance on the parcel(s) involved, including investigation, boundary determination, measurement, clerical, and other costs. The ~~provisions of property owner wishing to appeal the cost bill for total abatement expenses by may be filing an appeal in accordance with the procedures set forth in~~ Section 8.36.180 ~~of this chapter apply to any such costs.~~ 130 of the Napa County Code.

#### **8.36.180 ~~Appeal from determination of cost.~~ [Reserved.]**

~~The owner of the property may appeal the cost bill (total abatement expenses). Such appeal shall be in writing and must be filed with the clerk of the board within thirty calendar days of the date of the mailing of the notice required by Section 8.36.160. An appeal hearing shall be set within fifteen calendar days of the filing of the appeal. Pursuant to subsection (i) of Government Code Section 25845, the county hearing officer is delegated the power and duty to hear these appeals. At the conclusion of the hearing, the county hearing officer may make such modifications and revisions of the proposed account and assessment as it deems just, and may order the account and proposed assessment confirmed or denied, in whole or in part, or as modified and revised. The county hearing officer shall render a written decision, including any findings or conclusions required and file the decision and record with the clerk of the board. The determination of the county hearing officer as to all matters contained in the order is final. An appeal to the county hearing officer is not deemed filed until it is delivered to the clerk of the board. The filing of such notice of appeal shall stay the effectiveness of the order of abatement until the appeal has been decided.~~

### **8.36.190 Placement of lien on property in event of non-payment.**

If the property owner does not pay the cost of the abatement expenses ("cost bill") within forty-five days after being billed or within fifteen days after an order of the county hearing officer~~fire chief~~ affirming or amending the cost bill, then a copy of the cost bill shall be sent to the county auditor by the tenth day of August following the expiration of the period within which the cost bill must be paid. The auditor shall thereupon enter the amount of the cost bill, or such amount of the cost bill that has not been paid, as an assessment against the affected parcels of land as they appear on the current assessment roll. The county tax collector shall include the amount of the assessment on the bills for taxes levied against the respective parcels of land. Thereafter, the amount of the assessment shall be collected at the same time and in the same way as county taxes are collected. The owner is subject to the same penalties, procedure, and sale as in the case of delinquency for non-payment of ordinary county taxes. All laws applicable to the levy, collection, and enforcement of county ad valorem taxes are applicable to these assessments, except that if any real property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attached thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the cost bill relating to such property shall be transferred to the unsecured roll for collection.

### **8.36.200 Enforcement—Extent of duty to enforce.**

Nothing in this chapter shall be construed as imposing on the enforcement officer or the county any duty to issue an order to abate a fire hazard and neither the enforcement officer nor the county shall be held liable for failure to issue an order to abate a fire hazard nor for failure to abate any fire hazard.