



Agenda Date: 3/11/2008
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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Gabrielle Avina for Loveless, Ernie - Fire Chief
County Fire Department
REPORT BY: Gabrielle Avina, Fire Marshal - 967-1421
SUBJECT: Weed abatement ordinance

RECOMMENDATION

County Fire Chief requests first reading and intention to adopt an ordinance amending Chapter 8.36 of the Napa County Code for fire hazard abatement in the unincorporated areas including the addition of requirements consistent with Public Resources code section 4291, changing the appeal process, modifying the methods required for notice of violations, and clarifying neighboring property owner responsibilities for fuel modification.

ENVIRONMENTAL DETERMINATION: The project consists of the adoption of an ordinance changing enforcement mechanisms for gaining compliance with current standards and does not change any current fuel management standards. The proposed ordinance does not have the potential to result in a direct or indirect change to the environment, and therefore does not meet the definition of a "project" under the California Environmental Quality Act (CEQA) pursuant to Section 15378(a). Furthermore, fuel management activities presently authorized under the proposed and current ordinance are categorically exempt from the provisions of CEQA pursuant to Section 15304 (i).

EXECUTIVE SUMMARY

During adoption of the Napa County Weed Abatement Ordinance staff committed to returning to the Board in early 2008 with a report of the program activities during 2007. Staff also recommends modifications to the existing ordinance and requests the first reading and intention to adopt modifications to Chapter 8.36 of the Napa County Code.

Procedural Requirements

1. Chair announces agenda item.
2. Chair declares the Public Hearing open.
3. Staff reports on the item.
4. Questions by the Board.
5. Chair invites public comment.
6. Chair declares the Public Hearing closed.

7. Chair reads the Ordinance title.
8. Chair invites a motion to waive the balance of the reading of the ordinance.
9. Member moves waiving the balance of the reading of the ordinance.
10. Another member seconds the motion waiving the balance of the reading of the ordinance.
11. Chair calls for the Vote on the motion waiving the balance of the reading of the ordinance.
12. Chair announces the result of the vote on the motion waiving the balance of the reading of the ordinance.
13. Chair invites a motion of intent to adopt the ordinance.
14. Member moves intention to adopt the ordinance.
15. Another member seconds the motion of intention to adopt the ordinance.
16. Board discussion and debate on the motion of intention to adopt the ordinance.
17. Chair calls for the Vote on the motion of intention to adopt the ordinance.
18. Chair announces the result of the vote on the motion of intention to adopt the ordinance.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The project consists of the adoption of an ordinance changing enforcement mechanisms for gaining compliance with current standards and does not change any current fuel management standards. The proposed ordinance does not have the potential to result in a direct or indirect change to the environment, and therefore does not meet the definition of a "project" under the California Environmental Quality Act (CEQA) pursuant to Section 15378(a). Furthermore, fuel management activities presently authorized under the proposed and current ordinance are categorically exempt from the provisions of CEQA pursuant to Section 15304 (i).

BACKGROUND AND DISCUSSION

In May of 2007 the County adopted a weed abatement ordinance that went into effect on June 22, 2007. During the ordinance adoption process staff committed to returning to the Board with a review of the progress that was made during the fire season of 2007 and lessons learned from the experience. Staff is also returning with recommended modifications to the existing ordinance and requests the first reading and intention to adopt an Ordinance modifying Chapter 8.36 of the County Code.

After the ordinance was approved in May of 2007 and before it went into effect on June 22, 2007 the Napa County Fire Marshal's Office mailed out over 11,000 letters to residents of Napa County explaining the requirements of the new ordinance and directing residents to resources such as the county web-site and chipping program that were available to assist them.

During the period of June 22, 2007 through October 15, 2007, the end of declared fire season in Napa County, staff completed 1,007 defensible space inspections. Of the 1007 inspections staff inspected 780 properties of which 553 (70%) were in compliance at the initial inspection. The remaining 227 (30%) properties were sent violation notices and 66% of those noticed were in compliance during the follow up inspection. When the season ended abruptly in October we had abated one property and had fifteen other properties that were not in compliance. During the 2007 fire season Chief Ernie Loveless received two appeals to the order to abate. One

was withdrawn and resolved before the follow up inspection and the second was continued while the property owner worked with neighboring property owners and was not resolved when fire season ended in October.

Staff estimates that during the 2008 fire season staff should be able to complete approximately twice the number of inspections that were completed in 2007. A number of factors contributed to the lower than expected inspection numbers and staff are in the process of addressing those issues. When the ordinance was adopted staff did not have the ability to complete abatement orders and issue notices in the field. Staff is currently working with Information Technology to use an existing county program to complete an inspection and issue a notice in the field similar to the Conservation Development and Planning Department Code Enforcement personnel. Not only was there a learning curve for fire department staff in enforcing the ordinance but also there was a significant learning curve for the general public on defensible space requirements and fuel modification. Inspections required a fair amount of time educating residents and explaining the requirements of the ordinance. Over time as the defensible space requirements become second nature for residents staff believes the amount of time spent on each inspection will decrease. We also started the season behind the curve, the ordinance took effect on June 22, 2007 well into the fire season. This years plan to notify residents of the weed abatement program will begin in April with an informational letter to all county residents affected by the ordinance in hopes that residents will complete fuel modification when the weather and fuel conditions are more favorable.

The information letter sent out to residents in June did contribute to a large number of complaints regarding fire hazards on neighboring properties. In fact our goal of targeting high risk neighborhoods was practically put on hold for the first few months while we responded to neighbor and quite often community complaints about properties that have been fire hazards for years. As the program continues staff believes the number of complaints will decrease and we will be able to spend more time on the high risk communities.

As expected, after working with the ordinance for a season staff has identified items that we believe should be added to the ordinance, changes to procedures that would streamline the process and language in the ordinance that needs revision because it is difficult to interpret.

Additions to the Ordinance for Consistency with Public Resource Code 4291

Proposed additions to the ordinance include requirements consistent with Public Resource Code (PRC) 4291 which consists of maintenance items like keeping roofs and gutters clear of combustible material, maintaining 10' of clearance between tree limbs and chimneys and maintaining the appropriate covering on chimneys and stovepipes. Since some of the additions proposed include maintenance issues consistent with Public Resource Code we recommend a change in the name of the ordinance from the Napa County Weed Abatement Ordinance to the Napa County Fire Hazard Abatement Ordinance.

Changes to the Appeal Process

A procedural change in the proposed ordinance is a change in the appeal process. The property owner still has two appeals but instead of both appeals being hearings the first appeal is written to the fire chief and the second appeal is a hearing with the county safety officer. This change will allow the fire chief or his designee sufficient time to investigate the appeal and render a decision and will result in a more streamlined appeal process which does not duplicate staff time spent on appeals while still affording property owners two separate and distinct appeals.

Modifications to the Methods for Noticing

Proposed procedural changes to the ordinance are changes in giving notice to property owners of violations which include posting of the property and hand delivery of notices. A large number of the violations that did not comply were due to our inability to notify the property owner. Abatement notices were sent via certified mail and

were frequently returned after a month when the postal office was unable to deliver the mail or the property owner did not respond to the notice. This left us with a long list of violations that we were unable to process because we were not able to notify the property owner as required by the ordinance.

Property Owner's Responsibility

Staff has included language in the proposed ordinance that requires fuel modification on vacant or undeveloped parcels one acre or less in size. Quite frequently these small undeveloped parcels are in communities or subdivisions and while fuel on the parcel may not be within 100 feet of a structure and therefore does not require fuel modification under the existing ordinance these properties frequently create a fire hazard for the community. This has proven to be a problem in some of our high risk communities such as Berryessa Estates and Berryessa Highlands.

The major issue regarding the Weed Abatement Ordinance is the defensible space required across property lines and more specifically the financial responsibility for the fuel modification. Language in the ordinance and in the Napa County Defensible Space Guidelines proved to be difficult for staff to enforce and both staff and the public to interpret. Currently the language in the ordinance has been interpreted by staff as the responsibility of fuel modification on a neighboring parcel is the responsibility of the owner of the structure which requires defensible space and therefore not necessarily the property owner where the fuel modification is required. The ordinance as written requires a property owner to either provide the required fuel modification or allow the property owner with the structure access to the property to do the fuel modification.

In practice applying the right of the neighboring property owner to shift responsibility for fuel modification is problematic. After noticing the owner of the property the fire department has to be shown and must interpret an agreement between the neighboring properties to determine responsibility. Staff will have to determine who has the right to enter and the financial responsibility for fuel modification.

Once that has been determined the property owner with financial responsibility will have to be noticed and allowed twenty one days to comply with the ordinance. The concept of requiring someone to modify fuel on someone else's property is problematic for a number of reasons. There is the potential for there to be conflicts on what is appropriate fuel modification between neighboring property owners. For example the property owner with the structure may enter on to the neighbor's property and may remove much more than is required by the ordinance or may remove or modify what is of value to the owner of the property. There is the potential for there to be liability issues if someone is injured while performing fuel modifications on someone else's land.

The proposed ordinance changes the responsibility for fuel modification to the actual owner of the property where the fuel conditions exist. Staff has researched other jurisdictions who have ordinances which require fuel modification across property lines and those ordinances also require the owner of the property on which the hazard exists to be responsible. This change in responsibility will make the inspection and noticing procedures far more efficient for staff and reduces the potential for county liability for claims of injury or property damage.

Requiring the owner of the property where the hazard exists to be responsible for maintaining their land free of fire hazards to neighboring structures is consistent with other codes. An example is a property owner with a large parcel storing hazardous materials near their property line and near a structure on some else's property. The county would not require the neighboring property owner with the structure to clean up the hazardous materials, the owner of the property where the hazard exist would be the responsible.

From a wildland fire perspective the ability to look past property lines to create and maintain adequate defensible space is the most significant benefit of the ordinance. Defensible space has been required in our wildland areas since the 1960's but because the state regulations stop at the property line many property owners have not been able to clear adequate defensible space because they could only go to the property line.

The ordinance is quickly changing the wildland fire landscape in the county and will definitely help to improve public and firefighter safety and reduce potential losses from wildland fires. To learn from our lessons last summer we have recommended changes to the ordinance which will continue to improve the wildland fire risk in Napa county and will improve staff effectiveness.

Staff has also drafted changes to the Napa County Defensible Space guidelines that are attached to this agenda item in draft form. If the Board adopts these amendments staff will return at the second reading with a resolution adopting the amended guidelines.

SUPPORTING DOCUMENTS

- A . Final Ordinance
- B . Redlined Ordinance
- C . Draft Napa County Defensible Space Guidelines

CEO Recommendation: Approve

Reviewed By: Helene Franchi