

ORDINANCE NUMBER BFPD 2019-01

AN ORDINANCE OF THE BURNEY FIRE PROTECTION DISTRICT ESTABLISHING PROCEDURES FOR ABATEMENT OF FIRE AND LIFE SAFETY HAZARDS ASSOCIATED WITH UNSAFE PROPERTIES AND STRUCTURES, AND AUTHORIZING RECOVERY OF ABATEMENT COSTS

Whereas, excessive fuel loads such as vegetation, rubbish and debris accumulated in yards and vacant lots can increase a fire's intensity, aiding in the spread of fire which can endanger the lives of people in the area during a fire event; and,

Whereas, toxic smoke as well as intense flames from the burning of materials found in abandon vehicles, discarded furniture and other man-made debris increases the health risks associated with fire suppression; and,

Whereas, vacant properties with unsecured buildings pose a potential risk of fire and threat to public health and safety by concealing unauthorized or squatter activities involving the use of fire and/or use of unauthorized fire-related devices; and,

Whereas, well maintained and cleared property will decrease the intensity and spread of wildfire during a fire event, and allow safer evacuation of the public and quicker access by responders to the fire; and,

Whereas, the Burney Fire Protection District is authorized pursuant to California Health and Safety Code Sections 13862, 13869, 13870, and 13879, and other applicable laws, to enforce fire safety laws and abate fire safety hazards within structures, and fire hazards caused by flammable vegetation and rubbish on and around structures.

Now, therefore, the Board of Directors of the Burney Fire Protection District ordains as follows:

1. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning set forth in this section.

Combustible vegetation means:

- A. Tumbleweeds (Russian Thistle).
- B. Dead trees, either standing or downed.
- C. Dead limbs, needles, leaves, or other debris of plants or trees.
- D. Dry combustible weeds, or dry grasses over four inches in height.
- E. Combustible, dry, or dead brush and plant material.
- F. Chaparral, brush or other vegetation of a height and density that prohibits foot traffic for fire protection or suppression activity.

Fire Chief means the Chief of the Burney Fire Protection District, or his or her designee.

Fire District or *District* means the Burney Fire Protection District.

Fire hazard means:

- A. Combustible vegetation dry or living.
- B. Brush or chaparral on the property within fifty (50) feet of any structure or within thirty (30) feet of any public or private road and/or utility and flood or fire control access road.
- C. Any unenclosed pile of yard clippings, leaves, or tree trimmings placed on the ground and deemed by the Fire Chief to be a fire hazard.
- D. Any other condition of real property, including any condition involving vegetation, plant, or tree material, defined or described in the most recent edition of the California Fire Code, as adopted by the District, as a fire hazard.
- E. *Fire Hazard* also means and includes any structure within the boundaries of the District, whether residential, commercial, or industrial, unoccupied or occupied, that is not being actively maintained, monitored, or secured such that in the determination of the Fire Chief, there exists a fire or life safety hazard due to increased risk of fire ignition or any other condition that will promote the spread of fire.

Owner/Occupant means, collectively and individually, any fee owner, tenant, or person or entity in lawful control of, or any other person or entity having or owning a possessory interest in, private real property.

2. Authority of the Fire Chief.

A. The Fire Chief shall be responsible for the administration and enforcement of this Ordinance. For such purposes, the Fire Chief shall have the power to declare property, buildings or portions thereof as fire hazards and to ensure that such hazards are abated pursuant to the provisions of this Ordinance. The Fire Chief shall have the power to render interpretations of this Ordinance, and to adopt and enforce rules and supplemental regulations, to the extent permitted by law, in order to clarify the application of this Ordinance. Such interpretations, rules and regulations shall conform to the intent and purpose of this Ordinance.

B. During normal business hours, the Fire Chief may enter areas open to the public, in or upon commercial property or any building where the Fire Chief has reasonable cause to believe a fire hazard may exist, for the purpose of inspection or re-inspection. For property posted or where access is restricted the Fire Chief will seek permission from the property owner/occupant. If access is not granted the Fire Chief may seek a warrant for entry.

C. The Fire District has finite personnel and financial resources and when faced with a non-compliant owner/occupant, the Fire Chief shall have discretion to decline or delay the commitment of District personnel or resources to the abatement process. Any decision to decline or delay initiation of the formal abatement process shall not excuse the responsibility of any property owner/occupant to abate a fire hazard as required by this Ordinance, nor does it preclude the Fire District from beginning any abatement process when resources become available.

D. If an inspection is required to confirm the existence of a fire hazard, inspection of the suspect property or building will first be made from public property, a location open to the public, or other property for which consent to enter has been obtained by the District. If the Fire Chief is unable to confirm the existence of a suspected fire hazard from any of the foregoing locations, a request may be made by the Fire Chief to the owner/occupant to enter property for the purpose of inspection. Such request to enter the property to inspect may be verbal or by mailing by certified mail with proof of delivery of a District Inspection Request form to the owner/occupant of record. If the owner/occupant refuses a verbal request for consent to enter the property to inspect, or if after 10 days following the mailing of the District Inspection Request form, no reply has been received, the Fire Chief may apply to the Superior Court for an inspection warrant to inspect the property, pursuant to California Code of Civil Procedure sec. 1822.50, et seq.

E. Notwithstanding any failure to receive consent to enter to inspect, the Fire Chief may determine the existence of a fire hazard based on conditions lawfully observed from any location.

3. Duty to abate fire hazards.

Every owner/occupant of private real property within the boundaries of the District shall abate all fire hazards from such property, including fire hazards existing in, upon, or around structures, sidewalks, parkways, trails, lots, and easements on such property, unless the easement is under the sole control of another person or entity, as determined by the Fire Chief. All such fire hazards are declared to be a public nuisance as to which the costs of abatement, as more fully described herein, may be specially assessed as provided in Health and Safety Code Sections 14902 and 14912, et seq., or otherwise as provided by law. The procedures for abatement of fire hazards set forth herein are not exclusive, but are in addition to any and all other procedures provided by law for the abatement of nuisances and fire hazards.

4. Notice to abate.

A. Whenever the Fire Chief deems it necessary to enforce the provisions of this Ordinance, he or she shall issue a notice to abate fire hazard by posting not less than three conspicuous notices on the property and serving the notice by any or all of the following methods:

1. By mailing a notice to the fee owner at the address shown on the latest tax roll and to the affected property if a mailing address is available. Note: The notice must be served by certified mail before a special assessment may be imposed against the property.

2. By personally serving the owner of the property shown on the latest tax roll.

Except as provided herein, written notice shall be mailed by first class mail to, or personally served upon, any tenant or person, other than the fee owner, actually occupying the property. The failure of the fee owner to actually receive such notice shall not affect the power of the District proceed as provided in this Ordinance. Mailed notice must be made by certified mail before a special assessment may be imposed against the property. Mailed notices shall be deemed received five (5) business days after mailing.

B. The notice to abate fire hazard shall include, at a minimum, the following information:

1. Description of the fire hazard(s).

2. List of locations, and parcel numbers of affected property.

3. Due date by which abatement must be completed.

4. A copy of this Ordinance or information as to where the Ordinance may be reviewed on the Internet.

5. Appeal rights.

6. Fee owner's name and address.

5. Means of abatement.

A. Fire hazards shall be abated by the owner/occupant by removal and/or elimination of the fire hazard(s), subject to verification by the Fire Chief.

B. Abatement for undeveloped parcels where combustible vegetation is more than fifty percent (50%) chaparral can be accomplished by the removal of all vegetation that is within fifty (50) feet of any structure, including structures on adjacent parcels; removal of all vegetation to a distance of thirty (30) feet from property lines and adjacent roads; removal of all dead and dying tree and plant material and noxious weeds; and maintaining grasses to a maximum height of four inches.

C. In the case of any parcel or contiguous parcels under the same ownership upon which exist over ten continuous acres of chaparral vegetation constituting a fire

hazard, the duty to abate fire hazards may be satisfied if there is cleared, and maintained cleared, a 100-foot wide strip of land at the boundaries of such land, and through such land so that there shall not be any portion of the land larger than five acres which is not enclosed by such strip or strips. The 100-foot wide strip required herein shall be in compliance provided vegetation thereon is reduced to 50 percent of the naturally occurring density. When the parcel or contiguous parcels are adjacent to a road, removal of all vegetation to a distance of thirty (30) feet from the edge of the road is required.

6. Immediate hazard.

A. When, in the opinion of the Fire Chief, an extreme fire hazard exists which constitutes an immediate threat to public health, safety, and welfare, and it is deemed necessary by the Fire Chief to abate such hazard as promptly as possible, said fire hazard shall be removed or abated within 72 hours of the posting of the notice to abate on the affected parcel or within 72 hours of receiving by mail the notice to abate.

B. Nothing herein shall authorize the entry upon private property not otherwise open to the public, without the owner's consent or possession of an abatement or inspection warrant unless the Fire Chief determines that there is an immediate and eminent threat of injury or death to any person if immediate action is not taken.

7. Enforcement.

A. If, at the end of the time allowed for compliance in the original notice to abate, or as extended in cases of appeal or the granting of a ten-day extension as provided below, compliance has not been accomplished, the Fire Chief may enter upon the property and abate any fire hazards found thereon. In the event an appeal has been filed by the owner/occupant and denied by the hearing officer, the Fire Chief may then enter upon the property and abate any fire hazards found thereon in accordance with this Ordinance. Noncompliance requiring re-inspection shall result in the assessment of an inspection fee in such amount as established by a resolution of the Fire District. Nothing herein shall authorize the entry upon private property not otherwise open to the public, without the owner's, tenant's or lawful occupier's consent, or possession of an abatement or inspection warrant, unless the Fire Chief determines that there is an immediate and eminent threat of injury or death to any person if immediate action is not taken.

B. A ten-day extension for compliance may be given to the owner/occupant when the Fire Chief has determined that the owner/occupant has completed greater than 51 percent of the abatement. In such event, a ten-day extension for compliance shall be mailed to the owner/occupant and shall include a revised due date for compliance.

C. Abatement of the fire hazards not timely abated by the owner/occupant may, at the discretion of the Fire Chief, be performed by contract awarded to the lowest responsive bidder following competitive bidding by the District, as required by the District's purchasing ordinance or policy. The contractor shall keep and submit to the Fire Chief an itemized written work report for each separate parcel of land.

8. Payment for inspections and abatement of fire hazard.

A. When abatement is completed by a private contractor, the Fire Chief shall present to the owner/occupant a demand for payment by mailing a statement to the owner/occupant that includes the actual cost of the abatement, plus administrative and inspection fees at the [Office of Emergency Services](#) hourly rate for District personnel and equipment, applicable, with a minimum of one (1) hour accrual and additional time rounded to the nearest .5 hour, or otherwise as established by resolution of the Fire District. Until paid, the cost of abatement shall be deemed to be a debt of the owner on a written contract.

B. If payment is not received within 180 days after mailing the statement, the Fire Chief may submit the debt to a collection agency for collection, or shall certify to the county assessor the amount remaining unpaid, together with any other information required by the assessor and/or applicable law to be submitted. To the extent permitted by law, the county assessor shall cause the unpaid amount to be entered upon the tax roll for the property on which abatement was performed, and the same shall be a special assessment which shall be included in the next property tax statement. Thereafter, the amount of the assessment shall be collected at the same time and in the same manner as property taxes are collected, and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for ordinary property taxes.

C. In addition to entering the unpaid amount on the property tax roll for the property, the Fire District is authorized to place a lien on the property to ensure reimbursement of abatement costs in the event the property is transferred or conveyed to a bona fide purchaser for value prior to the date on which the first installment of such taxes would be due.

9. Appeal procedure.

A. Pursuant to Health and Safety Code Section 13870, the owner may appeal the determination of the existence of a fire hazard and/or the amount of assessed fees and costs related to the abatement of a fire hazard, by timely submitting a written appeal to the Secretary of the District, or designee ("Secretary").

B. The appeal shall be heard by the designated hearing officer. The hearing officer shall be the person designated by the Fire District to serve as hearing officer, including the person designated to hear appeals of determinations made pursuant to the California Fire Code. Under any circumstances, the hearing officer must be an

individual having no involvement in the determination being appealed, or any financial interest in the outcome of the appeal.

C. A written appeal setting forth all facts upon which the appeal is based must be actually received by the Secretary within ten (10) business days of the date the notice to abate and/or statement of costs/fees was mailed to the property owner, as applicable. The owner/occupant's failure to appeal the notice and/or assessed fees and costs within ten (10) business days of the date that the notice or statement was mailed shall constitute a waiver of the right to an appeal. The Secretary shall immediately forward a copy of all appeals to the Fire Chief.

D. Upon receipt of a timely appeal, the Secretary shall set the matter for hearing with the hearing officer and shall notify the appellant of the hearing date at least ten days prior to such date. The hearing shall be set for a date not less than fifteen (15) days nor more than sixty (60) days after the appeal is received. At the hearing the appellant may appear and present evidence provided, however, that formal rules of evidence shall not apply. The hearing officer shall be authorized to hear any relevant evidence except evidence that is privileged by law from disclosure. The appellant may choose to submit written evidence on or before the hearing date without appearing.

E. The hearing officer shall issue a written decision no later than fifteen (15) days after the date on which the hearing concludes. The hearing officer can issue one or more of the following determinations:

1. A fire hazard did or does not exist.
2. An inspection or re-inspection fee was improperly assessed and is not payable by the owner/occupant.
3. The administrative fee was improperly assessed and is not payable by the owner.
4. The cost of abatement was improperly assessed and is not payable by the owner.
5. Although properly assessed, the fee and/or cost shall be reduced to a specific amount based on all of the facts presented.
6. All fees and costs were properly assessed.

F. If the hearing officer sustains the appeal in its entirety and/or cancels all assessed costs and fees, the fire district shall refund all costs and fees, if paid, within 30 days. Further, all or any portion of any such assessment or cost heretofore entered shall, on order of the hearing officer, be canceled by the county assessor if uncollected, or refunded by the county treasurer if collected, provided the hearing officer determines that the assessment and/or costs were entered, charged or paid:

1. More than once;
 2. Through clerical error;
 3. Through error or mistake of the hearing officer or the Fire Chief in respect to any material fact, including the case where the cost report rendered and confirmed as herein before provided incorrectly shows the fire district or private contractor abated the fire hazard;
 4. Without legal authority; or
 5. As to property acquired after the lien date by the state, or by any county, city, school district, or political subdivision, and is therefore not subject to sale for delinquent taxes.
- G. The decision of the hearing officer shall be final.

10. Penalties.

A. It shall be a misdemeanor for any owner to fail to comply with the requirements of this Ordinance, including failing to comply with a notice to abate fire hazard, or to interfere with the performance of the duties of the Fire Chief herein specified, or to refuse to allow the Fire Chief or approved private contractors to enter upon any premises for the purpose of abating fire hazards, or to interfere in any manner with the work or removal herein provided.

B. Violations are punishable as a misdemeanor, with the first offense being punishable by 6 months in jail or a fine of \$750.00, and for the second offense punishable by 364 days in jail and a fine \$1,000.

11. California Environmental Quality Act (CEQA).

The adoption of this Ordinance is categorically exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines, in that it is a regulation designed to more fully protect the environment as well as promote public health and safety. This Ordinance is further exempt from CEQA pursuant to CEQA Guidelines, Section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. The District Secretary shall file a Notice of Exemption from CEQA as required by law.

12. Severability.

The Board hereby declares that should any provision, section, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court action in a

court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, and words of this Ordinance shall remain in full force and effect.

13. The Secretary of the District shall certify to the adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted as required by law.
PASSED, APPROVED, AND ADOPTED this _____ day of _____ 201_.

AYES:

NOES:

ABSENT:

ABSTAINED:

Chairperson

ATTEST:

_____, Secretary

I, _____, Secretary of the Burney Fire Protection District, do hereby certify that the foregoing Ordinance was introduced for first reading by the Board of Directors of the Burney Fire Protection District at a regular meeting of said Board held on the _____ day of _____, 201_, and was finally passed, approved, and adopted by the Board of Directors of the Burney Fire Protection District at a regular meeting of said Board held on the _____ day of _____, 201_.

Executed this _____ day of _____, 201_ at _____, California.