

**PLACER COUNTY
OFFICE OF EMERGENCY SERVICES**

MEMORANDUM

TO: Honorable Board of Supervisors

FROM: Thomas Miller, County Executive Officer
by Rui Cunha, Emergency Services Program Manager

DATE: July 27, 2010

SUBJECT: Ordinance Readopting Chapter 9, Article 9.32, Part 4 (Public Peace, Safety and Welfare) of the Placer County Code Regarding Hazardous Vegetation Abatement.

REQUESTED ACTION

That your Board approve an amendment to Chapter 9, Article 9.32, Part 4 (Public Peace, Safety and Welfare) of the Placer County Code regarding readopting the County's Hazardous Vegetation Abatement program.

BACKGROUND

Following the destructive fires during the summer of 2007 (Angora Fire in El Dorado County and Washoe Fire in Placer County) and at the request of the Tahoe community, the Board of Supervisors passed the Hazardous Vegetation Abatement (HVA) on Unimproved Parcels pilot ordinance on October 23, 2007. The pilot ordinance covered the following jurisdictions: North Tahoe Fire Protection District, Alpine Springs County Water District, Squaw Valley Public Service District, and the Northstar Community Services District. As approved by the Board, the ordinance was in effect through April 2010. In 2008, the Board set aside funding in the amount of \$50,000 for inspections and educational materials and \$200,000 to be used as a revolving account to fund abatement and for receipt of any collected charges. In 2009, the Board maintained the \$200,000 abatement account but did not contribute to inspections and educational materials within the pilot area.

Purpose:

The HVA ordinance's purpose is to further extend both State Law (PRC 4291) for defensible space and current County Code by creating a tool that can be applied specifically to unimproved properties adjacent to improved properties, where an extra hazardous fire condition exists and the owner of the improved property is significantly at risk due to fuels on the adjacent unimproved property. The HVA ordinance continues to encourage property owners to meet the requirements of State and County Code through inspections, public education and cooperation. The ordinance prescribes a scheduled inspection initiated process, involving a notice to abate and if requested a hearing before compulsory abatement is ordered and billed to a property owner. The ordinance, through the County Fire Warden, establishes common standards for inspections and for vegetation abatement. Additionally, the HVA ordinance establishes a requirement to reduce hazardous vegetation along roadways determined by the County Fire Warden as necessary for safe ingress or egress, and along fire access easements. A hearing body, appointed by the Placer County Board of Supervisors was established in the ordinance, and the hearing body is given the authority to hear a property owner's case and make final determination prior to a compulsory abatement order.

Results of the original ordinance:

The results of the pilot ordinance were concluded to be very positive from a fire mitigation standpoint. Identified below are some of the highlights of the original program:

2008

The Talmont area, comprising approximately 300 acres and 545 improved and unimproved parcels, was the target of the initial year's pilot effort. A total of 185 unimproved residential area lots were initially inspected (137 public – including 135 California Tahoe Conservancy and two USFS lots – and 48 private lots). Ninety-two (44 public and 48 private) of the 185 unimproved lots could not pass the initial inspection. After being provided a formal written notification and 30 days to comply, 27 of the 48 private and 33 of the 44 public lots were cleared by the property owners prior to or at the time of the second inspection. The remaining 21 private lots went through the full abatement process. Two property owners requested formal appeals. The HVA hearing body heard and denied the appeals. At the conclusion of the first year's pilot program, all of the 48 private lots and 126 (93 percent) of the public land lots (all unimproved) were cleared to pass approval consistent with the requirements of the ordinance. In addition, all improved land owners accomplished their defensible space as well.

2009

The Eastern Placer Fire Chief's Association, the target of the pilot Ordinance, reported that the Hazardous Vegetation Abatement Ordinance was a valuable tool in gaining voluntary compliance with fuel reduction requirements on private properties. While compulsory abatement was not used in 2009, having a process that could result in abatement in order to reduce a hazardous vegetation condition continued to be desirable within all of the communities that were subject to the pilot Ordinance. No costs were incurred to the County's revolving abatement account.

Analysis:

Because of the success of the pilot program and its continued support from both residents and the fire community, staff has concluded there is merit in readopting the Hazardous Vegetation Ordinance to allow for the continued implementation of this program. Given the significant winter and spring rains this year, there is a high potential for vegetation growth throughout the County, including within the Tahoe region. Based upon the previous success of the program, staff has concluded the readopting of this ordinance is warranted to provide staff and the respective Fire Districts with the tools needed to reduce identified fire dangers within the Tahoe region. The Office of Emergency Services, in conjunction with the Code Enforcement Division of the Community Development Resource Agency, will work with the County Fire Warden to continue to implement this program.

FISCAL IMPACT

There is no further impact to the General Fund as a result of this action (other than the monies the Board has already committed to this program). The existing abatement fund will remain in place and available for future abatements as required through the timeframe of this extension. Funds are not being recommended from the County General Fund for the inspection process.

Attachments

Hazardous Vegetation Abatement Ordinance

Before the Board of Supervisors County of Placer, State of California

In the matter of: AN ORDINANCE REPEALING
AND READOPTING PART 4 OF ARTICLE 9.32
OF CHAPTER 9 OF THE PLACER COUNTY CODE,
THE HAZARDOUS VEGETATION ABATEMENT
PROGRAM

Ord. No: _____

First Reading: _____

The following ORDINANCE was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____ by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Kirk, Uhler, Chair
Board of Supervisors

Attest:

Ann Holman
Clerk of said Board

THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, STATE OF CALIFORNIA, DOES HEREBY ORDAIN as follows:

Section 1: Part 4 of Article 9.32 of Chapter 9 of the Placer County Code, consisting of Sections 9.32.120 through 9.32.250, is hereby repealed in its entirety and is readopted to read as follows:

9.32.120 Title.

This part shall be known as, and may be cited or referred to as "The Hazardous Vegetation Abatement on Unimproved Parcels Ordinance".

9.32.130 Finding.

A. The Placer County Board of Supervisors (BOS) supports the improved parcel defensible space obligations found in Public Resources Code Section (PRC) 4291. PRC 4291 does not address hazardous vegetation abatement on unimproved parcels and the potential impact that hazardous vegetation on an unimproved parcel could have on an adjacent improved parcel. This part extends and supplements state law to ensure defensible space activities are accomplished on unimproved parcels adjacent to improved parcels and along roadways and fire access easements so that land owners benefit from the application of PRC 4291 on unimproved parcels.

B. This part shall apply to:

1. Unimproved parcels adjacent to improved parcels, in those areas of unincorporated Placer County defined by the district boundaries for the North Tahoe Fire Protection District, the Alpine Springs County Water District, the Squaw Valley Public Services District and the Northstar Community Services District, where the owner/occupant of the improved parcel is unable to obtain the required defensible space clearances, as delineated in adopted County Codes and/or PRC 4291 and the current condition of fuels on the unimproved parcel is assessed by the Fire Warden as an extra hazardous fire condition. The owner of the unimproved parcel shall provide the fuel modifications to meet the defensible space requirements of the improved parcel. Fuel modifications shall meet the standards identified in Appendix A, available from the County Fire Warden and incorporated by reference.

2. Unimproved parcels adjacent to roadways, in those areas of unincorporated Placer County defined by the district boundaries for the North Tahoe Fire Protection District, the Alpine Springs County Water District, the Squaw Valley Public Services District and the Northstar Community Services District, and determined by the County Fire Warden (or designee) to be necessary for the safe ingress and egress to the area served by the roadway or fire access easement and the current condition of fuels on the unimproved parcel is assessed by the County Fire Warden as an extra hazardous fire condition. Fuel modifications shall meet the standards identified in Appendix A.

3. In the instances where the structures on the improved parcel are built after the effective date of the ordinance codified in this part, the owner/occupant of the improved parcel shall be responsible for fifty (50) percent of the abatement cost on the unimproved parcel.

C. Placer County is located east of Sacramento and has forested landscape that stretches from the oak woodlands of the Sacramento Valley to the conifer forests of Lake Tahoe which includes sixty (60) percent of Lake Tahoe's west shore. In all, there are five hundred forty-nine thousand acres of forested land which includes two National Forests, several California State parks and numerous county and local parks.

D. The removal of hazardous vegetation in the area subject to this part is recognized as an essential action a homeowner or property owner can take to increase the chances that homes, structures and other property will survive a wildfire. Regular property clearing is necessary to ensure adequate defensible space is achieved.

E. Placer County's defensible space inspection program is based on state law, PRC 4291. PRC 4291 provides required treatments for improved parcels upon, or adjoining

any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered with flammable material.

F. It is the purpose of this ordinance to establish a hazardous vegetation abatement program that provides a process to identify and abate hazardous vegetation on unimproved parcels. This part will also help protect the lives and property of the citizens of Placer County while at the same time protecting rare and sensitive plants, animal species and the environment.

G. There is a need to broaden the scope of the current Placer County Fire Break Ordinance (Section 9.32.070) to include requirements for abatement of hazardous vegetation on undeveloped property. This part also defines abatement guidelines on improved parcels in Appendix A.

H. There is a need to provide public education and alternative processes for vegetation management. This is to include the use of the county chipper, shaded fuel break development and maintenance and biomass utilization programs.

9.32.140 Definitions.

A. Hazardous Vegetation. Vegetation that is flammable and endangers the public safety by creating a fire hazard including but not limited to seasonal and recurrent weeds, stubble, brush, downed limbs, low hanging branches, dry leaves and tumbleweeds. For the purpose of enforcement, hazardous vegetation within one hundred (100) feet of a structure, as defined below, (or greater as determined by the Placer County Fire Warden or his or her designated representative) and along roadways that serve as primary ingress and egress routes, is a public nuisance.

B. County Fire Warden. An officer of the County of Placer whose duties are described in Chapter 2 of the Placer County Code.

C. Improved Parcel. A portion of land of any size, the area of which is determined by the assessor's maps and records and may be identified by an assessor's parcel number upon which a structure is located.

D. Unimproved Parcel. A portion of land of any size, the area of which is determined by the assessor's maps and records and may be identified by an assessor's parcel number upon which no structure is located.

E. Structure. Any dwelling, house, building or other type of flammable construction including but not limited to a wood fence attached to or near any other structure.

F. PRC-4291. A California Public Resources Code that defines the defensible space requirements on improved parcels.

G. LE-38. The standard "Notice of Fire Hazard Inspection" (Form LE-38A) form used by local fire agencies to document PRC 4291 findings.

H. Biomass. For the purposes of this part, biomass is defined as the "green waste" material generated during the defensible space clearing project. This includes, grass, weeds, vegetation and tree trimmings.

I. Placer Country Chipper Program. The chipper program is a service to residents of Placer County to assist in their fire hazard reduction efforts.

J. Agency Director. The head of the Community Development/Resource Agency of Placer County, or his or her designee.

9.32.150 Duty to abate hazardous vegetation.

It shall be the duty of every owner, occupant, and person in control of any unimproved parcel of land or having an interest therein, which is located in the unincorporated territory of the County of Placer as that territory is determined and classified by the board of supervisors to abate there from, and from all sidewalks and roadways, except for those roads accepted into the county maintained system, all combustible material and hazardous vegetation, that constitutes a fire hazard and public nuisance which may endanger or damage neighboring property or forestland.

A. The requirements of this section shall be satisfied if there is cleared property pursuant to a notice to abate by cutting brush, trimming trees, thinning trees, disking, mowing, plowing or any other method described in the notice:

1. An area that extends to a minimum of ten (10) feet beyond the shoulder of the roadway, to a height of fifteen (15) feet along the boundary of an unimproved parcel; and/or
2. A one hundred (100) foot wide strip of land* around flammable structure(s) located on an adjacent improved parcel (some or all of this clearance may be required on the unimproved parcel depending upon the location of the structure on the improved parcel).

***Note:** The County Fire Warden, local fire protection district fire chief, or his or her designee may require more than a one hundred (100) foot width (subject to CEQA Guidelines) or less than a one hundred (100) foot width for the protection of public health, safety or welfare or the environment. The County Fire Warden, local fire protection district fire chief, or his or her designee will determine appropriate clearance distances based upon a visual inspection of the parcel and shall consider all factors that place the property or adjoining structure(s) at risk from an approaching fire. These factors shall include local weather conditions, fuel type(s), topography, and the environment where the property or adjoining structure(s) is located. Examples of the clearance requirements above are set forth in Appendix A for informational purposes only.

B. Where the parcel's terrain is such that it cannot be disked or mowed, the County Fire Warden, local fire protection district fire chief, or his or her designee may require, or authorize, other means of hazardous vegetation removal.

9.32.160 Enforcement.

The County Fire Warden and the Agency Director shall be the primary enforcement authorities for the requirements of this part and shall work jointly and cooperatively to administer and enforce the requirements as provided in this part. The County Fire Warden shall, as more broadly defined below, exhaust all informal steps to resolve the abatement of hazardous vegetation on unimproved parcels in advance of using the enforcement process below. The County Fire Warden may delegate authority to subordinate chief officers and trained, professional prevention staff as his or her deputy in the performance of the duties enjoined upon him or her by this part. In addition, each of the following officers within the county of Placer is designated to perform the same duties within the territory of the political subdivision which he or she serves (and whenever the term "County Fire Warden" is used hereinafter, the following officers are included in the meaning of such word, except that the County Fire Warden, him or herself, shall coordinate all such officers in the performance of these duties): chiefs or chief engineers of all fire protection districts/fire departments within the unincorporated areas of the county, and their deputies; and such other officers as are designated by the Board of Supervisors or the County Fire Warden.

The County Fire Warden shall have the following responsibilities and authorities in the enforcement and administration of the provisions of this chapter:

- A. Plan and conduct PRC 4291 inspections within the limits of available resources;
- B. Review with property owners found to be out of compliance with PRC 4291 the provisions of this code to support voluntary compliance with its provisions;
- C. Provide notice in accordance with Section 9.32.170;
- D. Conduct post-notice/pre-abatement inspections and documentation, and conduct post-abatement inspections and documentation
- E. The County Fire Warden, or designee, may at his or her discretion issue a notice of violation for a violation of this part, in lieu of abating the unimproved parcel;

The Agency Director shall have the following responsibilities and authorities in the enforcement and administration of the provisions of this chapter:

- A. Initiate administrative hearings in accordance with Section 9.32.180;
- B. Enforce the required fuel modifications by completing the required work and attaching the actual costs and administrative fee to the property tax of the unimproved parcel as a tax lien in accordance with Section 9.32.210;
- C. Carry out any other special enforcement programs initiated by part, order or resolution of the board of supervisors, and any other responsibilities and authorities specified by this article or this code;
- D. Recover enforcement investigation and processing costs.

9.32.170 Enforcement process.

The County Fire Warden may identify by planned PRC 4291 inspection those parcels requiring abatement. The County Fire Warden shall send the owner of record for the unimproved parcel a "notice to abate" by certified mail, return receipt requested. The "notice to abate" shall outline the required fuel modifications and allow thirty (30) days for the work to be completed. The "notice to abate" shall also outline the appeals process.

After the thirty (30) day time period, the County Fire Warden shall conduct a post-notice/pre-abatement inspection and, if the required fuel modification has not been performed, may recommend to the Agency Director that the required fuel modifications be completed by the County, and the cost of the abatement with administrative fee be attached to the property tax as a lien in accordance with Section 9.32.210 below.

Should the property owner appeal the "notice to abate" no action will be initiated until after the hearing body has made a determination of the appeal.

For parcels owned or controlled by public agencies, the local fire chief or his or her designee may provide a "notice of nuisance" and include the project area in the local Community Wildfire Protection Plan and request the hazardous vegetation be abated in accordance with the Healthy Forest Restoration Act of 2003 (H.R. 1904) or the State Public Resources Code.

9.32.180 Appeals process.

Property owners wishing to appeal a "notice to abate" shall do so in writing by delivering a request for hearing to Agency Director within thirty (30) days of the date of the notice to abate from the County Fire Warden .

9.32.190 Hazardous vegetation abatement hearing body.

The hazardous vegetation abatement hearing body is established. The hazardous vegetation hearing body will be convened by the agency director and will consist of a representative seated by the Eastern Placer County fire chiefs, and two "citizens at large" appointed by the Placer County board of supervisors.

The hazardous vegetation abatement hearing body shall have the authority to amend, dismiss, or uphold the "notice to abate" with a majority vote.

9.32.200 Removal of hazardous vegetation by private contractor and establishment of costs and administrative fee.

If, at the end of the time allowed for compliance in the original "notice to abate", or as extended in cases of appeal, or as specified by the hearing body, compliance has not been accomplished, the officer issuing the notice or the agency of which he or she is an officer, may recommend to the agency director that he or she proceed with the abatement of the hazardous vegetation or other combustible material and it be removed by public officers or by employees of the agency or by a private contractor selected by the County purchasing agent in accordance with applicable statutes and in the manner and under the terms specified by the board of supervisors. The cost of such removal accompanied by a reasonable administrative charge may be imposed as an assessment in the county tax roll (Section 9.32.210).

The costs so assessed shall be limited to the actual costs incurred by the County of Placer and the County Fire Warden in enforcing abatement upon the parcel. Such costs may include, but are not limited to the costs of payments to the contractor, costs of site inspection, costs of notice, boundary determination, measurement, clerical, personnel, consultant, and other administrative costs.

9.32.210 Abatement penalties and costs.

Upon expiration of the time limits established by Section 9.32.170 of this part, the agency director shall acquire jurisdiction to abate the nuisance, and may carry out the following as appropriate:

A. Disposal of Materials. Any materials abated may be disposed of as a part of the removal process to include, as appropriate, recycling or as a part of the county's biomass utilization program.

B. Cost Accounting, Receipts and Notice of Assessment. The fire warden and the agency director will keep an itemized account of the costs of enforcing the provisions of this part, and of the proceeds of the sale of any materials connected therewith. Upon completion of abatement, the agency director shall prepare a notice to be served as provided in Section 17.62.090(A) and (B), specifying:

1. The work done (supported by before and after pictures);
2. An itemized account of the costs and receipts of performing the work;
3. An address, legal description, or other description sufficient to identify the premises;
4. The amount of the assessment proposed to be levied against the premises, or the amount to be refunded, if any, due to excess proceeds over the expenses;
5. The time and place where the agency director will submit the account to the Board of Supervisors for confirmation. The time and place specified shall be no less than fifteen (15) days after service of the notice;

6. A statement that the Board of Supervisors will hear and consider objections and protests to the account and proposed assessment or refund.

C. Hearing on Account and Proposed Assessment. At the time and place fixed in the notice, the BOS will hear and consider the account and proposed assessment, together with objections and protests thereto. At the conclusion of the hearing, the BOS may make such modifications and revisions of the proposed account and assessment as deemed just, and may order the account and proposed assessment confirmed or denied, in whole or in part, or as modified and revised. The determination of the BOS as to all matters contained therein is final and conclusive.

D. Notice of Lien. Upon confirmation of an assessment by the BOS, the Agency Director shall notify the owners by certified mail, return receipt requested, of the amount of the pending lien confirmed by the BOS, and advise them that they may pay the account in full within thirty (30) days in order to avoid the lien being recorded against the property. If the lien amount is not paid by the date stated in the letter, the Agency Director shall prepare and have recorded in the office of the Recorder of Placer County a notice of lien. The notice shall contain:

1. A legal description, address and/or other description sufficient to identify the premises;
2. A description of the proceeding under which the special assessment was made, including the order of the BOS under this code confirming the assessment;
3. The amount of the assessment;
4. A claim of lien upon the described premises.

E. Lien. Upon the recordation of a notice of lien, the amount claimed shall constitute a lien upon the described premises, pursuant to Section 25845 of the California Government Code. Such lien shall be at parity with the liens of state and county taxes.

F. Collection with Ordinary Taxes. After recordation, the notice of lien shall be delivered to the County Auditor, who will enter the amount of the lien on the assessment roll as a special assessment. Thereafter the amount set forth shall be collected at the same time and in the same manner as ordinary county taxes, and is subject to the same penalties and interest, and to the same procedures for foreclosure and sale in case of delinquency, as are provided for ordinary county taxes; all laws applicable to the levy, collection and enforcement of county taxes are hereby made applicable to such assessment.

9.32.220 Violations.

Pursuant to Placer County Code Section 9.32.230, it shall be an infraction or misdemeanor for any person, natural or corporate, owning, possessing, occupying, or controlling any lands or premises to fail to perform the duty set forth in Section 9.32.150 of this part, or to fail to comply with the requirements in the "notice to abate" as specified in Section 9.32.170 of this part, or to interfere with the performance of the duties herein specified for any of the officers named in this part or their deputies, or to refuse to allow any such officer or their deputies or employees, or approved private contractors, to enter upon any premises for the purpose of lawfully inspecting and/or as ordered, removing any hazardous vegetation and/or combustible material hereinbefore described as a public nuisance, or to interfere in any manner whatever with the officers or contractors in the work of a lawful inspection and ordered removal herein provided.

Ord. No. _____
Repealing and Readopting Part 4 of Article 9.32 of Chapter 9

9.32.230 Penalties for violation.

Upon conviction, punishment shall be by a fine of not less than one hundred dollars (\$100.00) or more than one thousand dollars (\$1,000.00) and by imprisonment of not more than six months, or both.

9.32.240 Authority to promulgate reasonable rules and regulations.

The board of supervisors reserves its right to adopt reasonable rules, regulations, and resolutions consistent with this part to enforce, interpret, and carry out the provisions of this part. Such rules may vary among different areas within the county.

9.32.250 Effective date.

The ordinance codified in this part shall take effect on February 1, 2008, for the areas defined as the North Tahoe Fire Protection District, Alpine Springs County Water district, Squaw Valley Public Service District and Northstar Community Services District and remain in effect through December 31, 2012, unless readopted by the BOS.

Section 2: This ordinance shall take effect and be in full force and effect upon thirty (30) days after its passage. The Clerk is directed to publish a summary of this ordinance within fifteen (15) days in accordance with Government Code Section 25124.