



ORDINANCE NO. 5169

**AN URGENCY ORDINANCE ESTABLISHING REQUIREMENTS FOR THE
CONSOLIDATED DEBRIS REMOVAL PROGRAM
RESULTING FROM THE MOSQUITO FIRE**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN
AS FOLLOWS:**

Section 1. Findings and Declarations

- A. Pursuant to Article XI, section 7 of the California Constitution, the County of El Dorado (“County”) may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its residents.
- B. Pursuant to Government Code section 25123, to protect against an immediate threat to the public safety, health, and welfare, the County may adopt an urgency ordinance that takes effect immediately.
- C. A wildfire known as the Mosquito Fire started on September 6, 2022, and has consumed 76,788 acres and destroyed over 30 structures in El Dorado County. The Mosquito Fire has been contained at 100% as of October 23, 2022.
- D. On September 09, 2022, pursuant to Government Code section 8630, the Sheriff as the Director of the Office of Emergency Services proclaimed the existence of a local emergency based on conditions of extreme peril to the safety of persons and property within the territorial limits of the County of El Dorado as a result of the Mosquito Fire.
- E. On September 13, 2022, the El Dorado County Board of Supervisors adopted Resolution 142-2022 ratifying the Sheriff’s proclamation of a local emergency for the Mosquito Fire.
- F. On September 08, 2022, pursuant to Government Code section 8625, California Governor Newsom declared a state of emergency in the State of California, and in the County of El Dorado, due to the fire(s) around the State, including the Mosquito Fire in the County of El Dorado.

- G. Section 101080 of the California Health and Safety Code empowers the County Health Officer to declare a Local Health Emergency if he or she reasonably determines that conditions of exposure to hazardous waste exist that pose an immediate threat to the public health, and requires the Local Health Emergency to expire after seven days unless ratified by the Board of Supervisors, and requires the Board of Supervisors to review the need for continuing the Local Health Emergency at least once every 30 days and proclaim the termination of the Local Health Emergency at the earliest possible date that conditions warrant the termination.
- H. On September 09, 2022, the County's Public Health Officer declared the existence of a local health emergency (Public Health Declaration No. 2022-01) based on an imminent and proximate threat to the health and safety of the community from the ongoing Mosquito Fire due to the hazardous nature of the wildfire debris, smoke, and ash from the burning of vehicles, infrastructure, and structures. The declaration stated that the Mosquito Fire has created and is expected to continue to create hazardous waste conditions in El Dorado County in the form of contaminated debris from household hazardous waste/materials and structural debris resulting from the destruction of residences and structures; hazardous waste debris poses a substantial present or potential hazard to human health and the environment unless immediately addressed and managed; there is an imminent and proximate threat of infections or communicable disease and/or non-communicable agents due to fire related debris; and these threats to public health necessitate the declaration of a local health emergency.
- I. On September 13, 2022, the Board of Supervisors adopted Resolution 143-2022 ratifying the Public Health Officer's declaration of a local health emergency due to an imminent and proximate threat to public health from the Mosquito Fire in the County.
- J. In destroying private structures, the Mosquito Fire has created an accumulation of Fire Debris, much of which has been determined to be contaminated with heavy metals and asbestos.
- K. The potential for widespread toxic exposures and threats to public health and the environment exists in the aftermath of a major wildfire disaster. Debris and ash from residential structure fires contain hazardous substances that may lead to acute and chronic health problems and may have serious environmental impacts.
- L. The combustion of building materials such as siding, roofing tiles, and insulation results in dangerous ash that may contain asbestos, heavy metals, and other hazardous materials, and household hazardous waste such as paint, gasoline, cleaning products, pesticides, and other chemicals that may have burned in the fire also produces hazardous materials.

- M. Exposure to hazardous substances may lead to acute and chronic health effects and may cause long-term public health and environmental impacts.
- N. Uncontrolled hazardous materials and debris pose significant threats to public health through inhalation of dust particles and contamination of drinking water supplies, and improper handling of hazardous materials can expose workers to toxic materials and improper transport and disposal of Fire Debris can spread hazardous substances throughout the community.
- O. Dead and dying trees damaged by the Mosquito Fire and at risk of falling may threaten the health, safety and welfare of workers conducting debris removal and residents of the affected properties.
- P. The anticipated start of the rainy season offers little time to mitigate further environmental contamination resulting from the Fire, including contamination of the watershed, and, therefore, time is of the essence in removing hazardous waste and Fire Debris from affected properties.
- Q. Pursuant to Article XI, section 7 of the California Constitution and Government Code section 25845, the County may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety and welfare of its residents.
- R. Government Code section 25123(d) authorizes the adoption of an urgency ordinance for the immediate preservation of the public peace, health, or safety, where there is a declaration of the facts constituting the urgency and the ordinance is adopted by a four-fifths vote of the Board.
- S. There is an urgent need to mitigate the harm to public health and the environment from the improper disturbance, removal, transport and/or disposal of hazardous waste, Fire Debris resulting from the Fire, to create and implement clear standards and procedures for removal of Fire Debris, and to facilitate coordinated, timely, and effective mitigation of the risks to public health and the environment from the health hazards generated by the Mosquito Fire.
- T. It is essential that this Urgency Ordinance become effective immediately to mitigate the harm that could be caused to the public health and safety and to the environment from the improper disturbance, removal, and/or disposal of debris containing hazardous materials, and to facilitate the orderly response to the Mosquito Fire.

Section 2. A new Chapter 8.11 entitled “Mosquito Fire Consolidated Debris Removal Program” is hereby added to Title 8 of the El Dorado County Ordinance Code to read as follows:

Section 8.11.100 – Title

This chapter shall be known as the Mosquito Fire Consolidated Debris Removal Program Ordinance.

Section 8.11.200 - Definitions

- A. "Alternative Program." For purposes of this chapter, the term "Alternative Program" shall mean the requirements for inspections, clean up and disposal established by the County for property owners that opt out of or are ineligible for a Consolidated Program.
- B. "Board." The term "Board" means the County of El Dorado Board of Supervisors.
- C. "County." The term "County" shall be defined as the County of El Dorado.
- D. "County Building Official." The term "County Building Official" means the Deputy Director/Building Official or designee.
- E. "County Health Officer." The term "County Health Officer" means the County of El Dorado Public Health Officer.
- F. "Director." The term "Director" shall be defined as the Director of Environmental Management Department, or any person as designated by the Chief Administrative Officer of the County.
- G. "Fire Debris." The term "Fire Debris" means ash or other debris, resulting from the Mosquito Fire that is intended to be discarded but does not include structures or portions thereof.
- H. "Immediate Hazard Trees." The term "Immediate Hazard Trees" means wildfire-damaged trees that have been so damaged by the fires that their structural integrity is compromised, and they pose an immediate threat of falling onto work crews or obstructing their access to the debris clearance site.
- I. "Phase I." The term Phase I means the household hazardous waste cleanup performed by the United States Environmental Protection Agency and/or Department of Toxic Substances Control on certain properties impacted by the Mosquito Fire.
- J. "Phase II." The term Phase II means the ash and debris cleanup work performed pursuant to the Consolidated Program and/or the Alternative Program.
- K. "Removal of Fire Debris." The term "Removal of Fire Debris " as used in this chapter includes all cleanup of debris from structures and Immediate Hazard Trees resulting from the Mosquito Fire, including removal, transport and disposal of Fire Debris, but it does not include the removal of personal property from residential sites unless such removal of personal property involves cleanup and the removal of ash from the property.
- L. "Right of Entry Permit." The term "Right of Entry Permit" means the Debris Removal Right-of-Entry Permit (For Providing Fire Debris Removal on Private Property under the Consolidated Debris Removal Program) approved by the Director for the County and/or the California Office of Emergency Services for use in the cleanup after the Mosquito Fire.
- M. "Consolidated Debris Removal Program" or "Consolidated Program" means the Fire Debris removal program operated by the County for the Mosquito Fire area in

conjunction with other State and Federal agencies and involving the removal and disposal of Fire Debris on eligible private property at no cost to the property owner.

Section 8.11.300 – Effective Date

This Ordinance shall take effect immediately upon its approval by at least four-fifths vote of the Board of Supervisors pursuant to Government Code section 25123(d), and shall remain in effect until the later of the cleanup of all Fire Debris on all fire-damaged properties from the Mosquito Fire or the completion of all enforcement matters related to this Ordinance, if any.

Section 8.11.400 - Prohibition on Removal of Fire Debris from Private Property

No Removal of Fire Debris shall occur unless and until a hazardous materials inspection meeting applicable Department of Toxic Substances Control (DTSC) guidelines has been conducted except pursuant to the requirements of the table below. Notwithstanding the foregoing, Immediate Hazard Trees may be removed from vacant properties or properties on which no structures were damaged without a hazardous materials inspection, subject to the other requirements of this Ordinance.

| | No structure on burned private property | Non-qualifying structures (Structures less than 120 square feet only on burned private property) | Qualifying structures (Structures 120 square feet and over on burned private property) |
|--|--|---|---|
| Prior to completion of Phase I cleanup | Owner may remove debris | Debris removal prohibited | Debris removal prohibited |
| Prior to completion of Phase II cleanup | Owner may remove debris | Owner may remove debris with certificate from the Right of Entry Processing Center or the Environmental Management Department | County Program or Alternative Program contractors only may remove debris |
| Following Phase II cleanup | Owner may remove debris | Owner may remove debris with certificate from the Right of Entry Processing Center or the Environmental Management Department | Owner may remove remaining debris not removed during Phase II with certificate from the Right of Entry Processing Center or the Environmental Management Department |

Section 8.11.500 - Removal of Fire Debris

- A. Consolidated Program. Property owners that, pursuant to the rules established by the Consolidated Program that will be set forth in guidelines provided by the Director, are eligible for the removal of some or all of the Fire Debris on their properties through the Consolidated Program, may elect to use the Consolidated Program by submitting a Right of Entry Permit to the Director, which includes an assignment of any insurance proceeds covering the costs of the Fire Debris removal. Such Right of Entry Permit must be submitted to the Director by the deadline as provided by the Director. The Director may extend this deadline as necessary and appropriate to facilitate the cleanup, avoid undue hardship, and to protect public health and safety, and to the extent any such extensions are approved by the Consolidated Program.
- B. Alternative Program.
- i. Administration. The Director shall administer the Alternative Program. The Director shall utilize applicable state and/or federal standards for the safe removal and disposal of Fire Debris and Immediate Hazard Trees, consistent with the cleanup goals of the Consolidated Program, and incorporate additional requirements as necessary to address changes in conditions, needs, or technologies in order to effectively remove Fire Debris and Immediate Hazard Trees from the community. The Director shall prepare procedures and requirements for the Removal of Fire Debris and Immediate Hazard Trees and make such procedures and requirements available to the public. The Director shall also adopt an application that discloses the appropriate licensed contractors and appropriate plans to meet such procedures and requirements.
 - ii. Participation. Property owners that are not eligible for the Consolidated Program or who elect not to participate in the Consolidated Program for the removal of some or all of the Fire Debris and Immediate Hazard Trees on their properties must comply with the requirements of the Alternative Program. Under the Alternative Program, before any Fire Debris and Immediate Hazard Trees are removed from a property, the owner shall submit the application adopted by the Director to the Director. Work shall not begin until the Director approves the application, and the property owner obtains all applicable permits from the County Building Official.
 - iii. Completion. The Director shall establish an end date or deadline by which properties in the Alternative Program must be cleaned up. Upon the completion of the Removal of Fire Debris and Immediate Hazard Trees under the Alternative Program, the property owner shall submit to the Director documentation that demonstrates the removal of Fire Debris and Immediate Hazard Trees was completed in compliance with applicable standards and requirements as

established by the Director. Properties that have not completed Removal of Fire Debris and Immediate Hazard Trees under the Alternative Program by the deadline established by the Director are hereby declared a public nuisance and health hazard and shall be subject to nuisance abatement pursuant to Section 8.11.500F of this Ordinance.

- iv. Deadline. The Director shall establish an end date or deadline by which property owners who are not participating in the Consolidated Program must submit an Alternative Program application to the Director in accordance with Section 8.11.500B.ii of this Ordinance. Such properties that have Fire Debris from structures damaged or destroyed in the Mosquito Fire or Immediate Hazard Trees damaged or destroyed in the Mosquito Fire that have not submitted an application for the Alternative Program by that date are hereby declared a public nuisance and health hazard and shall be subject to nuisance abatement pursuant to Section 8.11.500F of this Ordinance.
 - v. Extensions. The Director may extend deadlines under the Alternative Program as necessary and appropriate to facilitate the cleanup, avoid undue hardship, and to protect public health and safety.
- C. Restrictions on Building Permits. No building permit from the County to demolish, repair, or reconstruct a structure that has been damaged or destroyed by the Mosquito Fire shall be issued until Fire Debris cleanup is completed on the affected property in accordance with the Alternative Program or the Consolidated Program. Any permit for the demolition, repair, or reconstruction of a structure that has been damaged or destroyed by the Mosquito Fire shall be held in abeyance and not acted upon until Fire Debris cleanup is completed on the affected property and completion is confirmed to the County Building Official, either through the Alternative Program or the Consolidated Program. Notwithstanding the foregoing, a demolition or miscellaneous permit issued by the County Building Official may be required for Removal of Fire Debris for work involving the removal of buildings, structures, or portions thereof, as determined by the Director.
- D. Exigent Circumstances. The Board's intent is to facilitate an orderly remediation of large-scale disasters. Nothing in the deadlines as set forth by this Ordinance shall limit the authority of the County or any County official to abate hazards more quickly where required by exigent circumstances. Nothing in this Ordinance shall limit the authority of the County or any County official to take any enforcement action or pursue any available remedies, including, without limitation, requiring preventive measures as defined in California Health and Safety Code section 101040.
- E. Public Nuisance. Properties that have Fire Debris from structures damaged or destroyed in the Mosquito Fire that have neither an approved Right of Entry permit for the

Consolidated Program nor an approved application for the Alternative Program by the deadlines established by the Director are hereby declared a public nuisance and health hazard and are subject to abatement.

F. Enforcement and Abatement.

- i. General Enforcement. When the Director determines that an activity is being performed in violation of this chapter or that a public nuisance exists under this chapter, chapter, the Director may initiate enforcement action pursuant to Chapter 9.02, Article I of this Code, and may seek imposition of costs and civil penalties. Nothing in this section is intended to preclude alternate enforcement mechanisms under other applicable laws, including but not limited to, health officer orders pursuant to California Health and Safety Code section 101040.
- ii. Summary Abatement. Pursuant to the authority of Cal. Const., art. XI, Section 7; California Health and Safety Code Section 101040, California Government Code Section 25845, and El Dorado County Code, if the Director determines that a violation of this chapter constitutes an immediate threat to public health or safety, the Director may summarily abate the condition upon satisfaction of the summary abatement procedures set forth below, as applicable.
 - a. Pre-Abatement Notice. Unless emergency conditions preclude doing so, the Director shall issue a summary Abatement Notice and Order with property owner(s) as listed on the last equalized tax roll. A summary of the Notice and Order shall be posted in a conspicuous location on the property to be abated at least ten (10) calendar days prior to the summary abatement action.
 - b. Appeal and Waiver. The property owner(s) or any person or entity having a legal interest in the property may submit a written appeal of the Director's Order to the Director or the Director's designee, by United States mail, overnight mail, or personal delivery, no later than fifteen (15) calendar days from the date the Director mailed or delivered the Notice and Order. The written appeal shall state the basis for the appeal. The Director or the Director's designee shall review the appeal, if the appeal is timely, and shall issue a written decision no later than ten (10) calendar days after receipt. The Director's or the designee's decision on the appeal shall uphold, rescind or modify the determination of the Notice and Order. The Director's or the designee's decision on the appeal shall be final. A copy of the Director's or the designee's determination shall be delivered, promptly upon its issuance, to the appellant by United States mail or personal delivery at the address listed on the last equalized tax roll or such other address provided by the appellant. Failure to appeal within the time

prescribed shall constitute a waiver of the right to contest the summary abatement.

c. Post-Abatement Notice. After the summary abatement is completed, the Director shall promptly deliver to the property owner(s) a post-abatement notice indicating: (a) the action taken by the County; (b) the reasons for the actions; (c) a statement of the costs, expenses and attorney's fees, if any, of the abatement and a request that the costs be paid by the property owner(s) to the County within sixty (60) calendar days, and (d) that a lien will be recorded against the property if the property owner(s) fail(s) to pay the requested abatement costs within sixty (60) calendar days. The post-abatement notice shall be delivered by United States mail or personal delivery.

G. Judicial Enforcement Action. County Counsel is authorized to initiate judicial enforcement as to a violation of any provision of this Ordinance without further Board approval.

H. Remedies Not Exclusive. The remedies identified in this ordinance are in addition to and do not supersede or limit any and all other remedies, civil or criminal, available at law or in equity.

Section 8.11.600 – Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter irrespective of whether one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases is held invalid or ineffective.

Section 3. Effective Date

This Urgency Ordinance shall take effect immediately upon its approval by at least four-fifths vote of the Board of Supervisors pursuant to Government Code section 25123(d).

Section 4. Environmental Determination

Adoption of this ordinance is exempt from the provision of the California Environmental Quality Act (CEQA) pursuant to California Public Resources Code Section 21080(b)(3) regarding projects to maintain, repair, restore, or replace property or facilities damaged or destroyed as a result of a declared disaster and Section 21080(b)(4) regarding actions to mitigate or prevent an emergency, and CEQA Guidelines Section 15269(a) regarding maintaining, repairing, restoring, demolishing, or replacing property or facilities damaged or destroyed as a result of a disaster

stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act commencing with Section 8550 of the California Government Code.

The foregoing urgency ordinance was introduced, read and PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the 15th day of November, 2022, by the following vote of said Board:

ATTEST

KIM DAWSON

Clerk of the Board of Supervisors



Deputy Clerk

Ayes: Parlin, Thomas, Hidahl, Turnboo

Noes: None

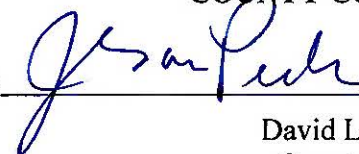
Absent: Novasel



Chair, Board of Supervisors

Lori Parlin

**APPROVED AS TO FORM
DAVID LIVINGSTON
COUNTY COUNSEL**

By: 

David Livingston
County Counsel