

ORDINANCE NO. 24-006

**AN UNCODIFIED URGENCY ORDINANCE OF THE
ORANGE COUNTY BOARD OF SUPERVISORS
ESTABLISHING REQUIREMENTS FOR THE REMOVAL
OF FIRE DEBRIS FROM PRIVATE PROPERTY DAMAGED BY
THE AIRPORT FIRE**

The Orange County Board of Supervisors ordains as follows:

SECTION 1. AUTHORITY.

This ordinance shall be known as the Airport Fire Cleanup Emergency Ordinance.

SECTION 2. EMERGENCY FINDINGS. This Urgency Ordinance is adopted pursuant to Government Code Section 25123(d) and 25131 and shall take effect immediately upon its approval by at least a four-fifths vote of the Board of Supervisors. The Board of Supervisors hereby finds, determines and declares that this Ordinance is necessary for the immediate preservation of the public peace, health and safety, based upon the following facts:

- A. Conditions of extreme peril to the safety of persons and property within Orange County were caused by the Airport Fire which started on September 9, 2024, in the unincorporated area of Orange County near Trabuco Canyon Road.
- B. On September 10, 2024, the Board of Supervisors proclaimed a Local Emergency due to the Airport Fire.
- C. On September 11, 2024, the Governor proclaimed a State of Emergency to exist in Orange County due to the Airport Fire.
- D. On September 13, 2024 and September 20, 2024, the Orange County Health Officer declared the existence of a local health emergency under Health and Safety Code Section 101080 within Orange County due to an imminent and proximate threat to public health posed by the Airport Fire, specifically due to the combustion of building materials which resulted in ash and debris that contain hazardous substances that must be properly handled, transported, and disposed in such a way as to minimize risk to human health, and contaminated debris from household hazardous waste, and materials and structural debris from the destruction of structures.
- E. On September 24, 2024, the Board of Supervisors ratified the local health emergency declared by the Orange County Health Officer.
- F. To date, approximately 76 structures have been destroyed in Orange County from the Airport Fire.

G. The potential for widespread toxic exposures and threats to public health and the environment exists in the aftermath of major wildfire disasters. Debris and ash from structure fires can contain hazardous substances, and the health effects of hazardous substances releases after a wildfire are well-documented.

H. The combustion of building materials such as siding, roofing tiles, and insulation can result in dangerous ash that contains asbestos, heavy metals, and other hazardous materials. Household hazardous waste such as paint, gasoline, cleaning products, pesticides, compressed gas cylinders, and chemicals may have been stored in homes, garages, or sheds that may have also burned in the fire, also producing hazardous materials.

I. Exposure to hazardous substances may lead to health effects and may potentially cause long-term public health and environmental impacts. Uncontrolled hazardous materials and debris pose significant threats to public health through inhalation of dust particles and contamination of drinking water supplies. Improper handling can expose workers to toxic materials, and improper transport and disposal of fire debris can spread hazardous substances throughout the community.

J. Standards and removal procedures are needed immediately to protect the public health and environment, and to facilitate coordinated and effective mitigation of the risks to the environment and public health from the health hazards generated in Airport Fire.

K. The anticipated start of rainy season offers little time to mitigate further environmental contamination and fire debris from affected properties.

L. 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 and fire debris resulting from the Airport Fire.

SECTION 3. REMOVAL OF FIRE DAMAGED DEBRIS FROM PRIVATE PROPERTY

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1. Definitions.

- (a) “Alternative Program” means the requirements for inspections and clean up established by the County of Orange for property owners who opt out of, or are ineligible for, the California Office of Emergency Services (“CalOES”) Program.
- (b) “Board” means the Board of Supervisors of Orange County.
- (c) “Director” means the Orange County Director of Public Works or their designee.
- (d) “CalOES Program” means the fire damage debris clearance program operated by the CalOES, as may be approved for the Airport Fire, in conjunction with other State and Federal agencies.

- (e) “County Private Property Fire Debris Removal Program” means the fire damage debris clearance program operated by the County should it opt to do so in lieu of the CalOES Program Phase II, for which property owners would have to consent through a County Right of Entry Permit.
- (f) “Private Action” means the removal of fire debris from private property damaged by the Airport Fire, by persons not eligible for, or opting out of, the CalOES Program.
- (g) “Removal of fire debris” means all cleanup of fire debris resulting from the Airport Fire, including removal, transport and disposal of fire debris, but it does not include the removal of personal property that is not fire debris from residential sites unless such removal of personal property involves cleanup and the removal of ash from the property.
- (h) “Right of Entry Permit” means the Debris Removal Right-of-Entry Permit approved by the CalOES for use in the cleanup of fire debris from private property.

2. Term of this Ordinance.

This Ordinance shall take effect immediately upon adoption and shall remain in effect until the cleanup of all fire debris on all fire-damaged properties from the Airport Fire, or the completion of all enforcement matters related to this Ordinance, if any.

3. Prohibition on Removal of Fire Debris from Private Property.

Removal of fire debris from private property is prohibited without a hazardous materials inspection conducted by the California Department of Toxic Substances Control through the CalOES Program, or an equivalent inspection approved by the Director through the Alternative Program.

4. Removal of Fire Debris.

- (a) The Right of Entry Permit shall function as the sole permit and authorization for participation in the CalOES Program.
- (b) Notwithstanding any contrary provision in the Orange County Codified Ordinances, no County approvals or permits for fire debris removal are required for properties participating in the CalOES Program, other than the Right of Entry Permit.
- (c) The County may opt to conduct private property fire debris removal using its own contractor(s) through the County Private Property Fire Debris Removal Program.

5. Removal of Fire Debris through the Alternative Program.

- (a) The County shall administratively adopt and administer the Alternative Program in the unincorporated areas of Orange County under the supervision of the County Executive Officer or their designee. The County shall use the state and federal standards and cleanup goals of the CalOES Program as the standards for the Alternative Program. Under the supervision of the County Executive Officer or their designee, the County may administratively update these standards as necessary to address ongoing changes in the administration of the CalOES Program and the need to efficiently remove hazardous fire debris from the community.
- (b) For those property owners who are not eligible for the CalOES Program, or who opt out of the OES Program, or who opt out of the County Private Property Fire Debris Removal Program, fire debris removal program if the County opts to conduct removal through its own contractors, Private Action to remove fire debris from fire-damaged properties is prohibited unless and until a hazardous materials inspection has been performed and authorization from the Director has been provided pursuant to the Alternative Program.
- (c) The Alternative Program shall require an application that identifies the appropriate licensed contractors who will perform the work and the submission of plans that demonstrate that the standards established in the Alternative Program will be met. Work shall not begin until the County approves the application.
- (d) The Director shall prepare a form for property owners to submit, certifying the work has been completed in accordance with the approved plans and a final inspection conducted by County staff, in addition to any other documentation the Director determines is necessary. If the Director determines the fire debris has been removed in compliance with the standards for the Alternative Program, the Director shall provide a letter confirming successful of completion of debris and ash removal to the property owner. A building permit shall not be issued for a property until the letter has been issued to the property owner.

6. Hold on Building Permits.

Any building permit previously issued by Orange County for a structure or other infrastructure that has been damaged or destroyed by the Airport Fire shall be held in abeyance and not acted upon until fire debris cleanup is completed on the affected property, either through the CalOES Program, the County Private Property Debris Removal Program, or the Alternative Program. If fire debris cleanup was performed under the Alternative Program, the property owner must also receive a letter from the Director under section 5(d) confirming successful completion of debris and ash removal before doing any further work under a previously-issued building permit.

7. **Deadlines.**

- (a) The Director may establish deadlines for filing an acceptable Right of Entry Permit in the CalOES Program and County Private Property Fire Debris Removal Program, or an acceptable application for the Alternative Program by posting notice of such deadlines at the County Administration Building and on the County website. The Director may modify these deadlines as necessary, or in individual cases based on extenuating circumstances.
- (b) Properties with fire debris from the Airport Fire that have neither an approved Right of Entry permit for the CalOES or for the County Private Property Fire Debris Removal Program nor an approved application for the Alternative Program by the deadlines established by the Director are hereby declared a nuisance and health hazard and are subject to abatement under the Orange County Codified Ordinances Section 3-14-2, *et. seq.*
- (c) The Director may establish deadlines for the completion of work in the Alternative Program by posting notice of such deadlines at the County Administration Building and on the County website. The Director may modify these deadlines as necessary, or in individual cases based on extenuating circumstances.
- (d) Properties with fire debris from the Airport Fire in the Alternative Program that are not complete by the deadlines established by the Director are hereby declared a nuisance and health hazard and are subject to abatement under the Orange County Codified Ordinances Section 3-14-2, *et. seq.*
- (e) The Board's intent is to facilitate orderly remediation of large-scale disasters. Nothing in the deadlines established by the Director shall limit the authority of the County to abate hazards more quickly when required by exigent circumstances. Nothing in this Ordinance or in these deadlines limits the authority of the County Health Officer to require preventative measures as defined in California Health & Safety Code section 101040.

8. **Enforcement and Abatement.**

- (a) General Enforcement Action. If the Director determines that an activity is being performed in violation of this Ordinance, the Director may initiate an enforcement action under the Orange County Codified Ordinances and may seek the imposition of costs and civil penalties. Nothing in this provision is intended to prevent alternate enforcement mechanisms, including but not limited to, Health Officer orders pursuant to California Health & Safety Code section 101040. Violation of this ordinance shall be an infraction, and a knowing violation may be prosecuted as either an infraction or a misdemeanor.

(b) Summary Abatement. Pursuant to the authority of Section 7 of Article XI of the California Constitution, California Health & Safety Code Section 101040, and California Government Code Section 25845, if the Director determines that a violation of this Ordinance constitutes an immediate threat to public health and safety, the County may summarily abate the condition within the unincorporated territory of the County of Orange in accordance with the summary abatement procedures outlined below, as applicable.

i. Pre-Abatement Notice. Unless emergency conditions preclude doing so, the Director shall issue a summary Abatement Notice and Order with the 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) days prior to the summary abatement action.

ii. 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 Director's Designee, by United States mail, overnight mail, or personal delivery, no later than ten (10) 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) 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.

iii. 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) the costs of the abatement and a request that the costs be paid by the property owner(s) to the County within sixty (60) 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) days. The post abatement notice shall be delivered by United States mail or personal delivery.

(c) 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.

(d) 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. The remedies provided in this Ordinance are cumulative and not

exclusive.

SECTION 4. SEVERABILITY.

It is hereby declared to be the intention of the Board of Supervisors that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, section, paragraph or sentence of this ordinance shall be declared unconstitutional or invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

SECTION 5. 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 6. CEQA COMPLIANCE.

The Board of Supervisors finds that adoption of this ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to 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 Government Code.

SECTION 7. PUBLICATION.

Within 15 days after adoption, a fair and accurate summary of this Ordinance shall be published in the *Orange County Reporter* along with the names of those Supervisors voting for and against the Ordinance, and a certified copy of the full text of this Ordinance shall be posted in the Office of the Clerk of the Board of Supervisors along with the names of those Supervisors voting for and against the Ordinance.

