

ORDINANCE NO. 1290

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, ADDING A NEW CHAPTER 8.36 TO THE NAPA COUNTY CODE FOR THE PURPOSE OF ESTABLISHING PROCEDURES FOR ABATING WEEDS AND RUBBISH CONSTITUTING A FIRE HAZARD IN THE UNINCORPORATED AREAS OF NAPA COUNTY AND ASSIGNING THE RESPONSIBILITY OF HEARING APPEALS RELATING TO IMPOSED ABATEMENT COSTS TO THE COUNTY HEARING OFFICER

The Board of Supervisors of the County of Napa, State of California, ordains as follows:

SECTION 1. A new Chapter 8.36 entitled “FIRE PROTECTION - WEED AND RUBBISH ABATEMENT” is hereby added to the Napa County Code to read in full as follows:

Chapter 8.36

FIRE PROTECTION - WEED AND RUBBISH ABATEMENT

Sections:

- 8.36.010 Title.**
- 8.36.020 Purpose of provisions—Public nuisance findings.**
- 8.36.030 Definitions.**
- 8.36.040 Applicability of article.**
- 8.36.050 Enforcement.**
- 8.36.060 Public nuisances.**
- 8.36.070 Duty to remove; Date of removal of nuisances.**
- 8.36.080 Adjacent property owner’s responsibilities.**
- 8.36.090 Order to abate.**
- 8.36.100 Abatement by county personnel or private contractors.**
- 8.36.110 Notices to abate-mailing.**
- 8.36.120 Requests for extension of time.**
- 8.36.130 Appeal of decision of enforcement officer.**
- 8.36.140 Appeals of abatement determination.**
- 8.36.150 Abatement by county.**
- 8.36.160 Cost of abatement.**
- 8.36.170 Cost of abatement; work by owner prior to county removal of nuisance.**
- 8.36.180 Appeal from determination of cost.**
- 8.36.190 Placement of lien on property in event of non-payment.**
- 8.36.200 Enforcement; Extent of duty to enforce.**

8.36.010 Title.

This chapter shall be known and may be referred to as the Napa County Weed Abatement Ordinance.

8.36.020 Purpose of provisions—Public nuisance findings.

Pursuant to and in accordance with the determination made and the authority granted by the state under Section 14930 of the Health and Safety Code, the board of the county makes the following findings and declarations:

A. The uncontrolled growth and/or accumulation of combustible vegetation, green waste, rubbish, or weeds on parcels as defined in this chapter is hereby found to create a condition that is a fire hazard and potentially injurious to the health, safety, and general welfare of the public.

B. The presence of such combustible vegetation, green waste, rubbish, or weeds, is hereby declared to be a public nuisance which may be abated in accordance with the provisions of this chapter. Nothing in this chapter shall replace or conflict with the authority of the county agricultural commissioner to eradicate noxious weeds under applicable sections of the California Food and Agricultural Code.

8.36.030 Definitions.

“Combustible Vegetation” means material that in its natural state will readily ignite, burn and transmit fire from native or landscape plants to any structure or other vegetation. Combustible vegetation includes, but is not limited to, dry grass, brush, weeds, dead or dying trees, litter or other flammable vegetation that creates a fire hazard.

“Defensible space” means that area described in the Napa County Defensible Space Guidelines which is adjacent to each side of a building or structure and must be cleared of all brush, flammable vegetation, or combustible growth, subject however to the exceptions set forth in the Napa County Defensible Space Guidelines.

“Enforcement Officer” means the fire marshal, assistant fire marshal or fire inspector of the county. In the case of enforcement by a fire district, “Enforcement Officer” means the fire chief of the fire district.

“Fire Hazard” shall mean any condition, arrangement, act or omission which:

1. Increases, or may cause an increase of hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service regularly engaged in preventing, suppressing or extinguishing fire, or
2. May obstruct, delay, hinder or interfere with the operations of a fire department or the egress of occupants in the event of fire.

“Green Waste” includes, but is not limited to, organic material such as yard trimmings, plant waste, untreated wood wastes, paper products, natural fiber products, mulch and compost, but does not include growing plants.

“Occupied building” means a structure or building either potentially or actually occupied by persons on either a permanent or temporary basis including but not limited to residences or businesses.

“Parcel” means any contiguous quantity of land in the possession of, owned by, or recorded as the property of, the same person or entity, and which is located in the unincorporated area of the county of Napa.

“Prohibited Materials” means combustible vegetation, green waste, rubbish or weeds.

“Rubbish” includes all the following types of waste, but is not restricted to nonputrescible wastes: paper, cardboard, grass clippings, tree or shrub trimmings, wood, bedding, crockery, rubber tires, construction waste and similar waste materials.

“Structure” means any building or structure used for support or any use or occupancy.

“Weeds,” as used in this chapter, includes any of the following:

1. Weeds which bear seeds of a downy or wingy nature;
2. Sagebrush, chaparral, and any other brush or weeds which attain such hard growth as to become, when dry, a fire hazard;
3. Weeds and grasses which are otherwise noxious;
4. Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health;
5. Dry grass, stubble, brush, litter, or other flammable plant material which endangers the public safety by creating a fire hazard.

8.36.040 Applicability of article.

This chapter shall be applicable to all unincorporated areas of the county. It shall also apply within those unincorporated areas in independent fire districts having governing bodies other than the board provided the governing body takes action to enforce this chapter by adopting an appropriate resolution authorizing the fire chief of the district to enforce the requirements of this chapter. If any part of this chapter is in conflict with any other part of this code the more restrictive provision(s) shall control.

8.36.050 Enforcement.

The enforcement officer shall have the duty and power to enforce the provisions of this chapter.

8.36.060 Public nuisances.

The following are declared to be public nuisances within the unincorporated areas of the county and it shall be the responsibility of the owner of the property, upon which such nuisance exists, to abate such nuisances at his or her own expense whenever they may exist during each fire season declared by the California Department of Forestry and Fire Protection:

- A. All weeds, combustible vegetation, green waste, rubbish, and other such accumulations when such accumulations are within one hundred feet of any occupied building or structure and violate the defensible space requirements of this chapter;
- B. All weeds, combustible vegetation, green waste, rubbish, and other such accumulations that contribute to the fuel load or hinder the clearing of properties or delay fire fighting operations on any parcel when such accumulations create a fire hazard as determined by the enforcement officer.

8.36.070 Duty to remove; Date of removal of nuisances.

Removal of public nuisances described in section 8.36.060 of this code shall be accomplished by June 1 of every year and such obligation continues until the end of the fire season as declared by the California Department of Forestry and Fire Protection.

8.36.080 Adjacent property owner’s responsibilities.

Where the distance from the occupied building to the property line of a parcel upon which the occupied building is located is less than the distance required to be cleared pursuant to

the Napa County Defensible Space Guidelines, the owner of the parcel adjacent to the parcel upon which such occupied building is located shall either:

A. Clear the remaining area or areas needed to provide the necessary fire protection in the manner and to the extent required by the Napa County Defensible Space Guidelines; or

B. Allow access to the owner of the parcel with the occupied building located on it for the purpose of clearing the remaining area or areas needed to provide the necessary fire protection in the manner and to the extent required by the Napa County Defensible Space Guidelines.

8.36.090 Order to abate.

The enforcement officer may issue an order of abatement of a nuisance to the owner of the affected property in the manner set forth in section 8.36.110 of this code. The property owner shall have twenty-one calendar days from the date of the order of abatement to abate the nuisance.

8.36.100 Abatement by county personnel or private contractors.

If the property owner fails to comply with the order of abatement, then the enforcement officer may cause the weeds, combustible vegetation, green waste, rubbish, and other such accumulations to be removed by county personnel. Alternatively, the county may elect to contract with private contractors to remove the weeds, combustible vegetation, green waste, rubbish, and other such accumulations.

8.36.110 Notices to abate-mailing.

Following a determination that a public nuisance of the type described in section 8.36.060 exists, the enforcement officer shall mail a copy of a notice to abate a fire hazard to the owner of the affected property as the owner's address appears upon the current county equalized assessment. The notice shall be titled with the words "Notice to Abate Fire Hazard" in letters at least one inch high. The notice shall be in substantially the following form:

[MONTH DAY YEAR]

You are hereby notified that there is a condition that constitutes a fire hazard on the following described property owned by you:

(Describe property by owner's address (if available) AND APN Number as it appears upon the current county equalized assessment roll)

The nature of the fire hazard is as follows:

(Describe nature of fire hazard)

You are hereby notified that the Board of Supervisors has declared that such fire hazard constitutes a public nuisance and you are required to remove said fire hazard within twenty-one (21) calendar days of the date of this notice. If you fail to do so, the fire hazard will be removed by the County of Napa and the cost of removal shall be assessed against your property and will constitute a lien upon said real property until paid. This charge representing the cost of removal

will be in addition to the administrative charge imposed by section 8.36.160 of the Napa County Code.

An appeal of the decision of the Enforcement Officer to abate the property may be filed in accordance with the procedures set forth in section 8.36.130 of the Napa County Code.

A request for extension of time may be made in accordance with the procedures set forth in section 8.36.120 of the Napa County Code.

8.36.120 Requests for extension of time.

The owner of the parcel affected by the notice may request an extension of time for the removal of prohibited materials. Said request shall be submitted to the enforcement officer within ten calendar days of the date the notice was sent. The enforcement officer shall notify the property owner, in writing, within ten calendar days of the date of request for extension whether or not the extension shall be granted and, if granted, the new date by which the abatement shall take place.

8.36.130 Appeal of decision of enforcement officer.

The owner of the parcel who wishes to contest the decision of the enforcement officer to abate may have an appeal in front of the fire chief. Any such appeal shall be filed with the clerk of the board within ten days of the date the notice was sent. The fire chief or its designee shall schedule a hearing date that is not more than ten calendar days following the filing of the appeal with the clerk of the board. The fire chief or its designee shall render a decision at the conclusion of the hearing or within seven calendar days of the conclusion of the hearing. The decision of the fire chief or its designee shall be in writing. An appeal to the fire chief is not deemed filed until it is delivered to the clerk of the board. The filing of such notice of appeal shall stay the effectiveness of the order of abatement until the appeal has been decided.

8.36.140 Appeals of abatement determination.

The owner of the parcel who wishes to contest the decision of the fire chief may file an appeal with the county safety officer. Any such appeal shall be filed with the clerk of the board within ten calendar days of the decision of the fire chief pursuant to section 8.36.130 of this code. The county safety officer shall schedule a hearing date that is not more than ten calendar days following the filing of the appeal with the clerk of the board. The county safety officer shall render a decision at the conclusion of the hearing or within seven calendar days of the conclusion of the hearing. The decision of the county safety officer shall be in writing and shall be final with no right of further appeal notwithstanding any other provision of this code. An appeal to the county safety officer is not deemed filed until it is delivered to the clerk of the board. The filing of such notice of appeal shall stay the effectiveness of the order of abatement until the appeal has been decided.

8.36.150 Abatement by county.

Unless a timely appeal is made, heard and allowed by the fire chief and safety officer, as the case may be, the county may have the public nuisance removed pursuant to section 8.36.100 of this code.

8.36.160 Cost of abatement.

Any expense including administrative expenses which the county incurs as a result of having weeds, combustible vegetation, green waste, rubbish, or other similar accumulations removed, shall be charged to the parcel owner. The enforcement officer shall keep an itemized account of the cost of enforcing the provisions of this chapter. Upon completion of abatement, the enforcement officer shall prepare and serve upon the owner of the parcel as shown on the last equalized assessment roll, anyone known by the board to be in possession of the parcel, and all lien holders of record, a cost bill specifying:

- A. The work done, whether by county personnel or private contractors;
- B. The costs of administering the abatement including but not limited to the costs relating to the protest and appeals hearings;
- C. An itemized account of the costs and receipts of performing the work;
- D. The street address, assessor parcel number, or other description sufficient to identify the property affected;
- E. The amount of the assessment proposed to be levied against the property;
- F. A statement that if an appeal is filed the county hearing officer will hear and consider objections and protests to the account and proposed assessment.

8.36.170 Cost of abatement; work by owner prior to county removal of nuisance.

Any person may have the public nuisance removed at his or her own expense if it is done prior to the arrival of the person or persons the county has designated to remove the nuisance. However, in any case in which an order to abate has been issued, the owner of the parcel shall be liable for the reasonable cost incurred by the county enforcing the abatement of the parcel(s) involved, including investigation, boundary determination, measurement, clerical and other costs. The provisions of section 8.36.180 of this code apply to any such costs.

8.36.180 Appeal from determination of cost.

The owner of the property may appeal the cost bill (total abatement expenses). Such appeal shall be in writing and must be filed with the clerk of the board within thirty calendar days of the date of the mailing of the notice required by section 8.36.160. An appeal hearing shall be set within fifteen calendar days of the filing of the appeal. Pursuant to subsection (i) of Government Code section 25845, the county hearing officer is delegated the power and duty to hear these appeals. At the conclusion of the hearing, the county hearing officer may make such modifications and revisions of the proposed account and assessment as it deems just, and may order the account and proposed assessment confirmed or denied, in whole or in part, or as modified and revised. The county hearing officer shall render a written decision, including any findings or conclusions required and file the decision and record with the clerk of the board. The determination of the county hearing officer as to all matters contained in the order is final. An appeal to the county hearing officer is not deemed filed until it is delivered to the clerk of the board. The filing of such notice of appeal shall stay the effectiveness of the order of abatement until the appeal has been decided.

8.36.190 Placement of lien on property in event of non-payment.

If the owner does not pay the cost of the abatement expenses (“cost bill”) within forty-five days after being billed or within fifteen days after an order of the county hearing officer affirming or amending the cost bill, then a copy of the cost bill shall be sent to the county auditor by the tenth day of August following the expiration of the period within which the cost bill must

be paid. The auditor shall thereupon enter the amount of the cost bill, or such amount of the cost bill that has not been paid, as an assessment against the affected parcels of land as they appear on the current assessment roll. The county tax collector shall include the amount of the assessment on the bills for taxes levied against the respective parcels of land. Thereafter, the amount of the assessment shall be collected at the same time and in the same way as county taxes are collected. The owner is subject to the same penalties, procedure, and sale as in the case of delinquency for non-payment of ordinary county taxes. All laws applicable to the levy, collection and enforcement of county *ad valorem* taxes are applicable to these assessments, except that if any real property to which such lien would attach has been transferred or conveyed to a *bona fide* purchaser for value, or if a lien of a *bona fide* encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real property and the cost bill relating to such property shall be transferred to the unsecured roll for collection.

8.36.200 Enforcement; Extent of duty to enforce.

Nothing in this chapter shall be construed as imposing on the enforcement officer or the county any duty to issue an order to abate a fire hazard and neither the enforcement officer nor the county shall be held liable for failure to issue an order to abate a fire hazard nor for failure to abate any fire hazard.

SECTION 2. Pursuant to section 2.22.020 of this code, the County Hearing Officer is assigned the duty of conducting the hearings required by section 8.36.180 and to decide such matters in the manner set forth in subsection (a) of section 27722 of the California Government Code.

SECTION 3. If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 4. This ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 5.

A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing ordinance was introduced and read at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 15th day of May, 2007, and passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 22nd day of May, 2007, by the following vote:

AYES:	SUPERVISORS	DODD, LUCE and WAGENKNECHT
NOES:	SUPERVISORS	MOSKOWITE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	DILLON

HAROLD MOSKOWITE, CHAIR
Napa County Board of Supervisors

ATTEST: GLADYS I. COIL
Clerk of the Board of Supervisors

By: _____

<p align="center">APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Robert C. Martin (by e-signature)</u> Deputy County Counsel</p> <p>By: <u>Sue Ingalls (by e-signature)</u> County Code Services</p> <p>Date: <u>May 15, 2007</u></p>
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<p align="center">APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: May 22, 2007</p> <p>Processed by: _____</p> <p>Deputy Clerk of the Board</p>
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