

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF FRESNO

STATE OF CALIFORNIA

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE COUNTY OF FRESNO -  
DISASTER RECOVERY URGENCY ORDINANCE FOR DEBRIS REMOVAL  
WITHIN AREAS AFFECTED BY THE CREEK FIRE.

The Board of Supervisors of the County of Fresno ordains as follows:

**Section 1. Emergency Findings.**

This urgency ordinance is adopted pursuant to California Government Code Sections 25123, particularly subdivision (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 finds 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 person and property within the County were caused by the Creek Fire, commencing on the 4th day of September 2020, at which time the Board of Supervisors was not in session.
- B. California Government Code section 8630 empowers the County Administrator to proclaim the existence of local emergency when the County is affected or likely to be affected by a public calamity, subject to ratification by the Board of Supervisors at the earliest practicable time.
- C. On September 5, 2020, the County Administrator of the County of Fresno proclaimed the existence of local emergency within Fresno County due to the Creek Fire.
- D. On September 6, 2020, the Governor of the State of California proclaimed a state of emergency to exist in Fresno, Madera, and Mariposa Counties as a result of the Creek Fire.
- E. On September 10, 2020, the Board of Supervisors adopted Resolution No. 20-283 ratifying the County Administrator's proclamation of the existence of a local emergency in Fresno County.

1 The resolution also requested that the State of California make available assistance programs  
2 including, but not limited to, California Disaster Assistance Act, and seek Federal assistance  
3 programs to provide relief to the individuals, businesses, public and private agencies that are  
4 harmed by this disaster. This declaration has been extended as required by law and remains  
5 in effect.

6 F. On September 18, 2020, the Fresno County Health Officer, Dr. Rais Vohra, issued a  
7 Declaration of Local Health Emergency warning persons about the health hazards associated  
8 with fire debris until a property has been cleared of the hazardous materials. This declaration  
9 has been extended as required by law and remains in effect.

10 G. The Creek Fire to date has consumed approximately 380,000 acres and has led to the  
11 destruction/damage of approximately 917 structures. In addition, mandatory evacuations and  
12 fire conditions temporarily displaced approximately 11,000 residents of Fresno County. The  
13 Board of Supervisors anticipates an increase in homeless and displaced residents as a result  
14 of the Creek Fire.

15 H. There exists on these residential parcels the potential for widespread toxic exposure and  
16 threats to public health and the environment in the aftermath of a major wildfire disaster, and  
17 debris and ash from residential structure fires contains hazardous materials and the harmful  
18 health effects of hazardous materials produced by a wildfire are well documented.

19 I. The combustion of building materials such as siding, roofing tiles and insulation results in  
20 dangerous ash that may contain asbestos, heavy metals and other hazardous materials.  
21 Household hazardous waste such as paint, gasoline, cleaning products, pesticides,  
22 compressed gas cylinders, and chemicals may have been stored in homes, garages, or sheds  
23 that may have burned in the fire, also producing hazardous materials.

24 J. Exposure to hazardous materials may lead to acute and chronic health effects and may cause  
25 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 residents and workers

1 to toxic materials, and improper transport and disposal of fire debris can spread hazardous  
2 substances throughout the community.

3 K. The Creek Fire has created hazardous waste conditions in Fresno County in the form of  
4 contaminated debris from household hazardous waste/materials and structural debris resulting  
5 from the destruction of hundreds of structures. This hazardous waste debris poses a  
6 substantial present or potential hazard to human health and the environment until the property  
7 is certified clean. The accumulated exposure to hazardous waste debris over an extended  
8 period of time poses a severe hazard to human health.

9 L. Standards and removal procedures are needed immediately to protect the public safety, health  
10 and environment, and to facilitate coordinated and effective mitigation of the risks to the public  
11 health and environment from the health hazards generated by the Creek Fire.

12 M. It is essential that this Ordinance become immediately effective to mitigate the harm that could  
13 be caused to the public health and safety and to the environment from the improper  
14 disturbance, removal and/or disposal of debris containing hazardous materials, and to facilitate  
15 the orderly response to the Creek Fire disaster.

16 N. The Board of Supervisors finds that wildfire-generated ash and debris pose a danger to the  
17 health, safety and welfare of the general public in the vicinity of any real property located  
18 throughout the territory of the County for the reasons set forth above. Therefore, all wildfire-  
19 generated ash and debris located on real property within the unincorporated area of the County  
20 are deemed a public nuisance and pose a hazard to the safety of the landowners, residents in  
21 the vicinity, to the public generally, and to the environment.

## 22 **Section 2. Definitions.**

23 A. **Director.** The term Director shall mean the Fresno County Director of Public Health and his/her  
24 designee.

25 B. **OES Program.** For purposes of this Ordinance, the term "OES Program" shall mean the fire  
damage debris clearance program operated by the Fresno County Office of Emergency  
Services for the Creek Fire in conjunction with other State and Federal agencies.

- 1 C. **Alternative Program.** For purposes of this Ordinance, the term "Alternative Program" shall  
2 mean the requirements for inspections, clean up and disposal established by the County of  
3 Fresno for property owners that opt out of or are ineligible for the OES Program.
- 4 D. **Private Action.** For the purposes of this Ordinance, the term "private action" shall mean the  
5 removal of fire debris from private property damaged by the Creek Fire by persons not eligible  
6 for or opting out of the OES Program.
- 7 E. **Removal of Fire Debris.** The term "removal of fire debris" as used in this Ordinance includes  
8 all cleanup of fire debris from structures resulting from the Creek Fire, including removal,  
9 transport and disposal of fire debris, but it does not include the removal of personal property  
10 from residential sites unless such removal of personal property involves cleanup and the  
11 removal of ash from the property.
- 12 F. **Right of Entry Permit.** The term "Right of Entry Permit" means the Debris Removal Right-of-  
13 Entry Permit (For Providing Debris Removal on Private Property) approved by the California  
14 Office of Emergency Services for use in the cleanup after the Creek Fire.
- 15 G. **Board.** The term "Board" means the Board of Supervisors.

### 16 **Section 3. Effective Period.**

17 This Ordinance shall take effect immediately upon adoption and shall remain in effect until the cleanup of  
18 fire debris has been completed on all properties damaged by the Creek Fire.

### 19 **Section 4. Prohibition on Removal of Fire Debris from Private Property.**

20 No fire debris from structures shall be removed from private property without a hazardous materials  
21 inspection conducted either by the U.S. Environmental Protection Agency or California Department of Toxic  
22 Substance Control through the Office of Emergency Services' fire debris clearance program, or by an entity  
23 approved through the Alternative Program. This Ordinance shall apply to properties that contained a  
24 qualifying structure under the OES Program. This Ordinance shall not apply to properties that only  
25 contained non-qualifying structures, including but not limited to sheds, canopies, carports, well houses,  
greenhouses, chicken coops or fencing. Whether fire debris derived from a qualifying or non-qualifying

1 structure shall be determined by the Director, or his or her designee, in consultation with the California  
2 Office of Emergency Services.

3 **Section 5. Removal of Fire Debris through the OES Program.**

- 4 A. Effect of the Right of Entry Permit: The Right of Entry Permit shall function as the sole permit  
5 and authorization for participation in the OES Program.
- 6 B. Notwithstanding any contrary provision in Fresno County Code, no County approvals or permits  
7 for fire debris removal are required for properties participating in the OES Program, other than  
8 the Right of Entry agreement.

9 **Section 6. Removal of Fire Debris through the Alternative Program.**

- 10 A. The County shall administratively adopt and administer the Alternative Program in the  
11 unincorporated areas of Fresno County under the supervision of the County Administrative  
12 Officer or his or her designee. The County shall utilize the state and federal standards and  
13 cleanup goals of the OES Program as the standards for the Alternative Program. Under the  
14 Supervision of the County Administrative Officer or his or her designee, the County may  
15 administratively update these standards as necessary to address ongoing changes in the  
16 administration of the OES Program and the need to efficiently remove hazardous fire debris  
17 from the community.
- 18 B. For those persons who are not eligible for the OES Program, or who opt out of the OES  
19 Program, private action to remove fire debris from fire-damaged properties is prohibited unless  
20 and until a hazardous materials inspection has been performed and authorization from the  
21 Director has been provided pursuant to the Alternative Program.
- 22 C. The Alternative Program shall require an application that identifies the appropriate licensed  
23 contractors who will perform the work and the submission of plans that demonstrate that the  
24 standards established in the Alternative Program will be met. Work shall not begin until the  
25 County approves the application. The County may rely upon the subject matter expertise of  
multiple departments in deciding whether to approve the application.

1 D. Upon completion of the work described in the approved plans, the Alternative Program shall  
2 require an application for certification of successful completion of the work required by the  
3 Alternative Program. The Alternative Program will require that: (1) the debris removal and clean-  
4 up work on the property meets or exceeds the standards set by the State of California for debris  
5 removal; and (2) if the existing foundation is to be built upon, the owner shall submit a letter  
6 from a licensed civil or structural engineer certifying that the foundation is acceptable for  
7 rebuild. The letter shall certify structural reasons for the decision and include the process and  
8 procedure used to reach the conclusion.

9 E. Notwithstanding any contrary provision in Fresno County Code, no county demolition permit  
10 shall be required for private debris removal work for which the Director has issued an approval  
11 allowing such work to proceed.

#### 12 **Section 7. Hold on Building Permits.**

13 Any issued County of Fresno building permit to repair or reconstruct a fire damaged structure or private  
14 infrastructure shall be held in abeyance and not acted upon until fire debris cleanup is completed on the  
15 affected property and completion is confirmed to the County Building Official, either through the OES  
16 Program or through the Alternative Program.

#### 17 **Section 8. Deadlines and Enforcement.**

18 A. The Board may set deadlines for filing either an acceptable Right of Entry Permit in the OES  
19 Program or an acceptable application for the Alternative Program by resolution. Otherwise,  
20 deadlines set by CalOES shall apply.

21 B. Properties that have fire ash and debris from the Creek Fire and that have neither an approved  
22 Right of Entry Permit for the OES Program nor an approved application for the Alternative  
23 Program by the deadline set by the Board may be declared a nuisance and health hazard and  
24 such property may be abated pursuant to this Chapter.  
25

1 C. The Board may set deadlines for the completion of work in the Alternative Program by  
2 resolution. Properties that have fire ash and debris from the Creek Fire after that deadline may  
3 be declared a nuisance and health hazard.

4 D. The Board's intent is to facilitate orderly remediation of a large scale disaster. Nothing in these  
5 deadlines shall limit the authority of the County to abate hazards more quickly where required  
6 by exigent circumstances. Nothing in this Ordinance or in these deadlines shall limit the  
7 authority of the Health Officer to require preventive measures as defined in California Health  
8 and Safety Code Section 101040.

9 E. Enforcement and Abatement.

10 (1) General Enforcement action. When the Director determines that an activity is being  
11 performed in violation of this Ordinance, the Director may initiate an enforcement action  
12 using the process set forth in the Fresno County Code and may seek the imposition of  
13 costs and civil penalties pursuant to the Fresno County Code. Nothing in this provision  
14 is intended to prevent alternate enforcement mechanisms, including but not limited to,  
15 health officer orders pursuant to California Health and Safety Code Section 101040.

16 (2) Summary Abatement. Pursuant to the authority of Cal. Const., art. XI, Section 7;  
17 California Health and Safety Code Section 101040, California Government Code  
18 Section 25845, and the Fresno County Code, if the Director determines that a violation  
19 of this Ordinance has created an emergency condition which seriously endangers the  
20 public health or safety, the County may abate the condition within the unincorporated  
21 territory of the County of Fresno. The costs shall be charged to the property owners(s)  
22 and the County may, at its option, recover the same in an administrative or civil action.  
23 Such charges shall be in addition to any penalty for a violation of this Ordinance.

24 i. Pre-Abatement Notice. Unless emergency conditions preclude doing so, the  
25 Director shall issue a Summary Abatement Notice and Order with reasonable  
notice. The Notice and Order shall be mailed to the Property owner(s) as listed

1 on the last equalized tax roll. A summary of the Notice and Order shall be posted  
2 in a conspicuous location on the property to be abated at least 10 calendar days  
3 prior to the summary abatement action.

4 ii. Appeal and Waiver. The property owner(s) or any person or entity having a legal  
5 interest in the property may submit a written appeal of the Director's Order to the  
6 Health Officer or his or her designee no later than 10 calendar days from the date  
7 of mailing of the Notice and Order. The written appeal shall state the basis for the  
8 appeal. The Health Officer or his/her designee shall review the appeal and shall  
9 issue a written decision (the "Decision") no later than 10 calendar days after  
10 receipt. The Decision shall uphold, rescind or modify the determination of the  
11 Notice and Order. The Decision on the appeal shall be final. Failure to appeal  
12 within the time prescribed shall constitute a waiver of the right to contest the  
13 summary abatement.

14 iii. Post Abatement Notice. After the summary abatement is completed, the Director  
15 shall serve the property owner(s) with a post abatement notice that sets forth: (a)  
16 the actions taken by the County; (b) the reasons for the actions; (c) a statement  
17 of the estimated costs, expenses and attorney's fees, if any, of the abatement  
18 and notice of the County's intent to collect those costs; and (d) right to appeal the  
19 costs determination within 10 calendar days of the notice. If the property owner is  
20 responsible for any costs, expenses or attorney's fees, such costs shall become  
21 a lien against the property and a Notice of Abatement Lien may be recorded.

22 iv. Post Abatement Costs Appeal. If the property owner(s) or anyone with a legal  
23 interest in the property submits a timely costs appeal, the County shall schedule  
24 an administrative hearing on the matter and provide the appeal party with  
25 reasonable notice of the hearing. The hearing officer shall conduct an  
administrative hearing where each party shall have the opportunity to present



1 evidence and the County shall have the obligation to establish that the costs,  
2 including expenses and attorney's fees, if any, incurred for the summary  
3 abatement were necessary by a preponderance of the evidence. After the  
4 hearing, the hearing officer shall issue a written decision and order that shall be  
5 served upon the appealing party within 30 calendar days of the hearing unless  
6 extended by agreement of the parties.

7 **Section 9. Judicial Enforcement Action.** The County Counsel is authorized to initiate judicial enforcement  
8 as to a violation of any provision of this Ordinance without further Board approval.

9 **Section 10. Remedies not exclusive.** The remedies identified are in addition to and do not supersede or  
10 limit any and all other remedies, civil or criminal. The remedies provided in this Ordinance shall be  
11 cumulative and not exclusive.

12 **Section 11. CEQA Exemption.** Adoption of this Ordinance is exempt from the provisions of the California  
13 Environmental Quality Act (CEQA) pursuant to California Public Resources Code Section  
14 21080(b)(3) regarding projects to maintain, repair, restore, or replace property or facilities damaged or  
15 destroyed as a result of a declared disaster and Section 21080(b)(4) regarding actions to mitigate or prevent  
16 an emergency, and CEQA Guidelines Section 15269(a) regarding maintaining, repairing, restoring,  
17 demolishing, or replacing property or facilities damaged or destroyed as a result of a disaster stricken area  
18 in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency  
19 Services Act, commencing with Section 8550 of the California Government Code.

20 **Section 12. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for  
21 any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining  
22 portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this  
23 Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that  
24 any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or  
25 invalid.

**Section 13. Effective Date and Publication.** This Ordinance shall be and the same is hereby declared to be in full force and effect immediately upon its passage by a four-fifths (4/5) or greater vote. A fair and accurate summary of this Ordinance shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in a newspaper of general circulation published in the County of Fresno, State of California. Pursuant to California Government Code Section 25124, a complete copy of this Ordinance is on file with the Clerk of the Board of Supervisors and is available for public inspection and copying during regular business hours in the office of the Clerk of the Board of Supervisors, 2281 Tulare St., Room 301, Fresno, CA 93721.

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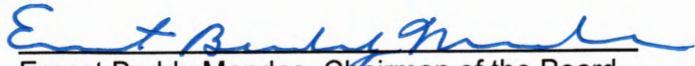
1 THE FOREGOING, was passed and adopted by the following vote of the Board of  
2 Supervisors of the County of Fresno this 24th day of November, 2020, to wit:

3 AYES: Supervisors Brandau, Magsig, Mendes, Pacheco, Quintero

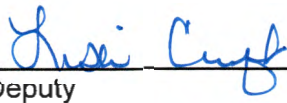
4 NOES: None

5 ABSENT: None

6 ABSTAINED: None

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8   
Ernest Buddy Mendes, Chairman of the Board  
of Supervisors of the County of Fresno

9  
10 **ATTEST:**  
11 Bernice E. Seidel  
12 Clerk of the Board of Supervisors  
13 County of Fresno, State of California

14  
15 By:   
16 Deputy

17 FILE # 20-1348

18 AGENDA # 11

19 ORDINANCE # 20-024  
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