

ORDINANCE NO. 4531

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS EXEMPTING THE REMOVAL OF CERTAIN DEAD, DISEASED OR HAZARDOUS TREES FROM DISCRETIONARY REVIEW IN THE COASTAL ZONE DURING THE LOCAL EMERGENCIES RELATED TO CLIMATE CHANGE AND TREE MORTALITY

WHEREAS, tree mortality within Mendocino County has increased as a result of native and invasive insects and diseases and persistent severe drought conditions that have affected the County in recent years; and

WHEREAS, higher levels of tree mortality increases the risk of large wildfires, which cause human casualties, property destruction, diminished air quality and other negative impacts on County residents; and

WHEREAS, removal of dead, diseased and hazardous trees is necessary to public health and safety, protect and maintain watersheds and wildlife habitat, protect and restore forest resiliency, and protect the continued economic development through tourism and the creation of jobs, and

WHEREAS, on November 1, 2022, the Board of Supervisors of the County of Mendocino adopted Resolution No. 22-218 declaring a local emergency related to tree mortality; and

WHEREAS, California's Fourth Climate Change Assessment warned that extreme weather and climate-related events in the United States are worsening, predicting increased drought cycles and heat waves in the western U.S. with a resulting three-fold increase in intensity and magnitude of wildfires; and

WHEREAS, on June 22, 2021, the Board of Supervisors adopted a new Safety Element for the County, which includes an assessment of the County's vulnerability to climate change, and which identified seventy-five (75) populations and assets in Mendocino County that are highly or severely vulnerable to one or more hazard conditions due to climate change, with wildfire and smoke being responsible for most vulnerability scores; and

WHEREAS, Mendocino County has been profoundly affected by disasters resulting from climate change in recent years, including multiple wildfires as well as severe storms that have caused tree branches and entire trees to fall and cause damage to public and private property, even leading to the closure of properties like the County's Bower Park; and

WHEREAS, it is imperative for the County to take action to allow for faster removal of dead, diseased or otherwise hazardous trees to lessen the amount of fuel for future wildfires and protect public and private infrastructure from possible damage caused by falling branches or trees during future storms; and

WHEREAS, on December 19, 2023, the Board of Supervisors of the County of Mendocino adopted Resolution No. 23-206 declaring a local emergency related to climate change; and

WHEREAS, the immediate implementation of this ordinance is necessary to prevent extreme peril to the safety of persons and property presently existing in Mendocino County, caused by widespread and rapidly increasing incidence of tree mortality and improve resilience

related to climate crisis; and

WHEREAS, the County of Mendocino desires to adopt these regulations on an urgency basis pursuant to Government Code section 25123, which allows ordinances to become effective immediately if the ordinance is for the immediate preservation of the public peace, health or safety, which shall contain a declaration of the facts constituting the urgency, and be passed by a four-fifths vote of the Board of Supervisors; and

WHEREAS, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction.

NOW, THEREFORE, The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

SECTION 1. Findings and Purpose.

The Board of Supervisors of the County of Mendocino finds and declares all of the following:

- A. The above recitals are true and correct and are incorporated herein by this reference. In addition, the recitals of Resolution No. 23-206, which declared a local emergency related to climate change, and Resolution No. 22-218, which declared a local emergency related to tree mortality, are incorporated herein by this reference.
- B. This ordinance is adopted in order to alleviate the effects of climate change as identified in Resolution No. 23-206 and the threats from tree mortality as identified in Resolution No. 22-218. As provided for in those resolutions, climate change and tree mortality both present a serious threat to the public health and safety of the residents of Mendocino County and adoption of this ordinance as an urgency measure is needed to preserve the health and safety of the County.
- C. As provided by Government Code section 8634, the Board of Supervisors may promulgate orders and regulations necessary to provide for the protection of life and property during a local emergency, and this ordinance is intended to better allow County residents to take measures to make themselves more resilient in the face of climate change and increased tree mortality and the disasters caused by these dangers.
- D. The purpose of this ordinance is to facilitate the removal of certain dead, diseased or hazardous trees in order to protect buildings within the Coastal Zone of Mendocino County.

SECTION 2. Definitions.

- A. "Coastal Zone" refers to all lands within the unincorporated areas of Mendocino County subject to Division II and Division III of Title 20 of Mendocino County Code.
- B. "Department" means the County of Mendocino Planning and Building Services Department.
- C. "Fall Zone" refers to the area surrounding a tree that may be affected or damaged

if a tree were to fall based upon the height of the tree.

- D. "Hazardous Tree Removal" refers to removal of dead, diseased or hazardous trees greater than 12 inches in diameter at breast height, where the Fall Zone of the tree includes an inhabited structure or its parking area (excluding driveways where no parking occurs). The determination of whether a tree is dead, diseased or hazardous shall be made by the property owner, taking into consideration the following factors:
1. The health of the tree, including its general vigor;
 2. The presence and extent of disease, insects, or other pathogenic organisms;
 3. The structure and shape of the tree, including its root system;
 4. The presence of any physical defect, such as splitting, broken limbs, etc.;
 5. The soil and slope conditions in the vicinity of the tree, including any evidence of erosion and/or upheaval;
 6. The degree of lean from vertical;
 7. The exposure of the tree to the predominant wind direction.
- E. "MCC" means Mendocino County Code.

SECTION 3. Applicability of Ordinance.

The Ordinance only applies to Hazardous Tree Removal located within the unincorporated areas of the Coastal Zone of Mendocino County, excluding areas of deferred certification (pygmy forest) or properties upon which the California Coastal Commission retains permit jurisdiction, including but not limited to tidelands, submerged lands or public trust lands, whether filled or unfilled.

SECTION 4. Administration and Administrative Policies.

- A. This Ordinance will be administered by the Department under the direction of the Board of Supervisors.
- B. The Department may establish administrative policies for the implementation of this Ordinance. The administrative policies must be consistent with this Ordinance and made available to the public on the Department website and upon request at the Department.
- C. Where this Ordinance directly conflicts with the MCC, or conditions of a discretionary permit issued by the County for a particular property, the provisions of this Ordinance shall prevail.

SECTION 5. Hazardous Tree Removal.

- A. Hazardous Tree Removal, as defined herein, is hereby exempted from the permit requirements of Divisions II or III of the Mendocino County Zoning Code, provided a property owner complies with the requirements of this Ordinance.
- B. Property owners desiring to conduct Hazardous Tree Removal shall complete an affidavit, on a form provided by the Department, prior to conducting any removal. The affidavit shall be submitted to the Department and placed in the property

address file. The affidavit shall provide, at a minimum, the following:

1. The address and assessor parcel number of the property where the Hazardous Tree Removal is to occur.
 2. That the individual completing the affidavit is the property owner of record for the property in question.
 3. A description of how the trees proposed for removal exhibit one or more of the factors listed in Section 2.D of this ordinance.
 4. The Hazardous Tree Removal is for life, safety and structure protection and the trees to be removed meet the parameters of Section 2.D of this ordinance.
 5. The property owner shall attest that the Hazardous Tree Removal will not result in the taking of endangered, rare, or threatened plant or animal species or significant erosion and sedimentation of surface waters.
 6. The property owner shall attest that the Hazardous Tree Removal will not impact an environmental resource of hazardous or critical concern that has been designated, precisely mapped, and officially adopted pursuant to law by federal, state or local agencies.
 7. The Hazardous Tree Removal is consistent with the requirements of this Ordinance.
 8. That the property owner will obtain appropriate permits for the Hazardous Tree Removal from the California Department of Forestry and Fire Protection ("CALFIRE"), if required.
 9. Photographs of the dead, diseased or hazardous trees prior to performing the Hazardous Tree Removal.
 10. An indemnification of the County from all liability associated with the Hazardous Tree Removal.
 11. An attestation that the information provided in the affidavit is true and correct.
- C. Compliance with Other Laws. Other than the permit requirements exempted from by this Ordinance, all Hazardous Tree Removal must comply with federal, state, and local laws, including but not limited to the Federal Endangered Species Act, the California Endangered Species Act, CALFIRE regulations, encroachment permit requirements of the County or the State, and building codes, as applicable.

SECTION 6. Enforcement.

Enforcement. A violation of this Ordinance is subject to enforcement by any legal means available, including but not limited to the enforcement provisions in MCC Chapter 1.08, and

Chapters 20.552 and 20.736 as applied to the zoning district where the violations occur.

SECTION 7. Environmental Determination.

Adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA") pursuant to the following: Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) as an action immediately necessary to mitigate or prevent an emergency because the Ordinance establishes streamlined review procedures for Hazardous Tree Removal to reduce wildfire risk related to the tree mortality emergency and assist in combating the climate change emergency and because the anticipated time to conduct environmental review would pose a grave risk to public health, safety, and welfare, and because the action is immediately necessary to allow property owners to remove dead, diseased or hazardous trees immediately as delay would similarly pose a grave risk to public health, safety, and welfare in the face of unprecedented tree mortality and a global climate emergency.

SECTION 8. Severability.

The provisions of this ordinance are separate and severable. If any provision of this ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

SECTION 9. Effective Date.

This Ordinance shall take effect immediately as an urgency ordinance and will remain in effect until the termination of the climate change local emergency declared by Resolution No. 23-206 and the tree mortality emergency declared by Resolution No. 22-218, certification of the Mendocino County Local Coastal Program Update, or until this Ordinance is modified or revoked by the Board of Supervisors, whichever is sooner.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 19th day of December, 2023, by the following vote:

AYES: Supervisors McGourty, Mulheren, Haschak, Gjerde and Williams
NOES: None
ABSENT: None

WHEREUPON, the Chairperson declared said Ordinance passed and adopted and SO ORDERED.

ATTEST: DARCIE ANTLE
Clerk of the Board



Deputy

APPROVED AS TO FORM:
CHRISTIAN M. CURTIS
County Counsel





GLENN MCGOURTY, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: DARCIE ANTLE
Clerk of the Board



Deputy