

**AN URGENCY ORDINANCE OF THE COUNTY OF BUTTE AMENDING ARTICLE V
OF CHAPTER 53, "CAMP FIRE RECOVERY" OF THE BUTTE COUNTY CODE TO
ADD NUISANCE ABATEMENT PROCEDURES FOR HAZARD TREES ON
NONCOMPLIANT PARCELS
4/5 VOTE REQUIRED**

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

Section 1. Emergency Findings. This Urgency Ordinance is adopted pursuant to California Government Code Sections 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 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 persons and property within the County were caused by the Camp Fire, commencing on the 8th day of November, 2018, 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 a 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 November 8, 2018, the County Administrator of the County of Butte proclaimed the existence of a local emergency within Butte County due to the Camp Fire.
- D. On November 8, 2018, the Acting Governor of the State of California proclaimed a State of Emergency for Butte County pursuant to the California Emergency Services Act,

1 commencing with Section 8550 of the Government Code, and on November 14, 2018, the
2 Governor issued Executive Order B-57-18 concerning the Camp Fire.

3 E. On November 9, 2018, the Camp Fire was still burning through the County and despite
4 firefighters' best efforts, the wildfire was not contained. Evacuation orders were in place
5 and numerous severe public health and safety hazards were present in the Camp Fire area,
6 including many blocked roads from fallen power lines, burned trees and vehicles,
7 numerous burned vehicles left throughout the Camp Fire area due to survivors fleeing their
8 vehicles in efforts to survive the wildfire, no available utilities, no available public services
9 and the presence of human remains and animal carcasses. At the time, the County estimated
10 that 2,000 structures had burned in the Camp Fire.

11 F. On November 9, 2018, Dr. Andrew Miller, Butte County's Local Health Officer, issued a
12 Declaration of Health Emergency pursuant to California Health and Safety Code section
13 101080. Dr. Miller's declaration stated that the local health emergency was a consequence
14 of the debris resulting from the Camp Fire that contains hazardous material in the ash of
15 the burned qualifying structures. The purpose of the Declaration was to address the
16 immediate threat to the public health and the imminent and proximate threat of the
17 introduction of contagious, infectious or communicable disease, chemical agents, non-
18 communicable biologic agents, toxins and/or radioactive agents present at the time in the
19 Camp Fire area. The threats included (1) the enormous amount of fire debris present in the
20 Camp Fire area, including ash and debris containing hazardous materials and probable
21 radioactive materials present in ash and debris from qualifying structures, (2) the threat of
22 infectious or communicable disease and/or non-communicable biologic agents due to
23 animal carcasses, radioactive waste and perishable foods, (3) the potential contamination
24
25

1 or destruction of the residential and commercial water supply in the Camp Fire area and
2 (4) the potential pollution of the drinking water downstream from the Camp Fire area if
3 weather conditions caused the spread of the hazardous materials in the ash and debris of
4 burned qualifying structures.

5 G. On November 12, 2018, the President of the United States declared the existence of a major
6 disaster in the State of California, providing assistance from many federal agencies,
7 including the Federal Emergency Management Agency (FEMA).

8 H. On November 13, 2018, the Board of Supervisors adopted Resolution No. 18-169 ratifying
9 the County Administrator's proclamation of the existence of a local emergency in Butte
10 County. The resolution also requested that the State of California waive regulations that
11 may hinder response and recovery efforts, as well as make available assistance under the
12 California Disaster Assistance Act or any other state funding, and that the Federal
13 Government expedite access to federal resources and any other appropriate federal disaster
14 relief program.

15
16 I. On November 13, 2018, the Board of Supervisors ratified Dr. Miller's Declaration of
17 Health Emergency.

18 J. On November 21, 2018, the status of the Camp Fire area was as follows: firefighters had
19 contained the Camp Fire; the Sheriff had lifted some evacuation orders; work crews had
20 removed fallen power lines, burned vehicles and trees blocking the roads; utilities including
21 electric power, gas and non-potable water had become available; no local businesses were
22 open to serve the public; and no public services were available. Further, preliminary actions
23 had been taken to mitigate the risk from animal carcasses, radioactive waste and perishable
24 foods in the Camp Fire area, however, concerns regarding the threats remained. The public
25

1 health hazards present in the Camp Fire area included (1) the public health hazards from
2 the enormous amount of fire debris, (2) the public health hazard from the hazardous
3 materials and probable radioactive materials present in the ash and debris from destroyed
4 qualifying structures, (3) the threat of infectious or communicable disease and/or non-
5 communicable biologic agent due to the presence of animal carcasses, perishable foods and
6 radioactive waste and (4) the potential pollution of the drinking water downstream from
7 the Camp Fire area if weather conditions caused the spread of the hazardous materials in
8 the ash and debris of burned qualifying structures. At the time, the County estimated that
9 the Camp Fire had destroyed 18,000 structures.

10 K. On November 21, 2018, Dr. Miller issued a Hazard Advisory strongly suggesting residents
11 should not reside on property with qualifying structures damaged or destroyed by the Camp
12 Fire until the property had been cleared of hazardous waste, ash and debris and certified
13 clean by the Department of Public Health, Environmental Health Division. When the
14 evacuation orders were lifted, the Department of Public Health provided residents who
15 chose to visit their property to collect valuables with re-entry packets to improve their
16 safety during the visit. The re-entry packets included personal protective equipment and
17 information on the dangerous conditions and toxic materials present in the Camp Fire area.
18 The re-entry packets were intended to improve public safety from the public health hazards
19 encountered during the visit, but was not intended to encourage long-term habitation. The
20 purpose of the Hazard Advisory was to address the public health hazards present at the
21 time in the Camp Fire area, including (1) the enormous amount of fire debris present in the
22 Camp Fire area, (2) the hazardous materials and probable radioactive materials present in
23 ash and debris from qualifying structures, (3) the lessened but still present threat of
24
25

1 infectious or communicable disease and/or non-communicable biologic agents due to
2 animal carcasses, radioactive waste and perishable foods, (4) the potential contamination
3 or destruction of the residential and commercial water supply in the Camp Fire area and
4 (5) the potential pollution of the drinking water downstream from the Camp Fire area if
5 weather conditions caused the spread of the hazardous materials in the ash and debris of
6 burned qualifying structures.

7 L. The Camp Fire to date has consumed 153,336 acres and has led to the destruction of 13,696
8 residences, damage to 462 residences, the destruction of 276 multiple family residences,
9 the destruction of 528 commercial buildings, damage to 102 commercial buildings, the
10 destruction of 4,293 other minor structures, and resulted in the evacuation of over 50,000
11 people. As a result, the Camp Fire has created an enormous amount of debris.

12 M. There exists the potential for widespread toxic exposures and threats to public health and
13 the environment in the aftermath of a major wildfire disaster, and debris and ash from
14 residential and commercial structure fires contain hazardous materials and the harmful
15 health effects of hazardous materials produced by a wildfire are well-documented.

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

21 O. Exposure to hazardous materials may lead to acute and chronic health effects and may
22 cause long-term public health and environmental impacts. Uncontrolled hazardous
23 materials and debris pose significant threats to public health through inhalation of dust
24
25

1 particles and contamination of drinking water supplies. Improper handling can expose
2 residents and workers to toxic materials, and improper transport and disposal of fire debris
3 can spread hazardous substances throughout the community.

4 P. Standards and removal procedures are needed immediately to protect the public health and
5 environment, and to facilitate coordinated and effective mitigation of the risks to the public
6 health and environment from the health hazards generated by the Camp Fire disaster.

7 Q. The Camp Fire has created hazardous waste conditions in Butte County in the form of
8 contaminated debris from household hazardous waste/materials and structural debris
9 resulting from the destruction of thousands of structures. This hazardous waste debris poses
10 a substantial present or potential hazard to human health and the environment until the
11 property is certified clean. The accumulated exposure to hazardous waste debris over an
12 extended period of time poses a severe hazard to human health.

13 R. The Board of Supervisors previously approved urgency ordinances and/or related
14 resolutions relating to the Camp Fire disaster recovery on December 11, 2018, December
15 21, 2018, January 8, 2019, January 29, 2019, February 4, 2019, February 12, 2019,
16 February 24, 2019, April 23, 2019, August 13, 2019, September 10, 2019, October 22, 2019,
17 November 5, 2019, November 19, 2019, December 17, 2019, February 11, 2020, March
18 10, 2020, July 21, 2020 and September 29, 2020. The actions addressed the need for the
19 regulation of debris removal to alleviate the public health, safety and welfare concerns
20 associated with the ash and debris of qualifying structures and temporary emergency
21 housing options.

22 S. As of February 4, 2019, the status of the Camp Fire disaster recovery is as follows: (1)
23 Phase I cleanup by the U.S. Environmental Protection Agency and the California
24
25

1 Department of Toxic Substances Control is complete, which has reduced the public health
2 concerns relating to the most hazardous materials present in the Camp Fire area, (2) Phase
3 II of the cleanup pursuant to the Government (CalOES) Program and the Alternative
4 Program has commenced, (3) utilities are available (except for potable water), (4)
5 numerous businesses have opened to serve the public, (5) public services are available,
6 including a FEMA and CalOES jointly-operated Disaster Recovery Center in Paradise,
7 California. Current threats include (1) the enormous amount of fire debris present in the
8 Camp Fire area, (2) hazardous materials and probable radioactive materials present in ash
9 and debris from qualifying structures, (3) the potential pollution of the drinking water
10 downstream from the Camp Fire area if weather conditions caused the spread of the
11 hazardous materials in the ash and debris of burned qualifying structures. The purpose of
12 this ordinance is to allow residents to live on properties in the Camp Fire area that do not
13 contain fire ash and debris from a qualifying structure destroyed or damaged by the Camp
14 Fire.
15

16 T. The Debris Removal Operations Plan for the Camp Fire prepared by the
17 CalOES/CalRecycle Incident Management Team provides that the DTSC has issued
18 reports regarding the assessment of burn debris from wildfires in the past. The studies of
19 burned residential homes and structures from large scale wildland fires indicated that the
20 resulting ash and debris can contain asbestos and toxic concentrated amounts of heavy
21 metals such as antimony, arsenic, cadmium, copper, lead, and zinc. Additionally, the ash
22 and debris may contain higher concentrations of lead if the home was built prior to 1978
23 when lead was banned from household paint in the United States. The reports indicated
24 that the residual ash of burned residential homes and structures has high concentrations of
25

1 heavy metals that can be toxic and can have significant impact to individual properties,
2 local communities, and watersheds if the ash and debris is not removed safely and
3 promptly. The plan also indicates that the purpose of the structural debris removal program
4 is to remove debris that poses a risk to health and/or the environment. Debris from
5 structures smaller than 120 square feet are not included in the program.

6 U. The Local Health Officer, Dr. Miller, has indicated the following: (1) the Phase II cleanup
7 of the properties containing ash and debris from a qualifying structure mitigates the public
8 health hazards of the Camp Fire; (2) failing to clean properties containing ash and debris
9 from a qualifying structure can have severely negative long-term consequences to the
10 public health and environment; (3) therefore, the County's focus must be on
11 accomplishment of the Phase II cleanup to address the public health hazards; (4) the
12 standard for determining when a property is clean from ash and debris from a qualifying
13 structure is when the Phase II cleanup work is complete and the property is certified clean
14 by the Department of Public Health, Environmental Health Division; (5) as ash and debris
15 of qualifying structures is the focus of the Phase II cleanup work, the significance of the
16 public health risks is higher on properties with ash and debris from a qualifying structure;
17 (6) given the progress the Camp Fire disaster recovery has made with respect to the hazards
18 identified in the findings above, the remaining significant public health hazard is the ash
19 and debris from qualifying structures; (7) based on the foregoing, properties that contain
20 ash and debris from qualifying structures constitute a significant public health risk and
21 therefore, those properties should be ineligible for temporary emergency housing until
22 Phase II cleanup work is completed on the property and is certified clean by the Department
23 of Public Health, Environmental Health Division; and (8) properties that do not contain ash
24
25

1 and debris from a qualifying structure do not pose a significant public health risk and
2 should be eligible for temporary emergency housing.

3 V. There is an immediate need for housing to accommodate persons who have been displaced
4 by the Camp Fire. This Chapter temporarily relaxes some building and zoning regulations
5 to allow for additional housing both inside and outside of the Camp Fire affected area for
6 displaced persons. Due to the magnitude of the destruction, there is a need to provide for
7 sufficient housing options both inside and outside of the Camp Fire affected area.

8 W. As of October 22, 2019, the status of the Camp Fire area was as follows: (1) Phase II of
9 the cleanup pursuant to the Government (CalOES) Program and the Alternative Program
10 have resulted in the majority of Camp Fire parcels with final sign off and clearance for
11 rebuild; (2) the County has received 150 applications and issued 70 building permits for
12 residential parcels for Camp Fire survivors inside the Camp Fire area; (3) the County has
13 commenced its nuisance abatement actions on parcels not compliant with debris removal
14 requirements of Chapter 53; (4) dead and dying trees litter the Camp Fire footprint,
15 including areas where some homes still exist and where others existed and are now pending
16 construction; (5) the County has had trees in the County right-of-way assessed by an
17 arborist and removed a small portion of over 6,649 hazard trees¹ that have been determined
18 to meet removal criteria; (6) Del Oro Water and Paradise Irrigation District are in the
19 process of testing residential structures for water contaminants in the Camp Fire area; (7)
20 numerous Camp Fire survivors who are unable to live on their property until the fire debris
21 removal is complete are sheltering at non-congregate shelters at Lime Saddle and DeSabra
22
23
24

25

¹ The criteria for hazard trees for this purpose is set out in Section HH. below.

1 campgrounds; and (8) Camp Fire survivors are reporting barriers to returning to their
2 properties and rebuilding, including but not limited to hazard standing trees, large
3 depressions in the ground as a result of debris removal without adequate fill dirt in the area,
4 delays in accessing temporary power, concerns regarding contaminated drinking water in
5 the area, and being unable to rebuild on their property because it has not yet received final
6 sign-off in the debris removal program.

7 X. The majority of the Camp Fire area is located in a Very High Fire Hazard Severity Zone
8 as shown on the California Department of Forestry and Fire Protection's Fire and Resource
9 Assessment Program map dated August 2018.

10 Y. The County generally has a climate conducive to wildfires and is prone to periodic dry
11 summers and wind events. Hazard trees pose a significant danger to the health, safety and
12 welfare of the public by fueling and propelling wildfires, thereby increasing the potential
13 for a severe fire and endangering lives, property and the environment. Increasingly dry
14 summers and severe wind events further exacerbate the fire danger and have the potential
15 to result in catastrophic fire losses to life, property and the environment.

16 Z. Additionally, the Camp Fire created a fuel type conversion whereby the Ponderosa Pine
17 and mixed conifer forests have now been converted to predominantly open land with grass
18 and brush regrowth. The understory grass and brush can precipitate the start and spread of
19 fire with hundreds of thousands of dead trees still standing, many of which are within the
20 urban interface, to further add to the fire threat and intensity. Dead trees that fall on the
21 forest floor over time further complicate the fire environment by adding a large amount of
22 down and dead fuel that will add to surface fire intensity and make control efforts difficult,
23 thereby endangering the safety of firefighters during a wildfire.
24
25

1 AA. Recently the County has had an increase in the number of trees falling in the Camp Fire
2 area. Dead and dying trees pose a life hazard to firefighters, first responders and the general
3 public if exposed to fire or high wind storm events. Wind events in the Camp Fire area
4 result in healthy trees falling. Standing trees that are dead or dying and are adjacent to roads
5 have an increased risk of falling onto the roads during a wildfire disaster or high wind storm
6 event as compared to healthy trees. This endangers (1) the public safety of motorists on the
7 roads as falling trees may cause accidents or injure motorists or pedestrians, (2) the public
8 safety of any residents attempting to use primary and/or secondary evacuation routes in the
9 Camp Fire area if the tree(s) fall during a disaster and (3) the safety of first responders
10 attempting to enter and exit the Camp Fire area to assist residents in need..

11
12 BB. Of paramount importance to the Board and the residents of the County is the protection of
13 lives and property from the threat of fire, including proper maintenance of evacuation
14 routes and the safety of fire and law enforcement personnel during wildfires.

15 CC. Dead and dying trees suffer an increased risk of pest infestation, such as bark beetles. When
16 dead or dying trees are infested with pests, this also exposes the healthy trees in close
17 proximity. The healthy trees are then endangered by the pests, which potentially creates
18 more fuel for future fires, which increases the future fire risks in the Camp Fire area.

19 DD. The County Fire Chief has stated that the remaining fire damaged trees in the Concow area
20 following the 2008 fires propelled and exacerbated the progression and severity of the
21 Camp Fire. Further, under normal circumstances, dead and down trees hamper fire
22 suppression efforts. The huge number of fire damaged trees from the Camp Fire justifies
23 County action to reduce the risk posed by fire damaged standing trees.
24
25

1 EE. The enormity of the standing burnt trees throughout the Camp Fire area must be addressed
2 before rebuilding will be possible on a scale large enough to facilitate economic recovery
3 of the region. As a result of multiple barriers, including tree removal costs that exceed the
4 value of their land, many homeowners are abandoning their property. If owners do not
5 return to the Camp Fire area, businesses will not be able to open and remain in business.
6 The County must eliminate hazard trees from the Camp Fire area to encourage rebuilding
7 projects in the region.

8 FF. The County estimates 85,000 trees must be removed from approximately 4,700 private
9 parcels adjacent to eligible roads and public improved properties.

10 GG. The health of the communities and local economies largely depends upon repopulation;
11 repopulation largely depends upon the mindset of the public and their sense of security
12 regarding moving back to their land. For example, if evacuation routes continue to suffer
13 from falling trees, residents will not have confidence in their ability to evacuate safely
14 during a future fire, and will choose not to rebuild in the Camp Fire area. Without that
15 sense of security, people are moving elsewhere - which negatively impacts the economy
16 recovery of the region – both the commercial economy and the property tax base for the
17 County.
18

19 HH. The County has contracted with a certified arborist and tree health expert company to
20 assess and inventory trees rooted in the public right-of-way for tree mortality risk rating.
21 The arborists have generated a report and forms memorializing the tree mortality data at
22 the time of field reconnaissance and inventory efforts on February 2, 2019 through July 31,
23 2019. One of the purposes of the field reconnaissance effort was to identify, inventory, and
24
25

1 assess the risk of trees rooted in the public right-of-way within the unincorporated areas of
2 the Camp Fire disaster area that:

- 3 • Were damaged by the Camp Fire;
- 4 • Have a diameter of six inches or greater measured 4.5 feet above ground level;
- 5 • Pose an immediate threat to life, public health and safety, as a result of threatening
6 public right-of-ways; and
- 7 • Meet one or more of the following criteria:
 - 8 1. Have a split trunk;
 - 9 2. Have a broken canopy; or
 - 10 3. Is leaning at an angle greater than 30 degrees; and
- 11 • Is determined, in the professional opinion of the arborist, that the tree is a hazard
12 consistent with criteria set forth in ANSI A300 (Part 9), known as the Tree Risk
13 Assessment Standard.

14
15 II. For those trees which met the defined criteria, the arborists employed the ISA's Tree Risk
16 Assessment methods to assess a tree's risk ratings, which was based on the health of the
17 tree and the tree's relation to public right-of-ways.

18 JJ. Field reconnaissance and inventory efforts have found approximately 6,338 trees which
19 met the defined criteria.

20 KK. County arborists and foresters working on the Camp Fire recovery have stated that as time
21 passes, hazard trees become more dangerous, not less. During dry periods, the roots and
22 tops of trees can crack, bake in the sun and wind and begin to rot and decay. This results
23 in heightened risks, including but not limited to: (1) the tree falling from the bottom as its
24 root system is decayed and can no longer support the weight of the tree, (2) the top of the
25

1 tree cracking and splitting, which falls unexpectedly (3) the predictability of the behavior
2 of a dead and/or dying tree while being removed is reduced, making removal more
3 dangerous to removal workers and requiring additional equipment, which increases
4 removal costs.

5 LL. The County's arborists have recommended removal of all hazard trees which meet the
6 defined criteria and are rooted along the County's right-of-way.

7 MM. It is the opinion of the County Fire Chief and County's arborists that the unprecedented
8 level of hazard trees presents the following risks to life, public health and safety: (1) the
9 risks of injury and/or death to County residents who use County-maintained roads due to
10 falling trees; and (2) the increased threat of catastrophic wildfire to the Camp Fire area and
11 surrounding area.

12 NN. The County's Tree Right-of-Entry Permit Center has made numerous efforts to contact
13 owners of parcels that are not in compliance with this Article, including by several letters,
14 email communications and phone calls. County staff has contacted owners of noncompliant
15 parcels no less than six times in an effort to bring the parcels into compliance without
16 abatement proceedings.

17 OO. A purpose of this Article is to establish a Hazard Tree abatement program that protects the
18 lives and property of the public living in and traveling through the County, and the
19 environment.

20 PP. It is imperative that the County implement immediate and aggressive measures to identify
21 and fell the trees that are dead and dying as a result of the Camp Fire to immediately
22 eliminate or reduce the risks to life, public health and safety, infrastructure, forest health
23 and the community at large.
24
25

1 Section 2. Section 53-88 of Article V of Chapter 53 of the Butte County Code is amended as
2 follows:

3 **“53-88. Deadlines and enforcement.**

4 A. Properties that contain hazard trees and that do not have (1) an approved Government
5 Hazard Tree Removal Program ROE by the deadline set by the Government Hazard Tree
6 Removal Program or (2) either (a) an approved inspection access form for the Private Tree
7 Program or (b) an approved Arborist's/Forester's Certification by the deadline set by the Board,
8 are declared a public nuisance and health hazard and such properties may be abated pursuant to
9 this article.

10 B. The Board may set a deadline for the completion of Hazard Tree removal by resolution.

11 Properties that have Hazard Trees from the Camp Fire after that deadline are declared a public
12 nuisance and health hazard and such properties may be abated pursuant to this article.

13 The Board's intent is to facilitate orderly remediation of a large scale disaster. Nothing in these
14 deadlines shall limit the authority of the County to abate hazards more quickly where required
15 by exigent circumstances.”

16
17 Section 3. Section 53-89 of Article V of Chapter 53 of the Butte County Code is amended as
18 follows:

19 **“53-89. Public nuisances and enforcement.**

20 A. Whenever the Enforcement Officer determines that a public nuisance (as specified in this
21 article) exists, he or she shall use any legal remedies available under California law to address
22 and abate the public nuisance, including but not limited to Chapters 1, 32A, 41 and/or 53 of the
23 Butte County Code.
24
25

1 B. The County may, in its discretion, abate a violation of this article by the prosecution of a civil
2 action, including an action for injunctive relief. The remedy of injunctive relief may take the
3 form of a court order, enforceable through civil contempt proceedings, prohibiting the
4 maintenance of a violation of this article, or requiring compliance with other terms.

5 C. The County may also abate a violation of this article through the abatement process
6 established by Government Code Section 25845.

7 D. If a public nuisance is found to be present on the property in violation of this article, the
8 Enforcement Officer shall pursue payment for Abatement and Administrative Costs from the
9 owner and the owner of the property shall be responsible for paying all of the County's
10 Abatement Costs and Administrative Costs.”

11 Section 4. Section 53-93 of Article V of Chapter 53 of the Butte County Code is added as
12 follows:
13

14 **“53-93. Burden of Proof of Public Nuisance.**

15 a. When an owner maintains a Hazard Tree on his or her property that is deemed to be a public
16 nuisance pursuant to this Article, the burden of proof shall rest with the Enforcement Officer
17 making the allegation or determination and shall be based on a preponderance of the evidence
18 as follows:

19 Evidence supporting an allegation of the existence of a public nuisance as described in this
20 Article shall demonstrate that (A) the property has one or more Hazard Trees on the property
21 and (B) the property owner (i) has not entered into the Government Hazard Tree Removal
22 Program or Private Tree Program or (ii) has not complied with the requirements of the
23 Government Hazard Tree Removal Program or Private Tree Program.
24
25

1 b. Abatement of Public Nuisance: Abatement of a condition or circumstance that is alleged to
2 be a public nuisance shall be encouraged to be on a voluntary basis on the part of the violator
3 or, when necessary, performed by official action.”

4 Section 5. Section 53-94 of Article V of Chapter 53 of the Butte County Code is added as
5 follows:

6 **“53-94. Duty.**

7 No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance
8 as defined in this Chapter to exist within the unincorporated limits of the County of Butte. It
9 shall be the duty of every owner, occupant, and person that controls any land or interest therein
10 within the unincorporated area of the County of Butte to remove, abate, and prevent the
11 reoccurrence of the public nuisance upon such land.”

12 Section 6. Section 53-95 of Article V of Chapter 53 of the Butte County Code is added as
13 follows:

14 **“53-95. –Abatement procedure**

15 (a) Whenever the Enforcement Officer determines that a public nuisance pursuant to this Chapter
16 exists, he or she shall request in writing that the public nuisance be abated within fifteen (15)
17 days. If the condition(s) continue beyond that fifteen (15) day period, the Enforcement Officer
18 may set the matter for hearing. If the matter is set for hearing, the Enforcement Officer shall post
19 the property upon which the public nuisance exists and shall mail, with a proof of service, notices
20 to those persons known to be in possession of the property, if any, and to persons shown on the
21 latest County tax roll to be the owners of the property at least ten (10) days prior to the hearing.

22 The Notice of Hazard Tree Nuisance Abatement Hearing shall inform the owner(s) of the basis
23 for the violation and explain that to prevent the accrual of additional costs, the owner(s) must
24
25

1 contact the Enforcement Officer and arrange a time for the Enforcement Officer to inspect the
2 property, and confirm that the violation(s) have been corrected. Both the mailed and posted
3 notice shall be in substantially the following form:

4
NOTICE OF HAZARD TREE NUISANCE ABATEMENT HEARING

5 The owner(s) and occupant(s) of real property described on the latest equalized Butte County
6 tax roll as A.P. No. _____ and having a street address of _____ is (are) hereby notified to
7 appear before a Hearing Officer of the County of Butte at _____ on _____, 20____, at the
8 hour of _____ o'clock _____ m., to show cause, if any there be, why the use of said real property
9 should not be found to be a public nuisance and abated pursuant to the Butte County Code. The
10 Enforcement Officer for the Hazard Tree Removal Program has determined that conditions exist
11 on the above property which constitute a public nuisance and violate Butte County Code
12 section(s) _____, as follows: _____. After hearing, if a violation is found to have existed at
13 the time the Notice of Hazard Tree Nuisance Abatement Hearing was posted on the property,
14 the cost of abating such violation, including, but not limited to, the cost of the Hearing Officer,
15 the cost of prior time and expenses associated with bringing the matter to hearing, the cost of
16 judicially abating the violation, the cost of labor and material necessary to physically abate the
17 violation, and the cost of securing expert and other witnesses may become a lien against the
18 subject property. If an abatement lien is recorded, it will have the same force and effect as an
19 abstract of judgment which is recorded as a money judgment obtained in a court of law. If you
20 fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the
21 time of hearing, the County will assert, in later judicial proceedings to enforce an order of
22 abatement, that you have waived all rights to assert such defenses or such points.
23
24
25

1 In preparing for such hearing, you should be aware that if an initial showing is made by
2 the County, sufficient to persuade the Hearing Officer that a public nuisance existed on your
3 property at the time the Notice of Hazard Tree Nuisance Abatement Hearing was posted on the
4 property, you will then have the burden of proving that no public nuisance exists on your
5 property. Therefore, you should be prepared to introduce oral and documentary evidence proving
6 why, in your opinion, your use of the property is not a public nuisance as defined in the Butte
7 County Code. A copy of Article V of Butte County Code Chapter 53 relating to Hazard Tree
8 abatement hearings is enclosed to assist you in the preparation of your presentation.

9
10 If an initial showing sufficient to persuade the Hearing Officer that a public nuisance
11 existed on your property is made by the Enforcement Officer, your failure to sustain the burden
12 of showing that no public nuisance existed on the property may result in a decision by the
13 Hearing Officer that a public nuisance did exist, an order to abate the nuisance (which may also
14 result in a later judicial order to the same effect) and that the County is entitled to recover its
15 Administrative Costs.

16 Further, if the Hearing Officer finds that a public nuisance continues to exist on your
17 property and you fail to abate the nuisance promptly, the County may abate the nuisance. If the
18 County abates the nuisance, you may be responsible for the actual costs of the abatement,
19 including the costs to the County of the administrative hearing, and such costs may be placed as
20 a lien against your parcel by the County.

21 Finally, if the Hearing Officer finds that a public nuisance existed or exists on your
22 property, a violation of the Butte County Code, the County will contend that you are bound by
23 such finding at any subsequent judicial action to enforce the Hearing Officer's order.
24
25

1 IMPORTANT: READ THIS NOTICE CAREFULLY. FAILURE TO APPEAR AND
2 RESPOND AT THE TIME SET FORTH IN THIS NOTICE WILL LIKELY RESULT IN
3 ADMINISTRATIVE AND/OR JUDICIAL ABATEMENT AND TERMINATION OF USES
4 OF OR CONDITIONS ON YOUR PROPERTY WHICH THE ENFORCEMENT OFFICER
5 CONTENDS ARE IN VIOLATION OF THE BUTTE COUNTY CODE. TO PREVENT THE
6 ACCRUAL OF ADDITIONAL COSTS, YOU MUST CONTACT THE ENFORCEMENT
7 OFFICER AND ARRANGE A TIME FOR THE ENFORCEMENT OFFICER TO INSPECT
8 YOUR PROPERTY AND CONFIRM THAT THE VIOLATION(S) HAVE BEEN
9 CORRECTED.

10 Dated: _____

11 COUNTY OF BUTTE
12 CAMP FIRE RECOVERY – HAZARD TREE REMOVAL
13 ENFORCEMENT OFFICER

14 By: _____

15 Enclosure: Article V of Butte County Code Chapter 53

16 b) All hearings conducted under this Chapter shall be held before a Hearing Officer designated
17 pursuant to the protocol set forth in that document entitled the "Butte County Administrative
18 Hearing Officer Program." The Program is based upon an alphabetical rotation through attorneys
19 currently under contract through the Program.

20 (c) At the time and place set for the hearing, the Hearing Officer shall review the Enforcement
21 Officer's decision ordering cessation of the alleged public nuisance to determine whether such
22 decision conforms to law and is supported by substantial evidence. The Hearing Officer shall
23 hear testimony and receive written and/or documentary evidence relating to the alleged violation.

24 Additional procedural rules may be adopted by resolution of the Board of Supervisors. The
25

1 Hearing Officer shall tape record the hearing or engage the services of a certified court reporter
2 to record the hearing and shall preserve the record of the hearing and all photographs and
3 demonstrative and documentary evidence introduced at the time of the hearing for a period of
4 three (3) years.

5 (d) Within five (5) days after the hearing is closed, the Hearing Officer shall render his or her
6 written decision relating to the existence or nonexistence of the alleged public nuisance. If a
7 violation is found to have existed at the time the Notice of Hazard Tree Nuisance Abatement
8 Hearing was posted, the decision shall include a statement of the Abatement and Administrative
9 Costs incurred by the County or estimated costs to abate the violation and shall also order that
10 the owner of the property, or persons known to be in possession of the property, abate the
11 violation within a reasonable time, not to exceed ten (10) days. The decision shall contain
12 findings of fact and conclusions of law. A copy of the decision shall be mailed by certified mail,
13 return receipt requested, to the person or persons shown on the last County tax roll to be the
14 owners of the property which is the subject of the hearing and the occupant of such parcel, if
15 any. All other persons noticed pursuant to this section shall be mailed a copy of the decision by
16 first class mail, postage prepaid.

18 (e) The decision of the Hearing Officer shall be final on the date the certified mail set forth in
19 subsection (d) above, is deposited in the mail. The Hearing Officer shall notify the Clerk of the
20 Board of Supervisors of his or her decision and the date upon which the decision became final. If
21 it is the decision of the Hearing Officer that a public nuisance existed at the time the Notice of
22 Hazard Tree Nuisance Abatement Hearing was posted, the owner of the property shall be
23 responsible for paying all of the County's Abatement Costs and Administrative Costs, including
24 but not limited to, those cost items set forth in the notice required by subsection (a) above.
25

1 (f) Notwithstanding any other provisions of this Code, if a final decision of the Hearing Officer
2 or the Board of Supervisors finds that a violation existed at the time the Notice of Hazard Tree
3 Nuisance Abatement Hearing was posted and the public nuisance is not voluntarily abated within
4 the time prescribed, the Enforcement Officer may abate the public nuisance pursuant to a warrant
5 issued by a court of competent jurisdiction. The owner of the property shall be responsible for
6 paying all of the County's Abatement Costs and Administrative Costs, including but not limited
7 to, those cost items set forth in the notice required by subsection (a) above. The Enforcement
8 Officer shall keep an accounting of the Abatement and Administrative Costs to perform each
9 abatement. Upon completion of the abatement, the Enforcement Officer shall post the property
10 and send a bill to the owner, and any persons known to be in possession of the property,
11 requesting payment of the County's Abatement and Administrative Costs. The bill shall also
12 state that failure to pay the Abatement and Administrative Costs within fifteen (15) days from
13 service of the bill may result in the recording of a lien against the property.
14

15 If the County's Abatement and Administrative Costs are not paid within fifteen (15) days
16 from service of the bill, the Enforcement Officer shall render an itemized report to the Clerk of
17 the Board of Supervisors for submittal to the Board of Supervisors for hearing and consideration
18 regarding the proposed lien. The report shall include the names and addresses of the owner of
19 record and any persons known to be in possession of the property. The report shall also include
20 the date the abatement was ordered, the work performed, the date the abatement was completed,
21 a description of the property subject to the lien, and an itemized account of the County's
22 Abatement and Administrative Costs. At least fifteen (15) days prior to said hearing, the Clerk
23 of the Board of Supervisors shall give notice, with an affidavit of service, of said hearing to all
24 persons named in the Enforcement Officer's report and the Enforcement Officer shall post the
25

1 property with a copy of the notice. The notice shall describe the property by assessor's parcel
2 number and street number or other description sufficient to enable identification of the property
3 and contain a statement of the amount of the proposed lien. The notice shall also contain a
4 statement that the Board will hear and consider objections and protests to the proposed lien at
5 the designated time and place.

6 (k) At the time and place fixed in the notice, the Board of Supervisors shall hear and consider
7 the proposed lien with objections and protests thereto. At the conclusion of the hearing, the Board
8 of Supervisors may make such modifications and revisions to the proposed lien as it deems just
9 and may order that the proposed lien be recorded by the Enforcement Officer. The lien shall have
10 the same force, priority and effect as a judgment lien.

11 (l) The notice of abatement lien shall, at a minimum, identify the record owner or possessor of
12 the property, set forth the date upon which abatement of the nuisance was ordered or deemed
13 ordered by the Board of Supervisors, describe the real property subject to the lien, set forth the
14 amount of the Abatement Costs and Administrative Costs incurred to date and, if applicable, the
15 date upon which the abatement was completed. If the abatement has not yet been completed, the
16 notice shall so state and shall also indicate that the lien is a partial lien and that additional
17 Abatement Costs will be incurred in the future.

18
19 It is the intent of the Board of Supervisors that Abatement Costs and Administrative Costs
20 incurred after the filing of the notice of abatement lien relate back to the date upon which the
21 lien was recorded for purposes of priority; however, in order to preserve its rights, after all
22 Abatement Costs and Administrative Costs have been incurred and the abatement is complete,
23 the Enforcement Officer shall cause a supplemental notice of abatement lien to be recorded. The
24
25

1 supplemental notice shall contain all of the information required for the original notice and shall
2 also refer to the recordation date and the recorder's document number of the original notice.

3 (m) The decision of the Hearing Officer or Board of Supervisors may be recorded by the
4 Enforcement Officer. In the event of such recordation and in the further event that the violation
5 is corrected, a notice of such correction shall be recorded. The Enforcement Officer is authorized
6 to prepare and record a notice of correction. Correction of the violation shall not excuse the
7 property owner's liability for costs incurred during the administrative abatement process
8 (Abatement Costs and Administrative Costs as defined in section 53-90 of this Chapter). If the
9 property owner has not fully compensated the County for costs incurred during the
10 administrative abatement process, a notice of correction shall not be recorded unless the fee
11 specified in section 41-9 of this code has been paid. Payment of the fee specified in section 41-
12 9 of this section does not excuse the property owner's liability for costs incurred during the
13 administrative abatement process (Abatement Costs and Administrative Costs as defined
14 in section 53-90 of this chapter).
15

16 (n) The County may, in its discretion, commence a judicial action to enjoin a violation of this
17 chapter without the necessity of first going through the administrative procedures set forth
18 herein.”

19 Section 7. CEQA Exemption. Adoption of this Ordinance is exempt from the provisions of the
20 California Environmental Quality Act (CEQA) pursuant to California Public Resources Code
21 section 21080(b)(3) regarding projects to maintain, repair, restore, or replace property or facilities
22 damaged or destroyed as a result of a declared disaster and Section 21080(b)(4) regarding actions
23 to mitigate or prevent an emergency, and CEQA Guidelines Section 15269(a) regarding
24 maintaining, repairing, restoring, demolishing, or replacing property or facilities damaged or
25

1 destroyed as a result of a disaster stricken area in which a state of emergency has been proclaimed
2 by the Governor pursuant to the California Emergency Services Act, commencing with Section
3 8550 of the California Government Code.

4 Section 8. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is
5 for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of
6 the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would
7 have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof
8 irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be
9 declared unconstitutional or invalid.

10 Section 9. Effective Date and Publication. This Ordinance shall be and the same is hereby declared
11 to be in full force and effect immediately upon its passage by a four-fifths (4/5) or greater vote.
12 The Clerk of the Board of Supervisors is authorized and directed to publish this Ordinance before
13 the expiration of fifteen (15) days after its passage. This Ordinance shall be published once, with
14 the names of the members of the Board of Supervisors voting for and against it, in a newspaper of
15 general circulation published in the County of Butte, State of California. Pursuant to Government
16 Code section 25124, a complete copy of this Ordinance is on file with the Clerk of the Board of
17 Supervisors and is available for public inspection and copying during regular business hours in the
18 office of the Clerk of the Board of Supervisors, 25 County Center Drive, Oroville, California.

19
20 ///

1 **PASSED AND ADOPTED** by the Board of Supervisors of the County of Butte, State of
2 California, on the 12th day of January, 2021 by the following vote:

3
4 **AYES:** Supervisors Lucero, Ritter, Kimmelshue, Teeter, and Chair Connelly

5 **NOES:** None

6 **ABSENT:** None

7 **ABSTAIN:** None

8
9 
10 **Bill Connelly**, Chair
Butte County Board of Supervisors

11
12 **ATTEST:**
13 **Andy Pickett**, Chief Administrative Officer
14 and Clerk of the Board

15 By: 
16 Deputy