Ordinance No. _______

AN ORDINANCE AMENDING CHAPTER 38A, ENTITLED
“FIRE PREVENTION AND PROTECTION,” OF THE BUTTE COUNTY CODE

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

Section 1. Section 38A-3 is hereby amended to read as follows:

38A-3 - Effect.

This chapter shall supplement and be in addition to the other fire prevention and protection statutes, regulations, and ordinances enacted by the state, the county or any other governmental agency having jurisdiction, including but not limited to the California Fire Code and Public Resources Code sections 4290 and 4291.

Section 2. Section 38A-5 is hereby amended to read as follows:

38A-5 - Definitions.

Except where the context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) "Abatement" means mitigation or elimination of a fire hazard and such ongoing maintenance as is necessary to prevent the recurrence of a fire hazard.

(b) "Abatement Costs" means any costs or expenses reasonably related to the abatement of conditions which violate the Butte County Code, and shall include, but not be limited to, enforcement, investigation, collection and Administrative Costs, and the costs associated with the removal or correction of the violation.
(c) "Administrative Costs" shall include the cost of County staff time reasonably related to enforcement, for items including, but not limited to, site inspections, investigations, summaries, reports, notices, telephone contacts and correspondence, as well as time expended by Development Services, the Enforcement Officer and Auditor-Controller staff calculating the above costs and preparing itemized invoices showing such costs. Costs for travel time for inspections shall not be included.

(d) "Building" shall include any structure or vehicle meeting at least one of the following:

1. Is occupied and used as a business or residence three months of the year or more in any combination of days;
2. Has one or more utilities connected to it, including but not limited to, natural gas, propane or electricity. This includes any means of connection, permitted or otherwise;
3. Has three or more walls, and a roof, and is greater than 119 square feet in size;
4. Is used for mechanical processing; or
5. Has any type of fire hazard associated with it.

This definition shall not include recreational vehicles with tires in good repair, not standing on leveling jacks or posts, and not otherwise meeting the above criteria.

(e) "Discing" means tilling the soil so as to turn under
or remove vegetation by mechanical or hand operated methods
including, but not limited to, tractor drawn soil tilling
equipment, self propelled rototilling equipment or hand
hoeing.

(f) "Firebreak" means a continuous area of land which is
created and maintained in accordance with the requirements
of section 38A-8 of this chapter.

(g) "Fire hazard" means that condition which exists when
weeds, grass, rank growths, or brush grow or accumulate
upon real property and do, or will when dry, create a
medium for the rapid spread of fire and therefore
constitute a danger to property or persons.

(h) "Fire Chief" means the Fire Chief of the County of
Butte or his or her designees.

(i) "Grass" means any herbaceous plant, cultivated or not,
which will attain, when mature, such a height as to be a
medium for the rapid spread of fire.

(j) "Legal parcel" means any parcel of real property that
may be separately sold in compliance with the Subdivision
Map Act (Division 2 (commencing with Section 66410) of
Title 7 of the Government Code).

(k) "Mowing" means cutting or shredding weeds, grass and
other vegetation by hand or mechanical methods.

(l) "Obstruction" means any material or object, including
natural growing vegetation, which is placed or allowed to
accumulate so as to interfere with fire suppression or the
abatement of fire hazards.

(m) "Occupyant" means an adult person or an entity having a possessory interest in real property. "Occupyant" includes a tenant, resident or other person or entity having possession, use or control of the property.

(n) "Owner" means an adult person or an entity having an ownership interest in real property. "Owner" does not include persons having only a security interest in the property.

(o) "Parcel" means a "legal parcel" as defined herein.

(p) "Rank growth" means vegetation of any type, cultivated or not, which has attained or will, if allowed to mature, attain such a height and density as to be a medium for the rapid spread of fire.

(q) "Rural lands" means those lands in the unincorporated area of the County of Butte which are not "urban lands" as defined below.

(r) "Urban lands" means:

(1) Those lands in the unincorporated area of the County of Butte which are inside the spheres of influence of the cities of Biggs, Chico, Gridley, Oroville and Paradise, as such spheres are established and amended from time to time by the Butte County local agency formation commission;

(2) Those lands outside said spheres of influence but within an approved subdivision which has lots six (6)
acres in size or smaller, where fifty (50) percent or more of the lots within such subdivision have been
developed and improved with residences;
(3) Those lands outside said spheres of influence but within the community of Palermo and within these
geographical boundaries: North boundary of Ophir Road between Lincoln Boulevard and Upper Palermo Road, to the East boundary of Upper Palermo Road and Palermo Honcut Highway between Ophir Road and South Villa Avenue, to the South boundary of South Villa Avenue between Palermo Honcut Highway and Occidental Avenue, to the West boundary of Occidental Avenue and Wyman Avenue to the Oroville city limits; and
(4) Those lands outside said spheres of influence but within the North Chico Specific Plan, within these geographical boundaries: North boundary of Rock Creek, North of Keefer Road, to the East boundary of Hicks Lane to the Chico city limit at the Chico Municipal Airport, to the South boundary of Sycamore Creek, to the West boundary of Highway 99.
(s) “Utility generator” means any device, or combination of devices, used to generate energy, including but not limited to, gas, diesel, or propane generators, wind generators, solar powered generator arrays, and hydroelectric generators. Any battery or capacitor or similar storage bank is also included in this definition.
(t) "Weed" means any plant, whether herbaceous or woody and of whatever height, except a tree, which grows wild. This definition includes brush-type plants such as manzanita and poison oak.

Section 3. Section 38A-8 is hereby amended to read as follows:

38A-8 - Firebreak requirements.

(a) Purpose. Firebreaks shall be created and maintained on real property, where a fire hazard exists, to slow or stop the spread of fire under normal summer fire season conditions.

(b) Criteria to be considered. The following criteria shall be considered by the Fire Chief in determining the firebreak requirements applicable to any property. Firebreak requirements less than the maximums specified below are favored where lesser requirements are determined by the Fire Chief to be consistent with the intent of this chapter:

(1) Location of buildings on or in close proximity to the property;

(2) Type, density and condition of vegetation on the property or on adjacent property;

(3) Existence of flammable or otherwise hazardous materials on the property or on adjacent property;

(4) Existence of natural or other existing firebreaks on the property or on adjacent property; and

(5) The slope and other characteristics of the
terrain which may make the creation and maintenance of firebreaks infeasible.

(c) Rural land maximum requirement. Upon consideration of the purpose and criteria specified in subsections (a) and (b) above, the Fire Chief shall require firebreaks of 100 feet wide around all buildings and structures. The owner or occupant of a property shall only be required to create and maintain firebreaks on his or her own property. All firebreaks required shall be created and maintained by mowing to a maximum height of three inches, discing or removing the annual weeds and grasses and other rank growth which is the primary flammable vegetation, and by removing obstructions.

(d) Agricultural lands.

(1) On irrigated pasture and on irrigated crops and orchards, firebreaks shall not be required.

(2) On non-irrigated pasture lands the Fire Chief shall require firebreaks of 100 feet around all buildings and structures.

(3) On non-irrigated pasture lands the Fire Chief may require firebreaks of 30 feet wide around all property lines. Specific lot line and number of hoofed animals will be considered prior to requiring said 30 foot wide property line firebreak. The standard equation for all hoofed animals will be one acre of "feed" per hoofed animal. If the number of hoofed animals exceeds
the number of acres in said parcel, the owner and
occupant are required to provide a 10 foot wide
property line firebreak, provided that the hoofed
animals satisfy the intent of section 38A-2.
(e) Modification of requirements for environmental
factors. The Fire Chief may approve reduced firebreak
requirements around residences and buildings to mitigate
erosion potential on steep slopes, to prevent destruction
of unique wildlife habitat, endangered species and/or
vernal pools, or for other environmental factors. Each
special circumstance will be evaluated based on the facts
of the situation. The Fire Chief is encouraged to
coordinate with soil conservation, fish and game, corps of
engineers, water quality or other agency representatives
when weed abatement activities are indicated on properties
where significant environmental considerations may arise.
(f) Shrubs. Specimen shrubs may be retained within
firebreaks, provided that:
(1) They are spaced at a distance equal to no less
than three (3) times their widest diameter, and are
not less than fifteen (15) feet from other specimens
or buildings.
(2) All specimens are kept free of dead wood and
litter.
(3) All specimens shall be trimmed a minimum of two
(2) feet up from the ground or one-third (1/3) of
their height, whichever is greater.

(g) Trees. Specimen trees may be retained within firebreaks provided that:

(1) All specimens are kept free of dead wood and litter.

(2) All conifer specimens shall be trimmed of limbs to a minimum of one-third (1/3) of their height from the ground or twelve (12) feet up from the ground, whichever is lesser.

(3) All non-conifer specimens shall have all limbs under one (1) inch in diameter removed to a point one-third (1/3) of the height of the tree above the ground or twelve (12) feet up from the ground, whichever is lesser.

(4) Crowns of adjacent specimens are not interlaced to constitute a medium for the rapid spread of fire.

(h) Fire resistive vegetation. Firebreaks may include fire resistive vegetation, such as green lawns, ice plant, green ivy, and other plants recognized by the Fire Chief as being fire resistive. Any fire resistive plants must be maintained in a state to resist the spread of fire.

(i) Urban lands. Upon consideration of the purpose and criteria specified in subsections (a) and (b) of this section, the Fire Chief may require the following firebreaks:

(1) On lots or parcels on urban lands which are one
and one fourth (1.25) acre in size or smaller and unimproved with residences or other valuable buildings, firebreaks may be required on the entire area of each lot or parcel. On lots or parcels on urban lands which are more than one and one fourth (1.25) acre in size and unimproved with residences or other valuable buildings, firebreaks may be required adjacent to and along all property lines for a maximum width of thirty (30) feet. Required firebreaks may be created by mowing to a maximum height of three (3) inches, discing or removing the annual weeds, grasses, rank growth and trimmings, and by removing obstructions.

(2) On lots or parcels on urban lands improved with residences or other valuable buildings, the firebreak requirements around residences or buildings shall be the same as specified in subsection (c) of this section for rural lands. In addition, where there is an existing fire hazard on said lots or parcels, more than one hundred (100) feet from residences or other valuable buildings and within thirty (30) feet of the property lines, a firebreak of thirty (30) feet maximum width adjacent to and along the property lines may be required. Required firebreaks may be created in the manner described in subsection (1) above.

(j) Utility generators, power poles and petroleum-based
product storage tanks. All utility generators, privately
owned power poles and petroleum-based products (gasoline,
diesel, liquid propane, etc.) shall have a maintained fire
break of no less than 10 feet in all directions around,
above, and below. The furthest measurement shall include
any connections or ground contact points. Privately owned
power poles and overhead distribution lines not owned or
maintained by a utility company shall have a maintained 10
foot clearance around all conductors. Any dead, diseased,
dying, damaged, or otherwise unhealthy tree or limb of a
tree that may fall onto or contact conductors shall be
mitigated as to eliminate any threat of failure to the
conductor wires.

Section 4. Section 38A-10 is hereby amended to read as follows:
38A-10 - Contents of order.

The Order set forth in section 38A-9 of this chapter shall be
in writing and shall:

(a) Identify the owner(s) of the property upon which the
nuisance exists as named in the records of the county assessor
and identify the occupant(s), if other than the owner(s), and
if known or reasonably identifiable;
(b) Describe the location of such property by its commonly
used street address, giving the name or number of the street,
road or highway and the number, if any, of the property;
(c) Identify such property by reference to the assessor's
parcel number;
(d) Describe the fire hazard which exists and the firebreak required to abate it;

(e) State that the Order requires abatement of the fire hazard within fourteen (14) days after the date that said Order was served and that failure to do so may be charged as a misdemeanor violation of the provisions of this chapter pursuant to section 38A-21 of this chapter.

(f) State that if the violation of any provision of this chapter continues to exist on or after the date of any violator's conviction of violating said provision, the Fire Chief may submit a notice of violation to the county recorder for recordation pursuant to section 38A-23(b) of this chapter.

(g) State that the owner and/or occupant may, within fourteen (14) days of the date of the Order, appeal the determination of the Fire Chief that a fire hazard exists. The appeal shall be submitted pursuant to section 38A-13 of this chapter.

(h) State that, unless the owner and/or occupant so notified abates the fire hazard within fourteen (14) days of the date of service of the Order or timely appeals the determination of the Fire Chief, the Fire Chief may abate the fire hazard and may charge both the cost of the abatement and the cost of administration to the owner and/or occupant so notified. It shall also state that if the owner has been notified but does not pay the cost of such abatement, together with the cost of
administration, such costs may be made a special assessment and
lien against the property pursuant to section 38A-16 of this
chapter.

(i) State that, unless the owner and/or occupant so notified
abates the fire hazard or timely appeals the determination of
the Fire Chief within fourteen (14) days of the date of the
Order, the Fire Chief may impose an administrative penalty at
the rate of two hundred dollars ($200.00) for every acre of
land upon which a firebreak was not maintained in accordance
with the requirements of Section 38A-8 of this chapter. Said
administrative penalty may be levied in increments of one-tenth
(.10) of an acre.

(j) State that any person upon whom an Order to Abate Fire
Hazard has been served may request an administrative review
of the accuracy of the contents of the Order and/or the
propriety of any administrative penalty by:

(1) Filing a written notice of appeal with the Fire Chief
no later than fourteen (14) days after the date of service
of the Order to Abate Fire Hazard; and

(2) Including within the notice of appeal all facts
supporting the appeal and any statements and evidence,
including copies of all written documentation and a list of
any witnesses, that the appellant wishes to be considered in
connection with the appeal.

Section 5. Section 38A-12 is hereby amended to read as follows:

38A-12 - Posting of order.
If the address of the new, nonoccupying owner is not in the county assessor's records and is not otherwise discovered, the Order set forth in section 38A-9 of this chapter may be served on such owner by posting copies along the frontage of the subject property and at such other locations on the property reasonably likely to give notice to the owner. Posting may include, but is not limited to, the installation of a t-bar post, a wood beam, or by affixing a copy of the Order to existing materials using nails or staples. In no event shall fewer than two copies of the Order be posted on a property pursuant to this section.

Section 6. Section 38A-15 is hereby amended to read as follows:

38A-15 - Abatement by owner or occupant.

Any owner or occupant may, and is encouraged to, abate the fire hazard or cause it to be abated at any time prior to commencement of abatement by the Fire Chief or prior to the issuance of a citation for violation.

Section 7. Section 38A-16 is hereby amended to read as follows:

38A-16 - Enforcement, cost accounting.

(a) Whenever the Fire Chief becomes aware that an owner and/or occupant has failed to abate a fire hazard within fourteen (14) days of the date of service of the Order to Abate Fire Hazard set forth in section 38A-9 of this chapter, the Fire Chief may:

(1) Issue an "Administrative Penalty Liability Order" finding that a person or persons is/are responsible
for a violation of section 38A-7 of this chapter and

directing such responsible person(s) to pay an
administrative penalty in the applicable amount,
pursuant to the formula set forth in section 38A-8 of
this chapter;

(2) If, in the opinion of the Fire Chief, the
nuisance constitutes an imminent threat to public
health or safety, summarily abate the fire hazard(s); and/or

(3) Request that the District Attorney or County
Counsel immediately seek relief as may be necessary or
appropriate from a court of competent jurisdiction.

Said court, upon finding that there is, or that there
is a reasonable basis upon which to conclude that the
conditions complained of may present a danger to the
health, safety, or welfare of the public, the
environment or natural resources, arising out of or
resulting from said fire hazard, in whole or in part,
shall grant relief to abate the fire hazard,
consistent with the relevant requirements of this
Chapter and the public interest, to secure adequate
protection of the health, safety, or welfare of the
public, the environment or natural resources.

(b) An Administrative Penalty Liability Order shall:

(1) Identify the owner(s) of the property upon which
the nuisance exists as named in the records of the
county assessor and identify the occupant(s), if other than the owner(s), and if known or reasonably identifiable;

(2) Describe the location of such property by its commonly used street address, giving the name or number of the street, road or highway and the number, if any, of the property;

(3) Identify such property by reference to the assessor's parcel number;

(4) Describe the fire hazard which exists and the firebreak required to abate it;

(5) State that the fire hazard was not abated within the required fourteen (14) day period and the person or persons to whom the Administrative Penalty Liability Order is directed has been found liable for a violation of section 38A-7 of this chapter and shall remit payment of an administrative penalty;

(6) State that the Administrative Penalty Liability Order constitutes an order to remit payment of an administrative penalty, in a specified amount, to the Fire Chief within fourteen (14) days of the date of said Order;

(7) State that if the violation of any provision of this chapter continues to exist on or after the date of any violator's conviction of violating said provision, the Fire Chief may submit a notice of
violation to the county recorder for recordation pursuant to section 38A-23(b) of this chapter; (8) State that the owner and/or occupant may, within fourteen (14) days of the date of service of the Order, appeal the administrative penalty liability determination of the Fire Chief pursuant to section 38A-13 of this chapter; (9) State that, unless the owner and/or occupant so notified remits payment of the administrative penalty in the specified amount to the Fire Chief within fourteen (14) days of the date of service of the Order or timely appeals the administrative penalty liability determination of the Fire Chief, the Fire Chief may charge the amount of the administrative penalty, the cost of the abatement, if any, and the cost of administration to the owner and/or occupant so notified. It shall also state that if the owner has been notified but does not pay the amount of the administrative penalty, the cost of the abatement, if any, and the cost of administration, such costs may be made a special assessment and lien against the property; (10) State that any person upon whom an Administrative Penalty Liability Order has been served may request an administrative review of the accuracy of the contents of the Order and/or the propriety of any
administrative penalty by:

i. Filing a written notice of appeal with the Fire Chief no later than fourteen (14) days after the date of service of the Administrative Penalty Liability Order, and

ii. Including within the notice of appeal all facts supporting the appeal and any statements and evidence, including copies of all written documentation and a list of any witnesses, that the appellant wishes to be considered in connection with the appeal.

(c) Cost accounting shall be conducted in accordance with Article XVI of Chapter 3, beginning with Section 3-150 of this code.

(d) Nothing in this Chapter shall be construed as imposing on the Fire Chief or the County of Butte any duty to issue an order to abate a fire hazard, nor to issue an administrative penalty liability order, nor to issue a misdemeanor citation, and neither the Fire Chief nor the County of Butte shall be held liable for failure to issue an order to abate a fire hazard, nor for failure to abate any fire hazard, nor for failure to issue an administrative penalty liability order, nor for failure to issue a misdemeanor citation.

Section 8. Section 38A-17 is hereby amended to read as follows:

38A-17 - Administrative review of order to abate fire hazard,
administrative penalty liability order.

(a) The appeal shall be heard by a Hearing Officer designated pursuant to the protocol set forth in that document entitled the "Butte County Administrative Hearing Officer Program." The Program is based upon an alphabetical rotation through attorneys currently under contract through the Program. The Hearing Officer shall conduct a hearing concerning the appeal, which in no event shall be sooner than seven (7) days from the date of mailing, unless otherwise agreed to by the responsible party and the Fire Chief. The Hearing Officer shall sustain, rescind, or modify the Order to Abate Fire Hazard or the Administrative Penalty Liability Order by written decision. The Hearing Officer shall have the power to waive any portion of an administrative penalty in a manner consistent with the decision.

(b) Any administrative hearing conducted pursuant to this chapter need not be conducted according to technical rules relating to evidence, witnesses and hearsay. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue
consumption of time.

(c) The Hearing Officer shall issue a written decision, which shall include findings relating to the existence or nonexistence of the alleged fire hazard, as well as findings concerning the imposition and the appropriate amount of an administrative penalty, to support the decision.

(d) Written notice of the Hearing Officer's decision shall be given by mail within seven (7) calendar days after the date of the decision to the person(s) subject to the notice, the Fire Chief, and any person filing a written request for notice of the decision.

(e) The decision of the Hearing Officer is final and effective on the date of service of the written decision, is not subject to further administrative review, and constitutes the final administrative decision. If judicial review of the final administrative decision is not sought in accordance with the provisions of Section 38A-18 of this chapter, the decision of the Hearing Officer shall be deemed confirmed.

(f) If the applicable administrative penalty has not been paid, the amount of any unpaid administrative penalty may be declared a lien on any real property on which the violation existed or exists, as provided in Section 38A-20 of this chapter.

Section 9. Section 38A-21 is hereby amended to read as follows:

38A-21 - Criminal violation.

An owner or occupant, as defined in this chapter, is strictly liable for the condition of his or her real property.
Allowing or maintaining a fire hazard on real property shall constitute a violation punishable under section 38A-23(a) of this chapter if any of the following conditions exist:

(a) Such fire hazard is not timely abated after the Fire Chief has notified the owner or occupant of the existence of the fire hazard pursuant to article III of this chapter and there has been no timely request for a hearing on the determination of the existence of such fire hazard pursuant to article IV of this chapter; or

(b) If, after a hearing held pursuant to article IV of this chapter, the Hearing Officer determines that such a fire hazard exists and such fire hazard is not abated in accordance with the Hearing Officer's decision served pursuant to section 38A-17 of this chapter.

Section 10. Section 38A-22 is hereby added to read as follows:

38A-22 - Issuance authorized.

The County of Butte hereby authorizes the Fire Chief, his or her officers and employees, and any peace officer, to issue notices to appear in court pursuant to chapter 5C (commencing with section 853.5) of title 3 of part 2 of the California Penal Code for violations of this chapter.

No such officers or employees, however, shall be authorized to take any person into custody even though the person to whom the notice is delivered does not give his or her written promise to appear in court. The authority of any such officer or employee under this section is limited to the jurisdiction of
the County of Butte.

Section 11. Section 38A-22 is hereby amended to read as follows:

38A-23 - Penalties.

(a) Whenever any act is prohibited by this chapter, or is made or declared to be unlawful, or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful, the violation shall be punished by a fine not to exceed the amount of $1,000 or imprisonment for a term not to exceed six months, or by both such fine and imprisonment.

(b) Upon conviction of an owner or occupant for violation of this chapter, and if the violation continues to exist on or after the date of the conviction, the Fire Chief may submit a notice of violation to the county recorder for recordation. Said notice of violation shall include a description of the premises, a description of the violation, the action necessary to abate the violation, the date of the conviction for said violation, the court that entered the judgement of conviction and the case number. For the purposes of this subsection, a bail forfeiture or a plea of nolo contendere shall be deemed to be a "conviction."

Section 12. Section 38A-23 is hereby amended to read as follows:

38A-24 - Remedies cumulative.
The provisions of this chapter are supplementary and complementary to all of the provisions of the Butte County Code, state law and any law cognizable at common law or in equity; and nothing herein shall be read, interpreted or construed in any manner so as to bar or limit the Fire Chief from seeking any remedy to which the county may otherwise be entitled.

Section 13. Section 38A-24 is hereby amended to read as follows:

38A-25 - Validity.

If any provision of this chapter, or the application thereof to any owner, for any reason is held to be invalid, or unconstitutional, by a court of competent jurisdiction, the remainder of this chapter and the application of its provisions to other persons and circumstances shall not be affected thereby.

Section 14. Effective Date and Publication. This Ordinance shall take effect 30 days after the date of its passage. The Clerk of the Board of Supervisors is authorized and directed, before the expiration of 15 days after its passage, to publish this Ordinance once, with the names of the members of the Board of Supervisors voting for and against it, in the Chico Enterprise Record, a newspaper published in the County of Butte, State of California. PASSED AND ADOPTED by the Board of Supervisors of the County of Butte, State of California, on the ___ day of ____________, 2019, by the following vote:

AYES:
NOES:

ABSENT:

NOT VOTING:

____________________

____________________

STEVE LAMBERT, Chair of the
Butte County Board of Supervisors

ATTEST:
SHARI MCCracken, Chief Administrative
Officer and Clerk of the Board

By: __________________________________

Deputy