

ORDINANCE NO. 564
AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF DUNSMUIR AMENDING
CREATING CHAPTER 8.05
“HAZARDOUS VEGETATION AND COMBUSTIBLE
MATERIAL ABATEMENT” OF THE
DUNSMUIR MUNICIPAL CODE

WHEREAS, the foundation of a City or County is to provide for the health, safety, and welfare of the people who reside and visitor the area; and

WHEREAS, safety of the people includes police, fire, and emergency services to address current emergencies and prevent future issues; and

WHEREAS, the City of Dunsmuir is in very high fire severity zones as prescribed by Cal Fire, the state fire authority; and

WHEREAS, the City Fire Department and City Code Enforcement ensures the safety of residents and their property in the City of Dunsmuir through periodic inspections of property for fire risks and compliance with state Fire Code; and

WHEREAS, the Planning Commissioner approved the ordinance language at the July 10, 2019 Regular Planning Commission meeting through 7-0 vote of the attending members;

WHEREAS, the ordinance has been reviewed for compliance with the California Environmental Quality Act (CEQA) and found to be exempt from CEQA under the General exemption rule;

NOW, THEREFORE, the City Council of the City of Dunsmuir does ordain as follows:

SECTION 1: Adopts Text Creation Ordinance 564 to read as follows:

Chapter 8.05 Hazardous Vegetation and Combustible Material Abatement

8.05.010 Purpose.

8.05.020 Authority.

8.05.030 Definitions.

8.05.030 Duty to abate hazardous vegetation and combustible material.

8.05.040 Property Management Requirements

8.05.050 Enforcement, inspection and authority to enter property.

8.05.060 Summary abatement proceedings.

8.05.070 Abatement proceedings.

8.05.080 Hearing official.

8.05.090 Other remedies.

8.05.010 Purpose.

The purpose of this chapter is to provide for the removal of hazardous vegetation and combustible material from improved and unimproved properties situated in the City of Dunsmuir to reduce the potential for fire and to promote the public health, safety and welfare of the community.

8.05.020 Authority.

This chapter is enacted by ordinance pursuant to the powers granted to the City Council concerning the abatement of hazardous vegetation and combustible material as contained in Section 14930 and Section 14931 of the Health and Safety Code of the state of California. Additional authority for the abatement of nuisances, establishment of procedures, and establishment of real property liens through the City Council is provided in Section 25845 and 25845.5 of the Government Code of the state of California.

8.05.030 Definitions.

The following definitions apply to this chapter:

"Abate" and/or "abatement" means an act used to remove, destroy, eliminate, seize, impound, or any action taken to mitigate a public nuisance.

"Abatement costs" means any and all costs incurred by the City of Dunsmuir to abate the hazardous vegetation or combustible material on any property pursuant to this chapter, including physical abatement costs, administration fees and any additional actual costs incurred by the City of Dunsmuir Fire Department for the abatement proceeding, including attorney's fees, if applicable.

"Combustible material" means rubbish, litter or material of any kind other than hazardous vegetation that is flammable and endangers the public safety by creating a fire hazard.

"City Fire Chief" means the fire chief of the City of Dunsmuir or their designated representative, including:

- (1) Chiefs of all fire protection districts within the territory of the political subdivision with the county where they serve, and their deputies;
- (2) All employees of the Dunsmuir Fire Department; and
- (3) Such other code enforcement officer(s) as are designated by the City Manager or the City Fire Chief.

"Defensible Space" means the area surrounding a structure where plants and other landscape elements are maintained to decrease fire hazard, and allow firefighters to make a stand; addressing embers and spot fires before they grow.

"Fuel tank" means an above ground storage container for fuel used to power and/or heat a structure. Fuel used for power can be propane, kerosene, natural gas, methane, and heating oil.

"Hazardous vegetation" means vegetation that is flammable and endangers the public safety by creating a fire hazard including but not limited to seasonal and recurrent weeds, stubble, brush, dry leaves, etc.

"Improved parcel" means a portion of land of any size, the area of which is determined by the assessor's maps and records and may be identified by an assessor's parcel number upon which a structure is located.

"Person" means natural person, firm, association, partnership, or corporation, and includes City, County, special districts, school districts, and any other public agencies of the local, State, or Federal government.

"Street" means a public street, right-of-way, alley lane, court, parkway, driveway, sidewalk, and the area between a sidewalk and the curb.

"Structure" means any dwelling, house, building or other type of flammable construction including but not limited to a wood fence attached to or near any other structure.

"Unimproved parcel" means a portion of land of any size, the area of which is determined by the assessor's maps and records and may be identified by an assessor's parcel number upon which no structure is located.

8.05.030 Duty to abate hazardous vegetation and combustible material.

Upon receipt of a notice of violation and order to abate, it shall be the duty of every owner, occupant, and person in control of any improved or unimproved parcel of land or interest therein, which is located in the City Limits of the City of Dunsmuir as that territory is determined and classified by the City Council to abate there from, and from all parcels, roadways and parkways, except for those roads maintained by the City or county, all combustible material and hazardous vegetation, that constitutes a fire hazard which may endanger or damage neighboring property pursuant to the requirements of the notice of violation and order to abate received. The removal of vegetation pursuant to this chapter shall not exceed that set forth in the notice of violation and order to abate. The notice of violation and order to abate and any clearance shall conform to guidelines issued by the City fire chief, and which the fire chief may amend periodically.

8.05.040 Property Management Requirements

The requirements of this section will be satisfied if the following requirements:

(A). For improved parcels:

1. Maintain a thirty-foot defensible space around all buildings/structures which includes:
 - a. The grass needs to be cut six inches (6") or less.
 - b. The tree branches need to be limbed up six feet (6') from the ground.

- c. Any tree below six feet (6') or used for ornamental or food producing purposes shall be limbed a third (1/3) of the height of the tree from the ground.
 - d. Shrubs need to be maintained and dead and dying vegetation removed.
 - e. Climbing vines must be maintained of dead and dying vegetation.
- 2. Additional defensible space outward to one hundred feet (100') from all buildings and surrounding, neighboring structures may be required depending on the property slope, fuel load and/or fuel type.
 - a. Fuel load — Amount of vegetation.
 - b. Fuel type — Type of vegetation.
 - c. Property slope — Steepness of property.
- 3. Maintain a ten-foot minimum clearance next to the roadside; more may be required. The roadside clearance may be extended more than ten feet (10').
- 4. Remove all portions of trees within ten feet (10') of chimney and/or stovepipe outlets, pursuant to PRC §429(a)(4) and 14 CCR § 1299.03(a)(2).
- 5. Maintain trees adjacent to or overhanging a structure free of dead/dying wood. Cut the trees back and remove any dead or dying wood, pursuant to PRC § 4291(a)(5) and 14 CCR § 1299.03(a)(2).
- 6. Maintain the roof, decks, porches, and stairways of any structure free of leaves, needles, or other dead/dying wood. Remove any leaves, needles, branches, or debris from the roof and/or gutters, pursuant to PRC § 4291(a)(6) and 14 CCR § 1299.03(a)(1).
- 7. Install a spark arrester on chimney and/or stovepipe outlets. The spark arrester must be constructed of heavy wire mesh with openings not less than three-eighths inch (3/8").
- 8. Provide street address numbers that are clearly visible from the roadside, minimum height: Four inches (4").
 - a. The address numbers should be posted on the house.
 - b. If the house sits back from the street more than 35 feet, post the address at the beginning of the driveway and on the house.
 - c. The address numbers should be in a contrasting color for visibility.

9. Remove dead/dying vegetation from property. Remove any and all dead/dying vegetation from the property
10. Fire Pits shall be above ground and situated on a permeable or nonpermeable surface with a minimum 10-foot clearance from any vegetation. Overhead vegetation shall be kept a minimum of 15 feet away.
11. Fuel tanks shall have a 5 foot clearance in all directions from vegetation.
12. No outdoor hazardous and/or combustible waste shall be stored onsite without additional Fire Department permitting.

B. For unimproved parcels:

1. Flammable vegetation and other combustible growth within a minimum of twenty feet (20') of neighboring property lines and roadway frontage shall be removed;
2. Dead and dying vegetation within a minimum of twenty feet (20') of neighboring property lines and roadway frontage shall be removed;
3. Grass and combustible surface vegetation within twenty feet (20') of neighboring property lines and roadway frontage must be trimmed to less than four inches (4") in height unless necessary for erosion control;
4. All trees within twenty feet (20') of neighboring property lines and roadway frontage must be pruned to at least six feet (6') above grade; and
5. Combustible material shall be removed from the property.
6. No outdoor hazardous and/or combustible waste shall be stored onsite without additional Fire Department permitting.

C. Seasonal Requirements:

1. At the discretion of the City Fire Chief, seasonal provisions shall be required of all properties
 - a. Wood piles containing dead and dying wood must be located no less than 30 feet from a structure. Wood piles within 30 feet must be stored in an enclosed structure or fully covered with a tarp, or no flammable covering, pursuant to 14 CCR § 1299.03(a)(3).

- D. The City fire chief or their designee may require more clearance distance than specified in a notice of violation and order to abate for the protection of public health, safety or welfare or the environment.

- E. The determination for appropriate clearance distances will be made based upon a visual inspection of the parcel and shall consider all factors that place the property or adjoining structure(s) at risk from an approaching fire. These factors shall include local weather conditions, fuel type(s), topography, and the environment where the property or adjoining structure(s) is located.

8.05.050 Destruction and Removal

It shall be the duty of every such person to remove or destroy such weeds and/or combustible material. Removal or destruction by burning within the City is unlawful unless a permit is obtained as per Chapter 7.15 MSMC.

8.05.060 Methods of Destruction and Removal

- A. Hazardous vegetation shall be removed or destroyed by discing, rototilling, preventative chemical control, and cutting, or other process or processes as determined by the Fire Chief to be efficient and effective means of abatement.
- B. Combustible materials shall be removed to an approved dump site unless it is biodegradable and the Fire Chief authorizes its burial on the property. The property shall be granted the option of using any of the approved methods of removal if the Fire Chief finds that the use of such method is practical under the circumstances.
- C. Hazardous vegetation or combustible material, or both, when removed from the property shall be transported and disposed of only in the manner prescribed by applicable Federal, State, and local laws.

8.05.070 Large-scale Parcels

In any instance where the improved or unimproved parcel is one acre or larger in size and/or located in a sparsely populated area of the City, the Fire Chief may direct that proper firebreaks be cut in lieu of requiring that the hazardous vegetation be moved from or destroyed on the whole of such property.

8.05.080 Enforcement, inspection and authority to enter property.

- A. City Fire Chief may limit enforcement of the provisions of this chapter to specified areas for a specified period of time.
- B. For the purpose of enforcing this chapter, the City fire chief may designate any person or persons as their deputy in the performance of the duties enjoined upon them by this chapter,
- C. For the purpose of enforcing or administering this chapter, the City fire chief may enter any real property for the purpose of inspecting the property or for summary abatement proceedings whenever the City fire chief is informed or has reasonable cause to believe that hazardous vegetation or combustible material exists, constituting a condition dangerous or injurious to the health or welfare of persons or to the public, including the environment, is a public nuisance or is otherwise in violation of this chapter.

- D. No person shall interfere with the entry of the City fire chief acting in the official course and scope of his duty.

8.05.090 Summary abatement proceedings.

In addition to the authority granted by law to the City fire chief in exigent situations, and pursuant to California Health and Safety Code §14930 and Government Code §25845, as amended, the City fire chief is authorized to enter real property and summarily abate any public nuisance determined by the City fire chief to constitute an immediate threat to public health or safety without prior notice or hearing.

8.05.100 Abatement proceedings.

- A. Notice of Violation and Order to Abate. If the City Fire Chief determines that any real property is being maintained or permitted to exist in a manner prohibited by this chapter, the City Fire Chief shall issue a written notice to the property owner and any known person in possession of the property, of the violation and order the hazardous vegetation or combustible material to be immediately abated. The notice of violation and order to abate ("notice/order") shall specify the corrective actions required to be taken and order the property owners and persons in possession to abate the hazardous vegetation or combustible material within thirty (30) business days and state that the failure to bring the real property into compliance with this chapter could subject the owner or persons in possession to civil, administrative and criminal penalties. Furthermore, the notice/order shall provide the property owner and person in possession of the opportunity to appear before the City of Dunsmuir City Council and be heard prior to the abatement by the City. The failure of the notice to set forth all required contents shall not affect the validity of the abatement proceedings.
- B. Manner of Giving Notice. The City Fire Chief shall cause a copy of the notice/order to be mailed or otherwise delivered to all known persons to be in possession and to the property owner as such person's name and address appears on the last county equalized assessment roll. If the address is unknown, that fact shall be so stated, and the notice shall be addressed to the person at the county seat. Service by mail shall be deemed complete at the time of deposit in the U.S. mail. The failure of any person in possession or owner of the property to receive such notice shall not affect the validity of these proceedings.
- C. Appeals Hearing.
 - (1) Request for Hearing. Any person who is adversely affected by the notice/order may appeal the determination to the hearing officer.
 - (2) The request for a hearing must be made in writing and submitted to the enforcing officer within fifteen (15) calendar days of the postmark on the notice/order. Timely appeal shall stay any further action for abatement until the date set for hearing. If no request for a hearing is timely made, the City Council herein declares that abatement of the hazardous vegetation or combustible material shall have been deemed ordered by the City Council as of the date of the postmark of the notice/order.

- (3) Hearing. Upon timely written request by the recipient of the notice/order, a hearing shall be scheduled with the hearing officer with notice thereof mailed or otherwise delivered to the requesting person at least fifteen (15) calendar days before the scheduled hearing. The failure of any owner or occupant to receive such notice shall not affect the validity of the proceedings.
- D. At the time fixed in the notice of hearing, the hearing officer shall receive evidence from the City Fire Chief and the owner or person in possession of the real property in violation, or their representatives and any other concerned persons who may desire to present oral or documentary evidence regarding the conditions of the real property or other relevant matter, if such persons are present at the hearing. In conducting the hearing, the hearing officer shall not be limited by the technical rules of evidence. Failure of the owner or person in possession to appear shall not affect the validity of the proceedings or order issued thereon.
- E. Upon conclusion of the hearing, the hearing officer shall make their decision, and, in the event, they so conclude, may declare the conditions on the real property to be in violation of this chapter and to constitute a public nuisance. The hearing officer may direct the owner or person in possession to abate the hazardous vegetation or combustible material within ten (10) business days after receipt of certified mailing and posting of the hearing officer's decision. The order shall include notice that if the hazardous vegetation or combustible material is not abated as directed and within ten (10) business days, the City Fire Chief may abate the hazardous vegetation or combustible material and the abatement costs shall be a lien and an assessment against the real property.
- F. The council may grant any extension of time to abate such conditions that it may deem justifiable upon good cause being shown.
- G. Abatement of Hazardous Vegetation or Combustible Material by City Fire Chief. If, at the end of the time allowed for compliance in the original notice/order issued pursuant to this code, or as set forth in an order issued by the council after a timely request for a hearing pursuant to this code, compliance has not been accomplished as directed, the City Fire Chief may order the hazardous vegetation or other combustible material to be removed by City employees, or may cause the removal to be carried out by a private contractor selected by the City purchasing agent in accordance with applicable statutes and in the manner and under the terms specified by the City Council.
- H. Abatement Cost Recovery. As set forth in Government Code Section § 25845, the owner and any person in possession of the real property upon which the hazardous vegetation or combustible material is found to exist shall be jointly and severally liable for all abatement costs incurred by the county without any further hearing.
- (1) Notice of Abatement Costs. At the conclusion of the abatement by the City Fire Chief or designee, the City Fire Chief shall issue a bill setting forth the abatement costs to the owner and person in possession of the real property. The bill shall demand payment to the City of Dunsmuir the total abatement costs and administration costs, plus attorneys' fees, if relevant, within fifteen (15) calendar days of its mailing.

- (2) Abatement Costs Specially Assessed Against the Parcel. If the amount set forth in the notice of abatement costs is not paid upon demand by the City, the abatement costs, including attorneys' fees, if applicable, shall be specially assessed against the real property pursuant to Government Code Section § 22845, or by any other means provided by law. The assessment may be collected at the same time and in the same manner as ordinary taxes are collected and shall be subject to the same penalties and the same procedure of sale in case of delinquency as are ordinary taxes.
- (3) Notice of Abatement Lien. A notice of abatement lien may be recorded against the real property subject to this abatement proceeding, setting forth the date upon which abatement of the nuisance was ordered either by notice issued by the City Fire Chief or by the City Council after a hearing, the date the abatement was complete and the amount of abatement costs. Furthermore, the notice shall identify the parcel address, the record owner, the possessor of the property, if known and applicable, together with the last known address of the record owner or possessor. The abatement lien shall have the same effect as recordation of an abstract of a money judgment pursuant to Article 2 of Chapter 2 of Division 2 of Title 9 of Part 2 of the California Code of Civil Procedure (commencing with § 697.310, as amended). The lien has the same priority as a judgment lien on real property and continues in effect until released.
 - I. Attorneys' Fees. Reasonable attorneys' fees may be recovered by the prevailing party in any civil action, administrative proceeding or special proceeding established by this chapter. In the event a hearing is requested pursuant to the notice described above and the City Council deems the real property to be a public nuisance and orders the City Fire Chief to abate the hazardous vegetation or combustible material, the county shall be deemed the prevailing party.

8.05.110 Hearing official.

- (a) Delegation of Authority. The City of Dunsmuir City Council may delegate its authority to conduct the administrative abatement proceedings set forth in Section 8.05.100, above, to either of the following:
 - (1) The City Manager appointed by the City Council pursuant to Government Code Section 27720, as amended. The City Manager shall have full authority and duty to preside over hearing.
 - (2) A weed abatement hearing board (WAHB) designated pursuant to Government Code Section 25845, as amended. The WAHB shall have full authority to act and may preside over hearings with the same authority, power and duties of the City Manager. The WAHB shall be comprised of three (3) persons as follows: one (1) member shall be an officer of the Dunsmuir Fire Department selected by the City Fire Chief, (but not an employee involved in inspecting or issuing the notice/order; and two (2) members shall be selected by the City Council. Members shall serve at the pleasure of the appointing entity.

- (b) Recommended Action. At the conclusion of a hearing by either the City Manager or WAHB, a recommended decision shall be issued to the owner or person in possession of the real property subject to the hearing, and to any other interested person previously requesting notice. The City Manager or WAHB shall also file the recommended decision with the City Council. The recommended decision may alter the notice/order in any fashion and may include an order to the owner or person in possession of the real property to abate the hazardous weeds or combustible material within ten (10) calendar days of issuance of the order.
- (c) No Further Appeal. Upon receiving the recommended decision from either the City Manager or WAHB, the City Council may adopt the decision as recommended on the consent agenda at its next regularly scheduled public board meeting without further notice or hearing, or may set the matter for a de novo hearing before the City Council.

8.05.120 Other remedies.

The provisions of this chapter are to be construed as an added remedy of abatement and not in derogation of any other civil or criminal actions or proceedings or remedies otherwise provided by law.

(a) Civil Actions.

- (1) Injunctive Relief and Abatement. Whenever, in the judgment of the City Fire Chief, any person is engaged in or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this chapter or notice or order issued pursuant hereto, the City Fire Chief may request the City Attorney or district attorney to commence proceedings for the abatement, removal, correction and enjoinder thereof, and requiring the violator to pay civil penalties and/or abatement costs or in addition, be subject to criminal prosecution.
- (2) Civil Remedies and Penalties. Any owner or person in possession of real property who willfully violates the provisions of this chapter or any notice or order issued pursuant hereto shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000.00) for each day or portion thereof that the violation continues to exist. In determining the amount of the civil penalty to impose, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities, and net worth of the violator, whether corporate or individual, and any corrective action taken by the violator.

(b) Criminal Actions.

- (1) It shall be unlawful for any person to violate any provision of this chapter. Any person violating any provision of this chapter shall be deemed guilty of an infraction or misdemeanor as hereinafter specified. Such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this chapter is committed, continued or permitted.

- (2) Any person so convicted shall be guilty of an infraction offense and punished by a fine not exceeding one hundred dollars (\$100.00) for a first violation; guilty of an infraction offense and punished by a fine not exceeding two hundred dollars (\$200.00) for a second violation on the same site and perpetrated by the same person. The third and any additional violations on the same site and perpetrated by the same person shall constitute a misdemeanor offense and shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) or six (6) months in jail, or both. Payment of any penalty herein shall not relieve a person from the responsibility for correcting the violation. Notwithstanding the above, a first or second offense may be charged as a misdemeanor.
- (c) Treble Damages. Upon a second or subsequent civil or criminal judgment for a violation of this chapter within a two-year period the violator shall be liable to the City of Dunsmuir for treble the abatement costs, in accordance with Government Code § 25845.5.
- (d) Notice of Noncompliance. Whenever a notice/order has been issued, the City Fire Chief may record a notice of noncompliance with the office of the county recorder of Siskiyou County and shall notify the owner of the property of such action. The notice of noncompliance shall describe the property, shall set forth the noncomplying conditions, and shall state that any abatement costs incurred by the county as a result of the violation of this chapter may be specially assessed as a lien on the property and that the owner has been so notified.

SECTION 2: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the ordinance and the application of such provision will remain in effect to the extent permitted by law.

SECTION 3: Effective Date

This ordinance shall be effective thirty (30) days following its second reading and posting as provided for by Government Code Section § 36933.

I HEREBY CERTIFY that the foregoing Ordinance was introduced and read at a regular meeting of the City Council of the City of Dunsmuir held on the 19 day of September, 2019 and was passed upon second reading at a regular meeting of the City Council of the City of Dunsmuir held on the 24 day of October, 2019.

PASSED, APPROVED, and ADOPTED this 24 day of October, 2019 by the following vote:

AYES: Arth, Bryan, Deutsch, Keisler, Lucchesi

NOES: None

ABSENT: None

ABSTAIN: None

DATED: October 24, 2019

ATTEST:

CITY OF DUNSMUIR

Deputy City Clerk Iskra

Mayor Lucchesi