

City of Brisbane
Agenda Report

TO: Mayor and City Council
FROM: Hal Toppel, City Attorney
SUBJECT: Adoption of Weed Abatement Ordinance
DATE: For Council Meeting on March 16, 2009

Purpose:

The purpose of the ordinance is to establish procedures for the abatement of weeds and flammable waste constituting a fire hazard and the collection of abatement costs from the owner of the property on which the abatement work is performed.

Recommendation:

Introduce Ordinance No. 538, with adoption at the next Council meeting on April 6, 2009.

Background & Discussion:

The City's existing Fire Code contains a provision for removal of waste materials and combustible vegetation. Currently, this provision is set forth in Section 15.44.120 of the Municipal Code, which adds Section 304.1.4 to the Fire Code. Notwithstanding this section, the City has never engaged in a comprehensive program for abatement of weeds constituting a fire hazard. On those isolated occasions when weeds have been removed, the work has been performed at the expense of the City and no liens have been assessed against private property for the cost of the removal work. Moreover, the existing Fire Code does not contain the requisite due process procedures for the levy of such assessments.

Ordinance 538 will add a new Chapter 8.50 to the Health and Safety Title of the Municipal Code. The weed abatement process established by this Chapter will be in addition to any other remedies available to the City under state law (as contained in the Government Code) or the Brisbane Municipal Code (such as the general nuisance abatement provisions of Chapter 8.36). Chapter 8.50 is specifically oriented to weeds and other flammable hazards that would be identified and abated by the Fire Department. All enforcement authority for this Chapter is delegated to the North County Fire Authority.

The abatement process established by the Ordinance would be as follows:

1. The Enforcement Officer (who is designated by the Fire Chief) will provide an annual report to the Fire Chief of those properties on which weeds or flammable waste materials are found to exist. The Chief would then declare such conditions to be a public nuisance.

2. A Notice to Abate is mailed to the owner of each property identified in the report. The owner would be given a specific time to abate the nuisance (at least 15 days), and is advised that failure to do so will result in the weeds being removed by the City and all costs of removal, plus an administrative fee, will be charged to the owner and assessed against the property if not paid.

3. The City Council conducts a public hearing, at which time any owner may object to the proposed abatement. Upon conclusion of the hearing, the Council will issue an abatement order. The abatement work may proceed immediately upon issuance of such order.

4. Upon completion of the abatement work, each owner will be billed for the cost of the abatement performed on that owner's property. If the bill is not paid, the Enforcement Office will include such property in a report to the City Council. Following the conduct of a noticed hearing at which any owner may object to the proposed assessment of abatement costs, the City Council will adopt a resolution levying an assessment against the property and this assessment will be transmitted to the County to be included on the next property tax statement.

Fiscal Impact:

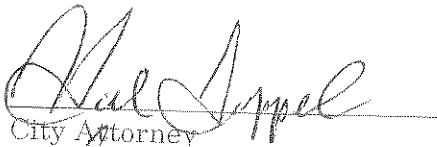
The City will be required to advance the abatement costs but it is anticipated that all costs will either be paid by the owner upon receipt of a billing from the City, or will be recovered through payment of an assessment added to the owner's property tax.

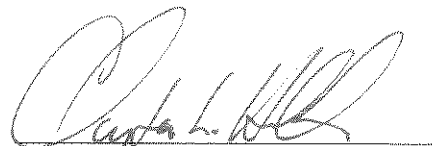
Measure of Success:

Removal of existing fire hazards and recovery of abatement costs.

Attachments:

Proposed Ordinance No. 538


City Attorney


City Manager

ORDINANCE NO. 538

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING CHAPTER 8.50 TO THE MUNICIPAL CODE
CONCERNING WEED AND FLAMMABLE WASTE ABATEMENT**

The City Council of the City of Brisbane, California hereby ordains as follows:

SECTION 1: A new Chapter 8.50, entitled "Weed and Flammable Waste Abatement," is added to Title 8 of the Brisbane Municipal Code, to read as follows:

**Chapter 8.50
WEED AND FLAMMABLE WASTE ABATEMENT**

Sections:

8.50.010	Authority for Chapter; alternative provisions
8.50.020	Delegation of enforcement authority; Enforcement Officer defined
8.50.030	Definitions
8.50.040	Public nuisance and abatement requirements
8.50.050	Declaration of nuisance
8.50.060	Notice to abate
8.50.070	Public hearing by City Council; order to abate
8.50.080	Performance of abatement work
8.50.090	Seasonal and recurrent nuisances
8.50.100	Account of abatement costs and billing
8.50.110	Assessment report and hearing
8.50.120	Levy and collection of special assessment

§8.50.010 Authority for Chapter; alternative provisions

(a) This Chapter is adopted pursuant to Sections 39501 and 39502 of the Government Code. It is intended as an alternative to the procedure set forth in Article 2 of Chapter 13, Division 3 of Title 4 of the Government Code (commencing with Section 39560). This Chapter also supplements the provisions of Section 15.44.120 of the Brisbane Municipal Code (amending the California Fire Code) concerning removal of waste materials and combustible vegetation, and the provisions of Chapter 8.36 of the Brisbane Municipal Code, concerning abatement of public nuisances. The rights and remedies available to the City for abatement of weeds, rubbish, or other flammable material are cumulative and the City may proceed under this Chapter, or said Article 2 of the Government Code, or said provisions of the Brisbane Municipal Code, or any combination thereof, either simultaneously or successively.

(b) Nothing contained in this Chapter shall prevent the Enforcement Officer (as hereinafter defined) from abating any weed or flammable waste nuisance summarily, without notice to the property owner, pursuant to Section 8.36.100 of the this Code where an immediate hazard to the public health, safety or welfare is found by the Enforcement Officer to exist upon any real property in the City. In such event, the collection of abatement costs and levy of the same as a special assessment shall be conducted in accordance with the procedure set forth in Chapter 8.36 of this Code. The Enforcement Officer is hereby given authority to conduct summary abatement proceedings pursuant to Section 8.36.100.

§8.50.020 Delegation of enforcement authority

The duty and authority to enforce the provisions of this Chapter are hereby delegated to the North County Fire Authority. In the event the North County Fire Authority is terminated or the City of Brisbane ceases to be a member thereof, the delegation of authority granted herein shall automatically expire.

§8.50.030 Definitions

(a) The term "Enforcement Officer," as used in this Chapter, means the person or persons duly authorized by the Fire Chief of the North County Fire Authority to administer and enforce the provisions of this Chapter. If the North County Fire Authority at any time ceases to render weed abatement services for the City, the Enforcement Officer shall be such person as designated by the City Council.

(b) The term "Fire Chief," as used in this Chapter, means the Fire Chief of the North County Fire Authority. If the North County Fire Authority at any time ceases to render weed abatement services for the City, the duties to be performed by the Fire Chief under this Chapter shall instead be performed by the Brisbane City Manager.

(c) The term "weeds," as used in this Chapter, includes, but is not limited to, any of the following:

- (1) Weeds and brush which attain such large growth as to become, when dry, a fire menace.
- (2) Weeds which are otherwise noxious or dangerous.
- (3) Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health.
- (4) Dry grass, grass cuttings, tree trimmings, vines, stubble, or other growth material which endangers the public safety by creating a fire hazard.

(b) The term "flammable waste" includes debris, rubbish, refuse, wastepaper, litter, lumber, waste petroleum products, packing material, or other combustible or flammable waste material deemed by the Enforcement Officer to constitute a fire hazard.

§8.50.040 Public nuisance and abatement requirement

No person having ownership or control of any property within the City shall cause or permit weeds or flammable waste material to remain or accumulate thereon, or upon the public right-of-way between the boundary line of such property and the paved surface of the street, or upon any abutting private roadway or easement over which the owner or occupant of such property has a right of access. Each of the conditions described herein shall constitute a public nuisance and the owner or other person having control over the property shall destroy or remove such weeds and flammable waste material.

§8.50.050 Declaration of nuisance

The Enforcement Officer shall annually furnish to the Fire Chief a report of those properties on which weeds or flammable waste material have been found to exist which constitute a fire hazard in violation of this Chapter. The Fire Chief shall review such report and make any changes thereto the Fire Chief deems necessary or appropriate. Upon approval of the report, the Fire Chief shall issue a written declaration of public nuisance to exist upon each of the properties identified in the report. Such declaration shall direct that a Notice to Abate be sent to the property owner in accordance with Section 8.50.060, and shall set a time and place for a public hearing to be conducted by the City Council for the consideration of any objections by property owners to the declaration of nuisance.

§8.50.060 Notice to Abate

(a) The Enforcement Officer shall mail to the owner of each property on which a nuisance has been declared by the Fire Chief to exist, a Notice to Abate such nuisance within the time specified in the notice, which shall be not less than fifteen (15) days after the date on which the notice is mailed. The notice shall be mailed to each person to whom such property was assessed on the last equalized assessment roll available on the date the City Council resolution is adopted pursuant to Section 8.50.050. The failure of any person to receive such notice shall not invalidate any of the proceedings conducted under this Chapter.

- (b) The Notice to Abate shall advise the property owner of the following:
 - (1) That upon failure by the owner to abate the nuisance within the specified time, the weeds or flammable waste will be removed by the City;
 - (2) That all abatement costs incurred by the City, together with an administrative fee in the amount set forth in the notice, shall be charged to the owner;
 - (3) That nonpayment of the abatement costs and the administrative fee will result in the same being levied as a special assessment against the property, to be collected at the same time and in the same manner as ordinary real estate taxes;

- (4) That any person objecting to the declaration of nuisance or the proposed abatement thereof may present such objections at a public hearing to be conducted by the City Council at the time and place indicated in the notice.

§8.50.070 Public hearing by City Council; order to abate

The City Council shall conduct a public hearing on the proposed abatement at the time and place specified in the Notice to Abate and shall hear and determine any objections by the owners of properties on which a nuisance has been declared to exist. At the conclusion of the public hearing, the City Council shall sustain or overrule any objections which have been raised. The City Council shall thereupon issue an order to the Enforcement Officer to abate the nuisance on each of the properties for which the original declaration of nuisance has not been rescinded by the City Council.

§8.50.080 Performance of abatement work

Upon the failure by the property owner to remove or abate the nuisance within the time specified in the notice given pursuant to Section 8.50.060, the Enforcement Officer shall, without further notice to the property owner, cause the nuisance to be abated on each of the properties described in the order to abate issued by the City Council pursuant to Section 8.50.070. The Enforcement Officer and his or her agents, employees and contractors are authorized to enter upon the property where such nuisance exists for the purpose of performing the abatement work. If the property on which the abatement work is to be performed is located within the San Bruno Mountain Area Habitat Conservation Plan (HCP), the abatement shall comply with any applicable requirements of the HCP, including the requirement to obtain a San Bruno Mountain Site Activity Review from the HCP Manager. Nothing herein shall prevent the property owner from abating such nuisance, so long as all abatement work is completed prior to the arrival of the Enforcement Officer or his or her representatives to remove the same.

§8.50.090 Seasonal and recurrent nuisances

(a) At the time the City Council issues the order to abate the nuisance, as provided in Section 8.50.070, and if so requested by the Enforcement Officer, the City Council may also find and declare that weeds on specified parcels of property are seasonal and recurrent nuisances. Such seasonal and recurrent nuisances shall be abated in accordance with the provisions of this Chapter, provided that upon the second and subsequent occurrence of such nuisance on the same parcel or parcels within the same calendar year, no further public hearings need be held and it shall be sufficient to mail a post card notice to the owners of the property as they and their addresses appear on the current assessment roll.

(b) The post card notice shall describe the property and shall state that noxious or dangerous weeds of a seasonal and recurrent nature are growing on or adjacent to the property and that the same constitute a public nuisance which must be abated by removal, and that otherwise they will be removed and the nuisance abated by the City, in which case the cost of such removal will be assessed upon the parcel of land from which or adjacent to which the weeds were removed, and upon confirmation of such cost will constitute a lien upon such parcel until paid.

§8.50.100 Account of abatement costs and billing

The Enforcement Officer shall keep an account of the costs of abating such nuisance upon each separate lot or parcel of land and shall send a bill for the same, including the administrative fee, to the property owner by mail, to the address or addresses to which the original notice of abatement had previously been sent. The bill shall specify that, upon failure of the owner to pay same in full within thirty (30) days from date of mailing, the amounts set forth in such bill will become a lien against the land and shall constitute a special assessment and be collected at the same time and in the same manner as general municipal taxes of the City. The billing shall also advise the owner that a hearing will be held by the City Council at the time and place indicated in the billing, at which time the owner can raise any objections to the proposed assessment, and that no other or further notice will be given of such assessment and hearing other than as set forth in the billing.

§8.50.110 Assessment report and hearing

The Enforcement Officer shall submit a report to the City Council of all unpaid bills for abatement expenses and administration costs, and a list of the parcels to be assessed for such expenses and costs. The Council shall conduct a public hearing on the report, at which time any property owner may object to any matter contained in the report. No notice need be given of such hearing other than the notice contained in the billing previously sent to the property owner in accordance with Section 8.50.100. The City Council shall review the report, hear and determine any objections thereto, and make any changes therein it deems necessary or proper, after which the Council shall by resolution confirm the report and assessment as submitted or modified.

§8.50.120 Levy and collection of special assessment

The cost of abating the nuisance upon the property described in the Enforcement Officer's report, together with the administrative fee thereon, as finally confirmed by the City Council, shall constitute a special assessment against each respective lot or parcel of land, and after thus made and confirmed, shall constitute a lien on such property for the amount of such assessment until paid. A certified copy of the assessment shall be filed with the County Tax Collector, who shall enter the amounts of such assessments against the respective lots or parcels of land on the County tax roll upon which general municipal taxes are to be collected, and the amount of each such assessment shall be collected at the same time and in the same manner as ordinary municipal taxes, and shall be subject to the same interest and penalties, and the same procedures for sale in case of delinquency. All laws and ordinances heretofore or hereafter made applicable to the levy, collection and enforcement of City taxes are hereby made applicable to such special assessments.

SECTION 2: Section 15.44.120 in Chapter 15.44 of the Brisbane Municipal Code is amended to read as follows:

§15.44.120 Section 304.1.4 added—Removal of waste materials and combustible vegetation

Section 304.1.4 is added to the Fire Code, to read as follows:

304.1.4 Removal of waste materials and combustible vegetation.

- (a) Notice to Remove. The Bureau of Fire Prevention is authorized to notify the owner of any roof, court, yard, vacant lot or open space within the City of Brisbane or its jurisdiction, or the agent of such owner to properly dispose of such wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, waste petroleum products, vines and other growth or rubbish of any kind located on such owner's property which is dangerous to public safety, health or welfare or is deemed a fire hazard by the Department. Such notice shall inform the owner or his agent that should the wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, waste petroleum products, vines and other growth or rubbish of any kind not be removed as required, then it will be removed by the City and the cost of said removal shall in accordance with this chapter be assessed as a lien on the property to be collected with the next regular tax bill.

Such notice shall be mailed to said owner at his last known address, as revealed by the tax rolls, and such additional address as may be known by the officer making the order.

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- (b) Action Upon Non-compliance. Upon failure, neglect or refusal of any owner or agent so notified to properly dispose of such wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, waste petroleum products, vines or other growth or rubbish of any kind dangerous to the public health, safety and welfare within fifteen (15) days after receipt of written notice provided for in subsection (a) above, or within fifteen (15) days after the date of such notice in the event the same is returned to the Fire Prevention Bureau because of its inability to make delivery thereof provided the same was properly addressed to the last known address of such owner, as provided in subsection (a) of this section, or agent, the Fire Prevention Bureau is hereby authorized to refer this non-compliance to the City Manager to conduct nuisance abatement proceedings pursuant to Chapter 8.50 of the Brisbane Municipal Code.

Deleted: have the City pay for disposing of such wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, waste petroleum products, vines and other growth or rubbish that endangers property or is liable to be fired.

Deleted: (c) Charge included in Tax Bill. When the City has effected the removal of dangerous or hazardous conditions from property as noted in subsection (a) or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of ten percent (10%) per annum from the date of the completion of the work, if not paid for by such owner prior thereto, shall be charged to the owner of such property on the next regular tax bill forwarded to such owner, and said charge shall be due and payable by said owner at the time of payment of such bill.

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- (c) Acreage Maintained. Any person who owns, leases, controls, operates or maintains any building or structure in, upon, or adjoining any mountainous area or forest-covered lands, brush-covered lands or grass covered lands or any land or acreage covered with flammable material shall maintain around and adjacent to such building or structure a fire break for a distance between thirty (30) feet and one hundred (100) feet, as may be directed by the Fire Marshall, or to the property line, whichever shall be less. Any person who owns open acreage shall maintain a fire break around the perimeter of his acreage for a distance between thirty (30) feet and one hundred (100) feet, as may be directed by the Fire Marshall.

(d) Remedies Cumulative. That the remedies set forth in this section are in addition to any other remedies available to the City as set forth in its ordinances and resolutions and the statutes of the State of California.

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(e) Other Regulations. In addition to the remedies set forth herein, the City Council may adopt such other additional, appropriate resolutions and ordinances establishing procedures and regulations for the regulation, control and abatement of waste materials, weeds and other matters constituting a fire and/or safety hazard.

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SECTION 3: The City Council finds and determines that this Ordinance is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301(h) (maintenance of native growth), Section 15301(i) (maintenance of wildlife habitat areas), Section 15304(d)(minor alteration of vegetation on existing officially designated wildlife management areas), and Section 15304(i) (fuel management activities to reduce the volume of flammable vegetation) of the CEQA Guidelines. The City Council further finds that none of the exceptions to these categorical exemptions, as set forth in Section 15300.2 of the CEQA Guidelines, is applicable. To the extent that weed abatement activities will be conducted on any property subject to the San Bruno Mountain Area Habitat Conservation Plan, the work must be performed in accordance with any conditions set forth in the Site Activity Review by the HCP Manager.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the ____ day of _____, 2009, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

A. Sepi Richardson, Mayor

APPROVED AS TO FORM:

ATTEST:

Harold S. Toppel, City Attorney

Sheri Marie Spediacci, City Clerk