

ORDINANCE NO. 1856

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL ADDING CHAPTER 4.12 TO THE SAN RAFAEL MUNICIPAL CODE, ENTITLED “WILDLAND-URBAN INTERFACE (WUI) – VEGETATION MANAGEMENT STANDARDS”

WHEREAS, the City of San Rafael General Plan 2020 contains the following goals and policies:

- S-30. Maintenance and Landscaping for Fire Safety. Encourage, where appropriate, special planting, removal and maintenance programs to reduce potential fire hazards in the hills, wildland areas and urban interface areas;
- S-30a. Fire Hazard Maps. As part of the City’s Fire Hazard Program, maintain maps identifying potential fire hazard areas in San Rafael;
- S-30b. Fire Protection Ordinance. Consider the adoption of a Fire Protection Ordinance to reduce fire hazards in areas in the urban interface area; and

WHEREAS, the City has prepared a number of studies and plans related to wildland safety. In particular, the Fire Department’s recent study, Wildland Urban Intermix Threat Analysis, evaluated safety issues related to wildland fires in San Rafael’s hillside areas. A Fire Management Plan, which includes a Transportation and Evacuation Plan component, was prepared for each High Hazard area identified in the study; and

WHEREAS, the County of Marin Fire Department has conducted mapping which determined Fire Hazard Severity Zones for all of Marin County including the City of San Rafael; and

WHEREAS, the San Rafael Fire Department has used site-specific information to adjust the County’s mapping to determine the City’s Wildland-Urban Interface (WUI), as reflected in the map entitled “City of San Rafael Wildland-Urban Interface”, dated July 2, 2007, on file with the City Clerk; and

WHEREAS, the City recognizes the critical nature of Wildland-Urban Interface fires and their impact upon life, property and the economic stability of San Rafael; and

WHEREAS, the City recognizes that Wildland-Urban Interface fires also have substantial impacts on biological resources and wildlife habitat, and to the extent that they can be prevented or more easily contained, such activities benefit both the developed and natural environments; and

WHEREAS, the City recognizes that the creation of a “defensible space” around occupied structures can prevent or contain fires within the Wildland-Urban Interface, whether those fires initiate in the natural environment or the built environment; and

WHEREAS, the City recognizes that local climatic, geographic, and topographical conditions increase the magnitude of vegetation fires; and

WHEREAS, the City presently enforces specific vegetation management standards within the identified Wildland-Urban Interface of San Rafael which reduce the risk of loss from fire; and

WHEREAS, the City desires to utilize a public and private partnership to manage combustible vegetation within the Wildland-Urban Interface on private and public lands; and

WHEREAS, the City, as a charter city, has the authority under Article XI, Section 5, of the California Constitution to adopt ordinances and regulations with respect to municipal affairs; and

WHEREAS, Section 16 of Appendix II-A of the California Fire Code, as adopted with amendments by San Rafael Municipal Code Section 4.08.020, presently allows the Fire Chief to compel property owners on a case-by-case basis to remove combustible vegetation within 100 feet of a structure upon a finding of extra-hazardous fire conditions; and

WHEREAS, the City desires to replace its current piecemeal program with a comprehensive vegetation management approach to alleviate extra-hazardous fire conditions, while establishing exceptions for creeks, drainage ways and wetlands as well as protected plants and wildlife; and

WHEREAS, the Legislature has authorized the Director of the California Department of Forestry, pursuant to Public Resources Code Section 4201 et seq., to designate fire hazard severity zones within State Responsibility Lands where the State has responsibility for fire prevention, within which areas property owners are required to remove flammable vegetation within 100 feet of occupied structures; and

WHEREAS, the Legislature has authorized local agencies, pursuant to Government Code Section 51175 et seq., to designate very high fire hazard zones where necessary for effective fire protection, within which areas property owners are required to remove flammable vegetation within 100 feet of occupied structures; and

WHEREAS, the Fire Chief has determined that the City of San Rafael Wildland-Urban Interface (WUI) map, dated July 2, 2007, is a designation of a very high fire hazard severity zone for the City of San Rafael as provided in Government Code Section 51179; and

WHEREAS, the Legislature has authorized cities, pursuant to Public Resources Code Section 4119, to adopt ordinances to provide for fire prevention regulations necessary to meet local conditions of weather, vegetation or other fire hazards, which ordinances may be more restrictive than state statutes in order to meet local fire hazard conditions; and

WHEREAS, the City Council has considered whether adoption of the proposed Fire Code amendments would be subject to CEQA, and has found that the adoption is not subject to CEQA under Class 4, 7, and 8 categorical exemptions.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1:

Title 4, Chapter 4.12, entitled “WILDLAND-URBAN INTERFACE – VEGETATION MANAGEMENT STANDARDS” is hereby adopted and added to Chapter 4 of the Municipal Code of the City of San Rafael, to read as follows:

CHAPTER 4.12

Sections Index:

4.12.010	Purpose
4.12.020	Definitions
4.12.030	Vegetation Management Standards
4.12.032	Exception to Vegetation Management Standards for Creeks, Drainage Ways and Wetlands
4.12.035	Exception to Vegetation Management Standards for Impacts on Protected Plants and Wildlife
4.12.040	Right of Entry
4.12.050	Enforcement and Penalties
4.12.060	Abatement and collection of Abatement Costs

4.12.010 Purpose and Intent.

This Chapter establishes a Wildland-Urban Interface (WUI) in the City, as described in the City of San Rafael Wildland-Urban Interface (WUI) map, dated July 2, 2007, on file with the City Clerk, as it may be amended hereafter from time to time by City Council resolution, which is a designation of a very high severity zone as provided in Government Code Section 51179, and within which specific combustible vegetation management standards will be required in order to create defensible space around structures that will minimize the spread of fires from wildlands to structures, from structures to wildlands, and from structures to structures.

4.12.020 Definitions.

“Combustible vegetation” means vegetation that ignites readily and burns intensely as more specifically identified by resolution of the City Council.

“Crown” means the branch and related growth structure of a bush or tree.

“Defensible space” means that area 100 feet around a structure where vegetation management has been conducted to reduce the potential for transfer of fire between the structure and the adjacent wildland, the adjacent wildland and the structure, or from structure to structure. Whenever a parcel’s property line is less than 100 feet from its structure, adjacent parcels must follow requirements found within 4.12.030 to complete the remaining footage for a total of 100 feet.

“Fire Chief” means the chief officer of the City’s Fire Department, or his or her designated representative.

“Raise the crown” means to remove lower branches and vegetative growth of trees.

“Person” means any natural person, partnership, association, limited liability company, corporation, or any other entity which is recognized by law as the subject of rights or duties, not including the City of San Rafael, the San Rafael Redevelopment Agency, or any federal, state or other public agency.

“Structure” means anything built or constructed that is inhabited or subject to habitation, and any related garages, workshops, pool houses or other accessory structures.

“Wildland-Urban Interface” means that geographical area that presents a significant risk of wildfire transfer to and from structures as identified on the map on file with the City Clerk entitled “City of San Rafael Wildland-Urban Interface”.

“Vegetation management” means the management of vegetation as required by this Chapter, including the removal of combustible vegetation.

4.12.030 Vegetation Management Standards.

A. Any person owning, leasing, controlling, operating or maintaining a property containing a structure in or upon the City Wildland-Urban Interface, and any person owning, leasing controlling, operating or maintaining a property that is adjacent to another property containing such a structure, shall at all times maintain a defensible space within 100 feet of such a structure as follows:

1) Raise the crown of all trees, by removing growth less than 3-inches in diameter, from the ground up to a maximum height of 10 feet, provided that no crown shall be raised to a point so as to remove branches from more than the lower one-third of the tree’s total height.

2) Cut and remove all dry grasses (by means other than discing, tilling or other soil manipulation) so that their height does not exceed 3 inches.

3) Remove all combustible vegetation, provided that single specimens of combustible vegetation are permitted if separated by a distance equal to two (2) times the height of the next adjacent combustible or non-combustible bush on slopes 0 to 20%, four (4) times the

height of the next adjacent combustible or non-combustible bush on slopes 21 to 40%, and 6 (six) times the height of the next adjacent combustible or non-combustible bush on slopes exceeding 40% as measured from the most outer edge of both bushes.

Exception: Remove all Junipers (genus Juniperus) and Bamboo (genus Bambusa) within 15 feet of any structure. Remove all Junipers (genus Juniperus) and Bamboo (genus Bambusa) from 15 to 100 feet of a structure before January 1, 2011. After January 1, 2011, single specimens of Junipers or Bamboo are permitted beyond 15 feet of a structure if separated by 2 times the height of the taller of the nearest bush as measured from the most outer edge of the bush.

4) Remove or chip the wood of all dead trees and other dead vegetation from the ground that is less than 3 inches in diameter, provided that the stump of a dead tree does not need to be removed. Chipping materials left upon the surface of the ground shall not exceed a depth of 3 inches.

B. Any person owning, leasing, controlling, operating or maintaining a property containing a structure in or upon the City Wildland-Urban Interface shall at all times:

1) Remove combustible vegetation on the ground of the property within 10 feet of any highways, city streets, or private streets used for vehicle traffic.

2) Remove all vegetation within 10 feet of a chimney outlet.

3) Remove any portion of trees or brush on the property that overhang any roadway and reach within 13 feet 6 inches (13'6") vertically above the roadway surface.

4) Remove any combustible vegetation under the eaves, decks or other components of the structure on the property.

5) Maintain the roof of any structure on the property free of leaves, needles, or dead vegetative growth.

6) Maintain woodpiles a minimum of 2 times the height of the woodpile away from any component of the structure on the property.

C. To the extent there is any conflict, the vegetation management standards in this Section shall supersede the property development standards for protecting the natural state of property as contained in Sections 14.12.030(C) and 14.12.040 of the City of San Rafael Municipal Code.

4.12.032 Exception to Vegetation Management Standards for Creeks, Drainage Ways and Wetlands.

A. There shall be an exception from compliance with the requirements specified in Section 4.12.030 with respect to any vegetation within a creek, wetland or drainage way within the City Wildland-Urban Interface, or within 25 feet of the top of the bank bordering such a creek or drainage way or within 25 feet of the edge of such a wetland.

B. A person seeking an exception to the obligations specified in Section 4.12.030 shall make a written request to the Fire Chief for a determination as to the application and scope of the aforementioned exception on property owned or controlled by such person. The person making such a request shall provide the Fire Chief or his or her designee with access to the person's property in order to conduct an investigation. The determination of the Fire Chief as to the application and scope of the exception shall be final.

4.12.035 Exception to Vegetation Management Standards for Protected Plants and Wildlife.

A. There shall be an exception from compliance with the requirements specified in Section 4.12.030 when such requirements would result in any of the following:

- 1) The destruction of a bird nest, egg, or bird in violation of Fish and Game Code Sections 3503, 3503.5, or 3511;
- 2) Impacts on threatened or endangered species, including species protected under any federal or state law or regulation adopted for the protection of threatened or endangered species; or
- 3) Disturbance of an active raptor nest.

B. A person seeking an exception to the obligations specified in Section 4.12.030 shall make a written request to the Fire Chief for a determination as to the scope and application of the aforementioned exception on property owned or controlled by such person. The person making such a request shall provide the Fire Chief or his or her designee with access to the person's property in order to conduct an investigation. The determination of the Fire Chief as to the application and scope of the exception shall be final.

4.12.040 Right of Entry.

Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Fire Chief has reasonable cause to believe that there exists upon any premises any condition in violation of the provisions of this Chapter, the Fire Chief or authorized representative is authorized to enter such premises at all reasonable times to inspect the same, provided that if such premises is occupied, the Fire Chief or authorized representative shall first present proper credentials and demand entry; and if such premises is unoccupied, the Fire Chief shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and demand entry. If such entry is refused, the Fire Chief shall have recourse to every remedy provided by law to secure entry.

4.12.050 Enforcement and Penalties.

A. The Fire Chief shall have the authority to enforce the provisions of this Chapter as provided in San Rafael Municipal Code Chapters 1.40, 1.42, 1.44, and 1.46.

B. A violation of the provisions of this Chapter shall be a misdemeanor/infraction and subject to the penalties set forth in Section 1.42.010 of the Code.

4.12.060 Abatement and Collection of Abatement Costs.

Any violation of the vegetation management standards of this Chapter shall be deemed a public nuisance. Upon the failure of the responsible person to correct the violation and abate the public nuisance, after reasonable notice and opportunity to correct has been given by the Fire Chief, the City is entitled to abate the public nuisance by correcting the violations, and to collect its abatement costs and related administrative costs by a nuisance abatement lien as more particularly set forth in Government Code Section 38773.1, and by special assessment to be collected by the Marin County Tax Collector as more specifically set forth in Government Code Section 38773.5. At least thirty (30) days prior to recordation of the lien, or submission of the report to the Tax Collector for collection of this special assessment, the Fire Chief shall mail a notice to the record owner, at the address on file with the County Assessor, of an intent to charge the property owner for the abatement costs and related administrative costs related to abatement of the public nuisance and enforcement of the provisions of this Chapter. The notice shall include a summary of the abatement and related administrative costs. The property owner may appeal the Fire Chief's decision to charge the property owner for the foregoing costs by filing a written appeal with the City Clerk within fifteen (15) days of the date of the Fire Chief's notice. The City Manager or his or her designee shall hear the appeal, and the decision of the City Manager shall be final. In addition to the foregoing, the City is authorized to file a civil action to collect the foregoing abatement and related administrative costs from the property owner or other responsible person in possession or control of the subject property, in which action the City also shall be entitled to recover its costs and reasonable attorneys' fees.

DIVISION 2:

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, clauses or phrases be declared invalid.

DIVISION 3:

The Council has determined that the vegetation management required by this Ordinance within 100 feet of structures located within the Wildland-Urban Interface described in this Ordinance is required due to the extra hazardous fire conditions that exist within such Wildland-Urban Interface, and therefore finds that the enactment of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to 14 California Code of Regulations Section 15304. In addition, the Council finds that this Ordinance is exempt from the provisions of CEQA pursuant to 14 California Code of Regulations Sections 15307 and 15308.

DIVISION 4:

This Ordinance shall be published once in full before its final passage in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage.

/s/ ALBERT J. BORO
ALBERT J. BORO, Mayor

ATTEST:

/s/ Jeanne M. Leoncini (Seal)
JEANNE M. LEONCINI, City Clerk

The foregoing Ordinance No. 1856 was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 2nd day of July, 2007 and ordered passed to print by the following vote, to wit:

AYES:	Councilmembers:	Cohen, Heller, Miller, Phillips and Mayor Boro
NOES:	Councilmembers:	None
ABSENT:	Councilmembers:	None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 16th day of July, 2007.

/s/ Jeanne M. Leoncini (Seal)
JEANNE M. LEONCINI, City Clerk