

**WORKING DRAFT-SUBJECT TO MODIFICATION BASED UPON PUBLIC
INPUT**

ORDINANCE NO. 2019-_____

**VILLAGE OF TAOS SKI VALLEY WILDFIRE PREVENTION
AND PROTECTION ORDINANCE**

**AN ORDINANCE OF THE VILLAGE OF TAOS SKI VALLEY ADOPTING
REGULATIONS TO REDUCE WILDFIRE HAZARDS BY REQUIRING THE
REMOVAL OF HAZARDOUS MATERIALS, DEBRIS, AND FLAMMABLE
VEGETATION FROM PRIVATE PROPERTY**

WHEREAS, the Village of Taos Ski Valley (“Village”) is in a high alpine forest which may be subject to hazardous wildfires;

WHEREAS, the Village of Taos Ski Valley declares uncontained wildfires to be a threat to the health, safety, and welfare of Village residents and their property;

WHEREAS, the Village of Taos Ski Valley believes it essential to adopt regulations to reduce wildfire hazards by requiring the removal of hazardous materials, debris, and flammable vegetation from public and private property within the Village, while striving to balance the needs for privacy, forest health, and overall aesthetic considerations;

WHEREAS, dangerous wildfires are abated through proper management of the forest and through limited clearing and maintenance of private and public properties throughout the Village;

WHEREAS, in order to mitigate the possibility of wildfires, as well as their severity, the Village declares that enactment of these regulations is necessary to promote fire prevention through the oversight and management of flammable vegetation, debris, and hazardous materials that constitute a fire hazard;

WHEREAS, the Village Council further declares that regulation of fire hazards on public and private property within the Village is essential to preserve

quality of life within the Village and to protect persons and structures from irreparable harm.

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF TAOS SKI VALLEY AS FOLLOWS:

SECTION I. DUTY TO ABATE AND CONTROL WILDFIRE FUELS

It shall be the duty of every owner and person in control of any real property, or interest therein, or premises which are located within the jurisdictional limits of the Village, to control and/or abate therefrom all flammable vegetation, hazardous materials, and other debris that constitute a fire hazard and which may endanger or damage neighboring property, or otherwise threaten the health, safety, welfare of the citizens of the Village of Taos Ski Valley due to the danger of wildfire.

SECTION II. STANDARDS FOR ABATEMENT AND CONTROL

This Ordinance establishes standards for abatement and control of flammable vegetation, hazardous materials, and other debris which increase the risk of wildfire on public and private property within the Village of Taos Ski Valley.

SECTION III. COLLABORATIVE FIRE MITIGATION PLANS

1. It is the intention of the Village to work collaboratively with individual property owners to create a Fire Mitigation Plan for all properties within the Village. These Plans will apply standards for abatement and control of flammable vegetation, hazardous materials, and other debris as set forth herein.
2. Each Plan will be implemented in phases in order to facilitate the long-term mitigation of wildfire hazards and to allow the property owner to budget for mitigation over time. The Village recognizes that large scale mitigation of hazardous vegetation and standing trees may take a period of months or years to fully implement. The Village will work cooperatively with individual property owners to allow sufficient time for such mitigation.
3. The Village intends that all Fire Mitigation Plans, whether on residential or commercial property, will be developed in partnership with the property owner to meet the objectives set forth in this Ordinance. The signed Plan will be a regulating agreement between the Village and the private property owner.

4. The Village will implement punitive measures only when a property owner outright refuses to cooperate in addressing and mitigating wildfire hazards as set forth herein.

SECTION IV. ENFORCEMENT OF ABATEMENT STANDARDS ON PRIVATE PROPERTY

1. Cooperation from all landowners will be encouraged through positive communication by mail and through personal contact with neighbors and Village officials and staff, including an appointed expert in forestry management and ecological health.

2. As set forth herein, abatement and control priorities for flammable vegetation, hazardous materials, and debris are established for designated property “Zones” which are based upon the location and size of properties and their relative wildfire hazard to the community.

3. The Village will coordinate with local entities to procure the expertise of a forestry and wildfire mitigation expert. This expert is referenced throughout this Ordinance as a “Director of Forestry.” The Director of Forestry will be selected and appointed by the Village as an expert to aid property owners in assessing the best practices for mitigation of wildfire hazards and to develop long-term Fire Mitigation Plans in cooperation with individual property owners. The Director of Forestry shall be qualified as a wildfire and forestry expert to manage wildfire in high alpine terrain.

SECTION V. FUEL MANAGEMENT STANDARDS

1. The Village’s “Fuel Management Standards” are established guidelines for each of the designated Zones set forth in Section VI below. These Zones address mitigation based upon the size of a property and the location of its structures in relation to potentially hazardous vegetation and other materials.

2. The intent of these Fuel Management Standards is to reduce the potential for a catastrophic crown fire within the Village, while preserving its forested appearance and natural landscape.

3. The Director of Forestry will develop a Fire Mitigation Plan with individual landowners in compliance with the guidelines established for each designated Zone. Only Plans approved by the Village’s Director of Forestry will be authorized under this Ordinance.

4. The Fire Mitigation Plan will outline a plan for mitigation of wildfire hazards and will generally involve phased clearing and mitigation, with the understanding that initial thinning will normally last a period of up to ten years before being fully implemented and ladder fuels and tree growth meet applicable Fuel Management Standards.
5. The property owner or person in control of the property will be responsible for compliance with the Fire Mitigation Plan. After the Plan is developed, the property owner will sign the Plan as an agreement with the Village.
6. In the case of failure to comply within given timeframes for clearing and mitigation, the property owner or person in control of the property will be given notice of noncompliance and an opportunity to be heard as set forth in this Ordinance.
7. Once a property has been mitigated in compliance with a Fire Mitigation Plan, the property owner or person in control of the property is responsible for maintenance thinning. Maintenance activities such as ladder fuel management shall be conducted on a yearly basis.
8. Circumstances such as drought and insect mortality can cause a property to quickly deviate from Fuel Management Standards and become noncompliant. Should a property not be maintained or otherwise become noncompliant, the owner or person in control of the property will be notified to correct the situation and will be given a timeframe for coming back into compliance, as well as an opportunity to be heard , as set forth in Section IX below.
9. For the purpose of addressing Fuel Management Standards, “ladder fuels” are defined as materials or vegetation that can carry a fire burning in low-growing vegetation to taller vegetation. Examples of ladder fuels include low-lying tree branches, shrubs, and smaller trees under the canopy of a large tree.

SECTION VI. DESIGNATED ZONES

1. All properties located within the boundaries of the Village of Taos Ski Valley shall meet the following requirements for each of the following designated Fire Protection Zones 1 through 4. Each designated Zones could be located within a given lot, although the size and configuration of the lot may vary, therefore requiring specific abatement and mitigation measures.

2. The attached Appendix A provides standard criteria for rating a given property through the use of a point system. This system is designed to aid the property owner in assessing potential risks of wildfire based upon individual circumstances existing on a given lot and should assist in the development of the Fire Mitigation Plan for that property.

A. Zone 1 /Structure Protection (zero to ten feet from a structure or deck)

Zone 1 should be devoid of flammable vegetation as much as possible. Trees within this Zone shall be considered a part of the physical structure, and the Zone will be extended accordingly. The requirements for Zone 1 are as follows:

- a. All flammable ground materials and activity slash should be removed.
- b. All ladder fuels should be removed, including shrubs beneath the crown of conifers.
- c. Separation between crowns of trees is encouraged.
- d. Where there is a maximum of five similar sized trees with overlapping crowns, there should be separation between these trees.
- e. All species of trees and underbrush should be pruned at least one to ten feet above ground and, if tree height permits, ten feet above structure eaves.
- f. Ornamental spruce and planted tree-form conifers that cannot be trimmed to structure eaves should be removed or modified through mitigation measures as approved in the Village's Fire Mitigation Plan, such as xeriscaping or vertical and horizontal spacing to reduce ignition risk. .
- g. No ornamental wood chips should be allowed, except in planting beds or designated pathways, and where allowed, should be limited to a maximum depth of two inches.
- h. No large piles of firewood should be stored from May through October immediately adjacent to structures, unless the ground is covered by at least six inches of snow.
- i. No flammable construction material should be allowed adjacent to structures.
- j. Standing dead trees are discouraged adjacent to structures.
- k. Grass and common weeds should be trimmed low to ground or eliminated.

- l. Planted vegetation should be fire resistant and low growing.
- m. There should be no low growing flammable vegetation such as juniper (including ornamental juniper) immediately adjacent to structures.
- n. Roofs and gutters should be kept free of pine needles and other debris.
- o. Conifers are discouraged when they are less than eave height and within twenty feet of vents, windows, or doors.

B. Zone 2/ Defensible Space (from ten feet to two hundred feet from structure or deck as dictated by the slope of the property in relation to the location of structures)

The intent of Zone 2 is to reduce the threat to a structure from an advancing wildfire. The requirements for Zone 2 are as follows:

- a. Remove all non-decomposing flammable ground materials and slash within thirty feet of a structure, unless that distance overlaps with another property or right-of-way.
- b. Remove all ladder fuels including brush beneath crowns.
- c. Minimum crowns separation of trees or "clumps" (maximum five similar sized trees per clump) is encouraged.
- d. Separation of brush species should be maintained.
- e. All species of vegetation should be pruned a minimum of ten feet from ground within thirty feet of a structure or one third of tree height, whichever is less. Ornamental conifers may be left untrimmed, provided that spacing and adjacent low ground fuels are maintained in order to minimize ignition potential.
- f. A minimum of ten feet is recommended between planting beds.
- g. No wood chips should be allowed, except in planting beds within thirty feet of a structure, or designated pathways, at a maximum depth of two inches.
- h. No firewood should be stacked within twenty feet of structures from May through October, unless stored under winter snow. Firewood should be stacked with no more than two cords per stack, and stacks should be separated by at least twenty feet of clear spacing.

i. Conifers are discouraged, less than eave height and within twenty feet of vents, windows, or doors.

j. Standing dead trees are discouraged within sixty feet of structures.

C. Zone 3/ Forest Woodlands (from the end of Zone 2 to the edge of the property boundary).

Zone 3 includes vacant lots and properties less than five acres in size.

Where the property is within the defensible space of another property, Zone 2 standards shall apply. This Zone shall maintain an open forested appearance with well-spaced trees and openings.

Zone 3 should contain a variety of tree species of various ages. Different species groups will provide for multiple age structure and size structure. The requirements for Zone 3 are as follows:

a. Manage all ladder fuels to mitigate fire hazards.

b. Separation and spacing of vegetation and trees is encouraged.

c. Remove and utilize bole wood over six inches in diameter. Bole wood is defined as fallen or cut wood generally in excess of six inches in diameter. It can be utilized on site by cutting it into sections so that it lays perpendicular to the fall line. It should not be stacked or clustered or placed against live trees.

d. Trim all species to six feet or one-third the height of the tree, whichever is less, measuring from the uphill side of the tree. Ensure that shorter tree groups are not upwind of taller tree groups, and remove or trim trees where necessary to meet this standard.

e. Mastication and chipping of slash are allowed for slash disposal, however, all residue must still be removed. Bole wood over six inches in diameter should be removed if possible or lopped and laid perpendicular and anchored.

f. All slash should be removed, masticated, or chipped. On steep slopes or where access is limited, alternative fuels management slash treatments may be approved by the Director of Forestry, such as lop and scatter with material anchored and lying perpendicular to the slope, or on-site burning with an authorized burn permit. Slash is defined as combustible materials such as

leaves, pine needles, downed trees, standing small trees, and thick vegetation that is dry and prone to initiate a wildfire.

g. Up to three, twelve inch in diameter, or larger non-hazardous, standing dead trees may be retained per acre for wildlife habitat.

h. Recent insect infested trees, or any recently dead or diseased tree, must be harvested and removed. Diseased trees can be identified by the Director of Forestry, but include dying trees that are infested with pine beetle or other insects. Appropriate measures should be used in the removal of diseased trees to ensure that infestation does not spread.

i. All non-decomposing ground debris greater than five inches in diameter should be removed, except that up to five downed logs per acre, greater than twelve inches in diameter, may be retained for wildlife habitat.

D. Zone 4/Large Tracts (more than five acres, with or without structures)

Zone 4 should have an open, forested appearance. These properties will be treated with the intent to keep a wildfire on the ground to minimize spotting potential. The goal of treatment is to prevent a stand replacing crown fire. Some untreated areas may remain to meet agreed upon objectives providing there is sufficient treated area surrounding the untreated areas to mitigate crown fire spread.

For Zone 4, a fuels reduction plan shall be prepared and/or approved as part of the Fire Mitigation Plan developed between the property owner and the Village's Director of Forestry. Where structures are involved, the Zone 1 and 2 standards will apply.

The requirements for Zone 4 are as follows:

a. Treated areas of the properties should have no ladder fuels. The cutting of some small diameter vegetation is encouraged.

b. Many larger trees are mature and ready to be harvested. The older Spruce and Fir are often at the end of their life and may have rotten cores, even while looking healthy. Therefore, mitigation or removal of these trees is encouraged.

c. A good mix of tree type and size across the property is desirable.

- d. Separation of trees is encouraged. Modification of this separation may be approved by the Director of Forestry to meet specific objectives.
- e. Perimeter thinning should be of sufficient width to prevent a sustainable crown fire from advancing to an adjacent property.
- f. Every effort should be made to remove and utilize bole wood over five inches in diameter. Bole wood not removed should be felled along the contour or otherwise treated per recommendation of the Director of Forestry. Except when the property has a fuels management plan approved by the Director of Forestry, removal of any live tree greater than twelve inch DBH (Diameter at Breast Height) or for more than four trees less than twelve inch DBH and greater than four inches DBH will require a Tree Cutting permit from the Planning Director.
- g. Where possible, slash should be treated with full removal, shallow mastication, or chipping. Lop and scatter may be used as a less desirable alternative.
- h. If lop and scatter is allowed, slash should be lopped and scattered to less than two feet in depth to accelerate decomposition. Lopped and scattered slash should not be placed under the drip line of residual trees. Lopped wood should not be left in piles or leaned against residual trees.
- i. No standing dead trees are allowed within one hundred and fifty feet of the property perimeter due to risks to adjacent properties.
- j. Trees should be pruned where appropriate to meet objectives, but may be left unpruned if separation is adequate to prevent fire movement from tree to tree, based on the determination of the Director of Forestry.

E. Wildland Urban Interface Zone (WUI)

- a. All properties within the limits of the Village of Taos Ski Valley are designated as within the Wildland Urban Interface Zone.
- b. The wildland-urban interface (WUI) is the area where houses meet or intermingle with undeveloped wildland vegetation. The WUI is thus a focal area for human- environment conflicts, such as the destruction of homes by wildfires.
- c. The Village, in collaboration with property owners, will strive to eventually map the Wildland Urban Interface Zone to educate the public about hazards and to aid in the prevention of future catastrophic wildfires.

SECTION VII. FEES IMPOSED

The Village may enact fees through the passage of an Ordinance to address collection of slash and other waste byproducts created in the wildfire mitigation process, or to otherwise aid in the implementation and enforcement of this Ordinance.

SECTION VIII. RESPONSIBILITY FOR ADMINISTRATION.

This Ordinance shall be administered by the Village of Taos Ski Valley Administrator, or his authorized designee, with assistance from the Director of Forestry, Chief of Police, Fire Chief, Planning Director, and Building Official.

SECTION IX. VIOLATIONS/NOTICE/ABATEMENT.

1. Violation of any provision of this Ordinance is unlawful and subject to the Enforcement/Penalties provisions set forth in this Ordinance.
2. Any person seeking to report a violation of any provision of this Ordinance shall make such report to the Village of Taos Ski Valley.
3. Upon notice of a violation of this Ordinance, the Village Administrator, or his designee, shall issue a written notice of violation to the owner, lessor, occupant, or person in control of the property, as his or her name appears on the Taos County tax rolls and to the address as shown in the records of the County tax assessor. The notice shall be substantially in the form used to notify property owners of code violations. The notice shall include a copy of the standards for abatement and control specified in this Ordinance, the specific violations of this Ordinance, and the procedure needed to come into compliance. The notice shall be hand delivered or sent via certified mail, return receipt requested.
4. The notice shall give the property owner, lessor, occupant, or person in control of the property sixty (60) days within which to come into compliance with the Ordinance and shall specifically state any deadline in the notice. This time frame may be reduced in cases of an emergency. The Village encourages property owners receiving such notice to communicate with the Village in order to work cooperatively in mitigation efforts, so that the Village may extend any compliance deadlines, where appropriate.
5. If the owner, occupant, lessor, or other person in control of the property fails to comply with the notice, the Village Administrator, or his designee, may apply to

the Village Council for written authorization to enter the property of the person who is in violation of this Ordinance and take any and all actions necessary to abate the conditions that have resulted in such violation, at the property owner's expense.

6. Such application to the Village Council shall include a copy of this Ordinance; a sworn or affirmed affidavit stating the factual basis for such relief, including evidence that the owner, occupant, lessor, or other person responsible for the property has received notice of violation, or that reasonable efforts to serve the notice have been made but to no avail; a general description of the location of the property that is the subject of the action; and a list of the corrective measures needed to come into compliance with this Ordinance. Notice of the full application to the owner, lessor, occupant, or person in control of the property should be sent via certified mail, return receipt requested, or delivered in person and shall include the date scheduled for hearing of the matter before the Village Council.

7. Following a hearing, at which the property owner, occupant, lessor, or other person responsible for the property, may present his case, the Village Council will issue findings and conclusions regarding the application of noncompliance. If a violation is found, these findings and conclusions shall be sent to the owner, occupant, lessor, or other person in control of the property within ten (10) days after the date of their issuance by certified mail, return receipt requested, or hand delivered. If the property is not brought into compliance within sixty (60) days of the mailing or delivery of the Council's findings and conclusions, the Village will enter the property and abate or remedy the condition, at the property owner's expense

8. The Village shall create a written inventory of any property impounded by the Village during the abatement process.

9. The Village shall provide a detailed invoice to the person violating this Ordinance, which includes the entire cost of the abatement, plus an additional five (5) percent for inspection and other incidental costs to the Village in connection therewith. The invoice shall be hand delivered or sent via certified mail, return receipt requested.

10. The person violating this Ordinance shall pay the outstanding invoice to the Village within thirty (30) days of the date of the delivery or mailing of the invoice.

If not paid in full, these costs will become a lien against the property that was the subject of the violation, until paid-in-full, and shall have priority based upon the lien's date of recording. The Village Clerk will certify the amount of the lien to the Taos County Clerk and Recorder. Liens will be enforced and foreclosed against the property as provided by law.

SECTION X. ADDITIONAL ENFORCEMENT/PENALTIES.

Any person who violates this Ordinance shall upon conviction be subject to a fine not exceeding three hundred dollars (\$300.00), or imprisonment for a period not exceeding ninety (90) days, or both such fine and imprisonment. Any violation continued for a period of thirty (30) days shall be prosecuted and treated as a separate offense.

SECTION XI. VILLAGE CONTROLLED PROPERTIES

All properties controlled, managed or owned by the Village of Taos Ski Valley will comply with this Ordinance.

SECTION XII. REMEDIES NOT EXCLUSIVE.

Nothing in this Section shall be construed to limit the Village's authority to institute actions for injunction, mandamus, abatement, or other appropriate actions to prevent, enjoin, abate, and/or remove a violation of this Ordinance or to enforce this Ordinance. The Village may pursue both criminal and civil enforcement actions.

SECTION XIII . VIOLATIONS DEEMED A PUBLIC NUISANCE.

Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

SECTION XIV. NON-WAIVER OF IMMUNITY.

Nothing contained in this Ordinance shall be construed as waiving the immunity of the Village, its officers, agents, servants and employees, as may be provided for in the New Mexico Tort Claims Act, and neither the Village, nor its officers, agents, servants and employees shall be liable to any person for enforcement of the provisions of this Ordinance.

SECTION XV. SEVERABILITY.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION XV. PUBLICATION AND EFFECTIVE DATE.

This Ordinance shall be in full force and effect after its adoption, approval and publication as provided by law.

PASSED, APPROVED AND ADOPTED THIS ____ day of _____, 2019.

VILLAGE OF TAOS SKI VALLEY, NEW MEXICO

Christof Brownell, Mayor

ATTEST:

Ann Wooldridge, Village Clerk