

Ordinance No. 2008-03

**ADMINISTRATIVE CITATION ORDINANCE
OF THE DEL NORTE SOLID WASTE MANAGEMENT AUTHORITY**

A Joint Powers Authority of the
City of Crescent City
And the
County of Del Norte

The Board of Commissioners of the Del Norte Solid Waste Management Authority finds the following to be true:

WHEREAS, the Del Norte Solid Waste Management Authority is a Joint Powers Authority of the City of Crescent City and the County of Del Norte formed in part to manage the disposition of solid waste and other discards and also to abate public nuisances; and

WHEREAS, under the authority provided by Government Code Section 53069.4, the Board desires to adopt an alternative enforcement mechanism to allow violations of Authority ordinances to be processed in a civil manner through the issuance of an administrative citation; and

WHEREAS, the enforcement of Authority ordinances is a matter of local concern and serves an important public purpose;

NOW, THEREFORE, the Board of Commissioners of the Del Norte Solid Waste Management Authority does ordain as follows:

SECTION 1. GENERAL PROVISIONS

1.01 Statement of Purpose

(a) The Board finds that there is a need for an alternative method of enforcement for violations of Authority ordinances. The Board also finds that an appropriate method of enforcement for violations is an administrative citation program as authorized by Government Code Section 53069.4.

(b) The procedures established in this Ordinance shall be in addition to criminal, civil or any other legal or equitable remedy established by law which may be pursued to address violations of Authority ordinances.

(c) The Board hereby finds and determines that the enforcement of Authority ordinances is a matter of local concern and serves an important public purpose. Pursuant to Government Code section 53069.4, the Authority adopts this administrative citation program in order to achieve the following goals:

- (1) To protect the public health, safety and welfare of the residents of Del Norte county;
- (2) To gain compliance with Authority ordinances and regulations adopted pursuant thereto in a timely and efficient manner;

- (3) To provide for an administrative process to appeal the imposition of administrative citations and fines;
- (4) To provide a method to hold parties responsible when they fail or refuse to comply with the provisions of an Authority ordinance;
- (5) To minimize the expense and delay where the alternative remedies are to pursue responsible parties in the costly and time-consuming civil or criminal justice system.

(d) Use of this chapter for the enforcement of Authority ordinances shall be at the sole discretion of the Authority, and its officers, agents and employees.

1.02 Title. This Ordinance shall be known and cited as the "Administrative Citation Ordinance" and will be referred to in this document as "this Ordinance."

SECTION 2. DEFINITIONS

- 2.01 Authority** shall mean the Del Norte Solid Waste Management Authority.
- 2.02 Board** shall mean the Board of Commissioners of the Del Norte Solid Waste Management Authority.
- 2.03 City** shall mean the City of Crescent City in the State of California.
- 2.04 County** shall mean the County of Del Norte in the State of California, including the incorporated territory comprising the City of Crescent City.
- 2.05 Correction Period** shall mean the period of time designated in the notice of violation within which a Responsible Party may correct or abate the violation.
- 2.06 Days** shall mean calendar days unless otherwise indicated.
- 2.07 Enforcement Officer** shall mean any officer or employee authorized by resolution of the Board to enforce the Authority ordinances or his/her designee.
- 2.08 Responsible Party** shall mean any individual, owner, or occupant of real property, or owner or authorized agent of any business, company, or entity, or the parent or legal guardian of any person under the age of eighteen years, who causes or maintains or allows to continue, by his or her action or failure to act, a violation of an Authority ordinance.

SECTION 3. VIOLATIONS AND CITATIONS

- 3.01 Authority.** Any person violating any provision of an Authority ordinance may be issued an administrative citation by an Enforcement Officer as provided in this Ordinance. A violation which may be cited includes, but is not limited to, a violation of the Solid Waste and Recycling Responsibility Ordinance, the Nuisance Abatement Ordinance, or any other ordinance duly adopted by the Board, or the failure to comply with any condition imposed by any entitlement, permit, or license issued or approved under an Authority ordinance or resolution.
- 3.02 Fine Schedule**
 - (a) Each and every day a violation of an Authority ordinance exists constitutes a separate and distinct offense.
 - (b) A civil fine shall be assessed by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the Authority.

(c) The amount for each violation shall be:

- (1) A fine not to exceed \$100.00 for the first violation;
- (2) A fine not to exceed \$200.00 for the second violation of the same ordinance provision, or condition of a permit, license, or entitlement within one year from the date of the first violation;
- (3) A fine not to exceed \$500.00 for each additional violation of the same ordinance provision, or condition of a permit, license, or entitlement within one year from the date of the second violation.

3.03 Notice of Violation.

(a) Service. Except as provided in Section 3.04, upon determining that a violation exists, the Enforcement Officer shall serve a notice of violation upon one or more of the Responsible Parties prior to issuing an administrative citation. Service shall be completed utilizing one of the methods of service identified in subsection (b) of Section 3.05.

(b) Contents. The notice of the violation shall include:

- (1) The date, approximate time and location of the violation;
- (2) The conditions constituting the violation;
- (3) The specific ordinance and section violated;
- (4) A specified time period from the date of service of the notice of violation within which the violation must be corrected or abated;
- (5) A statement that in the event the violation is not corrected or abated by the expiration of the Correction Period, the responsible party shall be subject to an administrative fine under this chapter;
- (6) A statement of the fine that will be levied if the violation is not corrected; and
- (7) A statement that the Responsible Party may submit in writing to the enforcement officer any information relating to a determination of the existence of a violation.

(c) Correction or abatement period. The notice of violation shall provide the Responsible Party a reasonable period of time from its date of service to correct the violation, except that if the violation creates an immediate danger to the health or safety of persons or property, the notice of violation may require that the violation be corrected immediately. If the Enforcement Officer determines that a good faith effort is being made to correct or abate the violation, he or she may grant an additional period of time to complete the correction. If the violation cannot be completely corrected, the violation must be abated in the manner described in the notice of violation.

(d) Acknowledgment of correction or abatement. When the Enforcement Officer determines that the violation has been corrected or satisfactorily abated, the Enforcement Officer shall provide the Responsible Party with a letter acknowledging that the correction has occurred. If the violation is corrected or satisfactorily abated within the Correction Period, no administrative citation shall be issued.

(e) Only one notice of violation shall issue for a continuing violation. Second and subsequent citations may be issued and served based on the original notice of violation.

3.04 Direct Citation

Notwithstanding any other provision of this chapter, no notice of violation is required, and a citation may be issued forthwith, when either of the following circumstances exist:

- (a) The violation creates an immediate danger to health or safety, or
- (b) The violation occurs within the immediate vicinity of a posted notice of the requirements of the ordinance and section being violated.

3.05 Administrative Citation

(a) If a notice of violation has been served upon a Responsible Party and the violation has not been corrected or abated within the Correction Period, an administrative citation may be issued to that Responsible Party by an Enforcement Officer for a violation of the ordinance.

(b) An administrative citation shall be served on the Responsible Party by an Enforcement Officer in one of the following ways:

(1) Personal service. The Enforcement Officer may personally serve the responsible Party and obtain the signature of the Responsible Party on the administrative citation. If personal service is affected, but the Responsible Party refuses or fails to sign the administrative citation, the failure or refusal to the sign shall not affect the validity of the service of the administrative citation or of any of the subsequent proceedings. The Enforcement Officer shall note on the administrative citation the failure or refusal of the Responsible Party to sign the citation. Date of service under this subsection shall be the date of actual service.

(2) Service by mail. As an alternative to personal service, the Enforcement Officer may serve the administrative citation by mail as hereinafter set forth. The administrative citation shall be mailed to the Responsible Party by certified mail, postage prepaid and return receipt requested. Simultaneously, the citation may be sent by first class mail. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned by the United States Postal Service undelivered. In the case of service by certified mail for which a signed receipt is returned, the date of service shall be the date of the signing of the receipt. In the case of service by regular first class mail, the date of service shall be the date upon which such mail was deposited in the United States Mail with postage prepaid, plus three days.

(3) Service by posting notice. If the Enforcement Officer does not succeed in serving the Responsible Party by personal service or by mail as set forth above, the Enforcement Officer shall post the administrative citation on any real property within the County in which the Authority has knowledge that the Responsible Party has a legal interest, and such posting shall be deemed effective service. The date of service of a posted notice or citation shall be the date of actual posting, plus five (5) Days.

3.06 Contents of Administrative Citation

Each administrative citation shall contain the following information:

- (a) The date and approximate time when the violation was observed;
- (b) The name and address of the Responsible Party and, if applicable, the physical address or description of the location where the violation exists or occurred;
- (c) The ordinance and section violated and a description of the violation;
- (d) When applicable, the date the notice of violation was served on the Responsible Party and the specified time period for correction of the violation;
- (e) When applicable, a statement that the violation has not been corrected within the correction period;
- (f) The amount of the fine;
- (g) An explanation of how, where, to whom and the time period within which the fine must be paid;
- (h) Identification of rights of appeal, including the time within which the citation may be contested and how to appeal the citation;
- (i) A statement that if the fine is not paid within thirty (30) calendar days a fifty percent (50%) late penalty will be assessed; and
- (j) The name and signature of the Enforcement Officer along with the date of issuance of the citation and, if possible, the signature of the Responsible Party.

3.07 Satisfaction of Administrative Citation

- (a) If payment of a fine is not received by the Authority within thirty (30) Days of service of the administrative citation, then a late fee shall be assessed. The amount of the late penalty shall be fifty percent (50%) of the total amount of the fine owed.
- (b) Payment of the fine shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the Authority.
- (c) If the Responsible Party fails to correct the violation, subsequent administrative citations may be issued for maintaining, continuing or repeating the same violation.
- (d) The Authority may collect any past due administrative citation fines and/or late payment charges by the use of the small claims court, or any other legal remedy.
- (e) The Board may adopt a settlement agreement process for the settlement of violations of Authority ordinances which have been issued an administrative citation pursuant to this Ordinance.

3.08 Appeal of Administrative Citation

Any recipient of an administrative citation may contest that there was a violation of an ordinance or that he or she is a Responsible Party by completing a request for appeal form and returning it to the Authority within fifteen (15) Days from the date of service of the administrative citation, together with an advance deposit in the amount of the fine. Any administrative citation fine amount that has been deposited shall be refunded if it is determined, after hearing, that the person or

entity charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

SECTION 4. HEARINGS

4.01 Hearing Officer

(a) The Board shall appoint a hearing officer for the administrative citation hearing. The hearing officer may not be an Authority employee. The compensation of the hearing officer, if any, shall be paid by the Authority. Compensation shall not be directly or indirectly conditioned upon whether or not administrative citations are upheld by the hearing officer.

(b) The hearing officer has the power to administer oaths and affirmations. Oral evidence shall only be taken upon oath or affirmation.

4.02 Hearing Procedure

(a) Request. No hearing to appeal an administrative citation shall be held unless and until a request for hearing form has been completed and submitted and an advance deposit of the fine amount has been made in accordance with Section 3.08.

(b) Timing. A hearing before the hearing officer shall be set for a date that is not less than fifteen (15) Days and not more than sixty (60) Days from the date the request for hearing was filed. The person requesting the hearing shall be notified of the time and place set of the hearing at least fifteen (15) Days prior to hearing via certified mail, postage prepaid and return receipt requested.

(c) Evidence.

(1) At least ten (10) Days prior to the hearing, the recipient of an administrative citation shall be provided with copies of the citations, reports and other documents submitted or relied upon by the Enforcement Officer. If the Enforcement Officer submits any additional written report or other documentary evidence concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of each such report or document shall also be served by mail on the person requesting the hearing at least five (5) Days prior to the date of the hearing. No other discovery is permitted.

(2) Formal rules of evidence shall not apply. Evidence shall be admitted in the hearing if it is the kind of evidence upon which a reasonable person would rely in the conduct of serious affairs.

(3) The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the Responsible Party has caused or maintained the violation of the ordinance on the date(s) specified in the administrative citation.

(4) The Responsible Party contesting the administrative citation shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation, and to cross-examine witnesses and question evidence.

- (5) The notice of violation, the administrative citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- (d) Record. A record of the entire hearing proceedings shall be made by an audio recording device operated by the hearing officer.
- (e) Continuance. The hearing officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation prior to issuing a written decision; both the Enforcement Officer and the recipient may be represented by counsel at the hearing.
- (f) Failure to Appear. The failure of any recipient of an administrative citation to appear at the scheduled hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

4.03 Administrative Order

- (a) After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision (known as an "administrative order") within ten (10) Days of the hearing to uphold or cancel the administrative citation and shall briefly state the reasons for that order.
- (b) If the administrative order upholds the administrative citation, then the fine amount deposited with the Authority shall be retained by the Authority.
- (c) If the administrative order cancels the administrative citation, then the Authority shall promptly refund the amount of the deposited fine.
- (d) The hearing officer shall have discretion to reduce the fine or condition return of all or part of the fine upon the correction of the violation.
- (e) The recipient of the administrative citation shall be served a copy of the administrative order by the Authority via certified mail, postage prepaid and return receipt requested.
- (f) The administrative order by the hearing officer shall be final.

4.04 [reserved]

4.05 Judicial Review

Any person aggrieved by the administrative order issued by the hearing officer may obtain a review of the administrative order by filing a petition for review with the Del Norte Superior Court in accordance with the timelines and provisions set forth in Government Code section 53069.4, or any successor provision thereto.

SECTION 5. PUBLICATION. The Board shall cause this Ordinance to be published once within fifteen (15) days after passage in a newspaper of general circulation, printed, published and circulated in the County in accordance with Sections 25124 and 36933 of the Government Code.

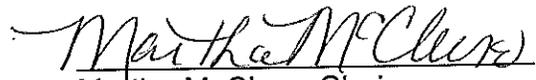
SECTION 6. SEVERABILITY. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board hereby declares that it would have passed and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid or unconstitutional.

SECTION 7. EFFECTIVE DATE. This Ordinance shall become effective thirty-one (31) days after its final adoption.

INTRODUCED at the regular meeting of the Board of Commissioners of the Del Norte Solid Waste Management Authority held on the 10th day of September, 2008, by motion of Commissioner Tynes and seconded by Commissioner Burns.

PASSED, APPROVED AND ADOPTED by the Board of Commissioner of the Del Norte Solid Waste Management Authority on the 6th day of October, 2008 by the following vote to wit:

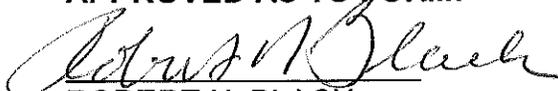
AYES: Commissioners Sullivan, Burns, Tynes, Hatfield, and McClure
NOES: none
ABSENT: none
ABSTAIN: none


Martha McClure, Chair

ATTEST:


NAME
Clerk

APPROVED AS TO FORM:


ROBERT N. BLACK
DNSWMA Attorney