

**Ordinance No. 2008-02**

**NUISANCE ABATEMENT 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 Governing Board of the Del Norte Solid Waste Management Authority finds the following to be true:

WHEREAS, the Authority is a Joint Powers Authority of the City of Crescent City and the County of Del Norte, formed in part to become the single local government agency responsible to comply with the requirements of the California Integrated Waste Management Act of 1989, as amended; and

WHEREAS, the Authority has developed the policies in this Ordinance to clearly establish that the unhealthy accumulation of solid waste or other discards and the illegal dumping of such discards in Del Norte County are public nuisances warranting enforcement action; and

WHEREAS, the Authority has adopted an ordinance to establish community standards for solid waste, recycling, composting and hazardous waste management responsibilities for residents, businesses, landlords, agencies, and institutions; and

WHEREAS, the Authority has determined that the provisions of this Ordinance establish necessary tools for the Authority and its enforcement officer to ensure that all residents, businesses, agencies, and institutions legally participate and contribute to the programs and facilities for integrated waste management in Del Norte County; and

WHEREAS, the Authority empowered the Del Norte Solid Waste Task Force (SWTF) to convene public meetings to discuss strategies to address illegal dumping and blight and has considered their feedback in drafting this Ordinance;

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

**SECTION 1. GENERAL**

**1.01 Purposes.**

- (a) It is the purpose of this Ordinance to protect the health, safety and welfare of the residents of Del Norte County and the City of Crescent City through the prevention and abatement of public nuisances associated with the mismanagement of discards, the

blight associated with inappropriately accumulated materials, improperly stored discards, items, products and packaging which are hazardous, and illegal disposal. It shall be liberally construed to that end.

- (b) It is the intention of the Board to minimize the burden placed on property owners and taxpayers in carrying out the purposes set forth in subsection (a) above. Accordingly, those methods of abatement are to be favored which are least costly and which are most directly related to protecting the public health, safety and welfare.
- (c) The Board further intends that this Ordinance and its enforcement will include a minimal amount of duplicative effort with respect to the County and City ordinances related to Nuisance Abatement.
- (d) The Del Norte Solid Waste Management Authority acknowledges that the City and County retain the right and responsibility to control or abate nuisances related to zoning, building or fire safety, parking and grading.

**1.02 Title.** This Ordinance shall be known and cited as the "Nuisance Abatement Ordinance" and will be referred to in this document as "this Ordinance."

**1.03 Application.** This Ordinance applies to all real property owned by an individual, firm partnership, joint venture, association, corporation, estate or trust. In addition, it applies to any real property owned by the United States and any agency of the United States, the state of California and any agency of the State, any city, and any public district or political subdivision of the State insofar as it is legally possible to enforce this Ordinance, or any portion thereof, against such entities.

## SECTION 2. DEFINITIONS

**2.01 Authority** means the Del Norte Solid Waste Management Authority.

**2.02 Board** means the Board of Commissioners of the Del Norte Solid Waste Management Authority, the Board-appointed Hearing Officer, or other Designee of the Board.

**2.03 City** means the City of Crescent City in the State of California.

**2.04 County** means the County of Del Norte in the State of California, including the incorporated territory of the City of Crescent City.

**2.05 Days** means calendar days unless indicated otherwise.

**2.06 Director** means the Director of the Authority or his/her designee.

**2.07 Discards** means materials or products which are stored as no longer usable to the generator but which are separated in preparation for collection, as reusable products or components, as recyclable commodities, as food scraps, as organic materials, as hazardous waste, or as solid waste.

- 2.08 **Enforcement Officer** means the Person(s) designated by the Director to enforce ordinances adopted by the Board of Commissioners.
- 2.09 **Owner** means the Person(s) holding legal title to the Premises.
- 2.10 **Person** means an individual, firm, limited liability company, association, partnership, industry, public or private corporation, or any other entity whatsoever.
- 2.11 **Premises** means any tract or parcel of land within the County, with or without habitable buildings or appurtenant structures which is the subject of a public nuisance notice of violation, citation or order, as provided for in this Ordinance.
- 2.12 **Property** means real property unless otherwise indicated, which includes the land and anything growing on, attached to, or erected on it.
- 2.13 **Responsible Party** means and includes every Owner of, or Person who has the care and control of, an inhabited residence, unoccupied parcel, or place of business within the County. Property managers of rental properties are Responsible Parties only to the extent that such property manager has been authorized by the Owner to incur maintenance expenses and set rent on behalf of the Owner of the Property managed.

### SECTION 3. DECLARATION OF NUISANCE

- 3.01 **Nuisances.** The following are declared to be a public nuisance, which may be abated in accordance with the provisions of this Ordinance:
  - 3.01.1 Any violation of the Authority's Solid Waste and Recycling Responsibility Ordinance;
  - 3.01.2 Activities prohibited by California Penal Code Sections 370 and 371 as enacted or hereafter amended;
  - 3.01.3 Any dangerous, unsightly, or blighted condition that is detrimental to the health, safety or welfare of the public;
  - 3.01.4 Anything defined as a nuisance pursuant to state or federal law including but not limited to the California Civil Code, Division 4, Part 3;
  - 3.01.5 Any condition in violation of the rubbish abatement laws defined at Government Code Sections 39560 et seq. as enacted or hereafter amended and enforced by Authority ordinances and resolutions;
  - 3.01.6 Any condition that constitutes a visual blight. For purposes of this Ordinance, visual blight is any unreasonable or unlawful condition or use of real property, appurtenant structures or building exteriors which by reason of its appearance as viewed at ground level from the public right-of-way or from neighboring Property, is detrimental to the Property of others or to the value of Property of others, offensive to the senses, or reduces the aesthetic appearance of the neighborhood. Visual blight includes, but is not limited to, the keeping, storing, depositing,

scattering over or accumulation on Property of any of the following:

- (a) Junk, trash, debris, scrap metal, rubbish, packing materials, tires, mattresses, box springs, or appliances,
- (b) Abandoned, discarded or unused objects or equipment such as furniture, stoves, appliances, refrigerators, freezers, cans or containers, automotive parts and equipment,
- (c) Abandoned, wrecked, disabled, dismantled or inoperative vehicles, boats, trailers, or parts thereof (except inoperative vehicles that are not abandoned, are either registered or are certified pursuant to Section 4604 of the California Vehicle Code, and are in an active state of renovation or restoration), abandoned excavators, or other large construction equipment, parts or portions thereof;

- 3.01.7 Property in urban zones that is used for the keeping, storage, depositing or accumulation of dirt, sand, gravel, concrete or other similar materials, for an unreasonable period, which constitutes a visual blight or reduces the aesthetic appearance of the neighborhood provided, that such of the listed materials as are being used or are to be used for a project of repair or renovation for which a permit, including a building permit, has been obtained may be stored for such period of time as is reasonably necessary to expeditiously complete the project.
- 3.01.8 The presence of a junkyard or automobile-dismantling yard, except in an industrial zone pursuant to a special use permit;
- 3.01.9 The accumulation on any Property of more than one abandoned, wrecked, disabled, dismantled or inoperative vehicle or parts thereof stored or accumulated where they are visible to the public;
- 3.01.10 Vehicle or equipment motors, transmissions, and all other vehicle or equipment accessories, parts, and fluids, stored or accumulated on any Property where they are visible to the public;
- 3.01.11 Inoperable or abandoned trailers, campers, boats or planes located on vacant Property or in front of yards of developed lots, viewable from the public right-of-way, other than driveways;
- 3.01.12 The maintenance or use of any Property in violation of any provision of state or federal law, or the ordinances of the Del Norte Solid Waste Management Authority;
- 3.01.13 Continuous yard, garage or estate sales on Property with any residential zoning designation. A sale is deemed to be "continuous" if it occurs more often than three Days per calendar quarter;

- 3.01.14 Property in urban zones that is not kept clean and sanitary and free from unreasonable accumulations of offensive matter including, but not limited to, dead animals, animal parts, and animal feces and urine;
- 3.01.15 Property which is likely to or does harbor rats or other vermin, vectors, feral pets, and other non-domesticated animal nuisances;
- 3.01.16 Commercial Properties where products or materials are sold or distributed which are subject to the Extended Producer Responsibility sections of the Authority's Solid Waste and Recycling Responsibility Ordinance and/or the Authority Extended Producer Responsibility Framework Ordinance as amended; and
- 3.01.17 Any other condition declared by a State, County, or City statute, code or regulation to be a public nuisance.

#### **SECTION 4. VIOLATIONS AND PENALTIES**

- 4.01 Continuing Violations.** Acts, omissions or conditions in violation of this ordinance which continue, exist, or occur on more than one (1) day constitute separate violations and offenses on each such day.
- 4.02 Criminal Violations.** Any Responsible Party, whether owner, lessee, sublessor, sublessee or occupant of any Property who violates the provisions of this ordinance shall be guilty of a misdemeanor for each violation.
- 4.03 Civil Penalties.** Any Responsible Party having been duly served with notice as prescribed in Section 5.03 of this Ordinance, who fails to commence the required abatement within five (5) Days or to complete the required abatement within fifteen (15) Days, upon conviction thereof, shall be liable for a civil penalty assessed by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the Authority as provided for in the Authority's Administrative Citation Ordinance and pertinent resolutions.
- 4.04 Civil Penalties Not Applicable.** The charges imposed by this section shall not apply if:
  - 4.04.1 The Responsible Party establishes that, at the time he or she acquired the Premises, (1) a violation of this code existed on the Property, (2) the Responsible Party did not have actual or constructive notice of the existence of the violation, and (3) within fifteen (15) Days after the mailing of the notice of nuisance, the Responsible Party initiates and pursues, with due diligence, good faith efforts, as determined by the Enforcement Officer, to the meet the requirements of this Ordinance; or
  - 4.04.2 The Responsible Party establishes that (1) within fifteen (15) Days after the date of mailing or service of the notice of nuisance, the Responsible Party removed the personal property,

the use or structure which constituted the nuisance, and (2) the Responsible Party had not previously been mailed a notice of nuisance with regard to violation of the same ordinance section.

- 4.05 Treble Damages.** As authorized by Government Code Section 25845.5, upon a second or subsequent determination within a two-year period that a Responsible Party of Property is accountable for a condition that may be abated in accordance with this Ordinance, except for those conditions abated pursuant to Section 17980 of the Health and Safety Code, the Responsible Party shall be liable for treble the costs of abatement.
- 4.06 Administrative Penalties.** In addition to criminal sanctions, and civil penalties as provided in this section, administrative penalties may be imposed pursuant to the Administrative Citation Ordinance against any Responsible Party, whether owner, lessee, sublessor or sublessee or occupant of any Premises or Property in violation of any of the provisions of this Ordinance. Imposition, enforcement, collection and administrative penalties imposed shall also be conducted pursuant to the Administrative Citation Ordinance.
- 4.07 Attorney's Fees.** In those cases in which the Authority, at the initiation of an individual action or proceeding, elects to seek recovery of its own attorney's fees, the prevailing party in any such action, administrative proceeding, or special proceeding to abate a nuisance shall be entitled to recover attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the Authority in the action or proceeding.
- 4.08 Obstruction of Abatement.** Any Person who obstructs, impedes or interferes with any representative, officer, employee or contractor of the Authority or with any Person who owns or holds any estate or interest in a building which has been ordered to be vacated, repaired, rehabilitated or demolished pursuant to the provision of this Ordinance when any of the aforementioned individuals are engaged in the work of abating any nuisance as required by the provisions of this Ordinance, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to lawfully engaged proceedings involving the abatement of a nuisance is guilty of a misdemeanor.

## **SECTION 5. DETERMINATION OF NUISANCE**

- 5.01 Inspection Warrant.** When there is a report of the existence of public nuisance or other reason to believe that a public nuisance exists on a certain Property, but the Responsible Party or occupier refuses consent to inspect it, or where circumstances justify the failure to seek consent to inspect, the Authority may proceed to obtain an inspection warrant pursuant to California Code of Civil Procedure Sections 1822.50 et seq. to enter and inspect such Property.

- 5.01.1 Exception. Any officer or employee of the City or County who is a duly registered environmental health specialist under state law may cite a Person without a warrant whenever he or she has reasonable cause to believe that the Person to be issued the citation has committed a misdemeanor in his or her presence, which misdemeanor is a violation of any statute or ordinance relating to public health which said sanitarian has a duty to enforce.
- 5.01.2 Exception. In addition, no inspection warrant shall be required where there is a clear and present threat or danger to the public health, safety or welfare of the occupants of structures or to the public. Examples of such conditions may be found in cases involving contagious diseases, extreme fire hazard, unwholesome food, or collapsing buildings. In such cases, immediate abatement of a public nuisance is justified as provided in Section 5.02 of this ordinance and as authorized by Government Code Section 25845(a).
- 5.02 Emergency Abatement.** Notwithstanding any other provision of this Ordinance, if it appears to the Enforcement Officer that a public nuisance represents an immediate threat or danger to the public health or safety, the Enforcement Officer may abate such public nuisance to the extent necessary to eliminate such threat or danger to the public health or safety without following the notice and hearing requirements set forth in Sections 5.03 and 5.05 of this Ordinance.
- 5.02.1 Costs and Accounting. The Responsible Party shall be accountable for the costs of abatement which shall be confirmed in accordance with Section 6 of this Ordinance within thirty (30) Days after the emergency abatement is commenced.
- 5.02.2 Objection by Responsible Party. In addition to evidence required to be presented at the accounting hearing as set forth in Section 5.05 of this Ordinance, the Responsible Party shall have the right to present evidence to prove that a nuisance did not exist at the time of the emergency abatement; and having provided such evidence satisfactorily to the Board, the costs of an emergency abatement shall rest with the Authority.
- 5.03 Notice of Nuisance.** Whenever the Enforcement Officer determines that a public nuisance described in Section 3 of this Ordinance exists upon any Property within the County, the Enforcement Officer shall notify the Responsible Party of the Property of such determination. Notice shall also be provided to any tenant, occupier, or other Person legally in possession of the Property, or reasonably believed by the Authority to be in legal possession of the Property.
- 5.03.1 Contents. The notice of nuisance shall contain the following information:

- (a) Identity of the Responsible Party of the Premises upon which the nuisance exists as the name appears on the records of the county assessor.
- (b) A description of the Premises sufficient to give its location.
- (c) A statement that the Authority has determined that a public nuisance exists on the Premises including a description of the condition causing the nuisance. Where the Enforcement Officer has determined that the condition causing the nuisance can be corrected or abated by repair thereof, the notice shall state the repairs which will be required.
- (d) A statement of the facts upon which the determination that a public nuisance exists was based.
- (e) Where the Enforcement Officer has determined that the condition causing the nuisance is imminently dangerous to human life or limb, or is unsafe, or is detrimental to the public health or safety, he or she may order that the building or structure be vacated, pending the correction or abatement of the conditions causing the nuisance. It is a misdemeanor for any person to defy an order of the Enforcement Officer to vacate a building or structure.
- (f) An order to immediately commence the abatement of the nuisance and to thereafter diligently prosecute and complete the abatement within fifteen (15) Days.
- (g) A statement that if the required abatement is not commenced within five (5) Days or is not completed within fifteen (15) Days, the Enforcement Officer may take either or both of the following actions: (1) apply to the Board for an order to abate the nuisance or (2) cause to be issued a citation under Section 4.03 of this Ordinance.
- (h) A statement that the cost of abating the public nuisance, including the applicable cost of administration and civil penalties, will be specially assessed against the Premises and collected at the same time and in the same manner as ordinary county taxes are collected pursuant to Government Code Section 25845, and shall be subject to the same penalties, interest, and to the same procedures of foreclosure and sale in the case of delinquency as is provided for ordinary County taxes. Additionally, the notice shall state that the lien found by the Board shall be recorded in the office of the County Recorder, and that said lien shall be subject to the same priority and methods of collection as a judgment lien, not a tax lien.

- (i) A statement that in order for any oral or written evidence or any claim, defense or privilege to be considered, it must be presented to the Board at or before the time of the hearing, and that a failure to do so will constitute a waiver and may prevent such evidence of claim, defense or privilege from being considered in any later proceeding.
- (j) A copy of Section 5.05.2 and 5.05.3 of this Ordinance related to hearing procedures.
- (k) A statement that the Authority may seek to recover its attorney's fees incurred in any action, administrative proceeding, or special proceeding to abate the nuisance from the Responsible Party.
- (l) A statement that if in the course of abating the nuisance the Authority or its contractors remove personal property having value, that such personal property may be sold and the proceeds of such sale applied to cover the cost of abatement, administrative costs, and attorney's fees incurred in any proceeding to abate the nuisance. The excess proceeds, if any, shall be conveyed to the Responsible Party for the Premises.

5.03.2 Recordation. The Enforcement Officer shall cause a copy of the notice of nuisance to be recorded in the office of the County Recorder if the required abatement is not commenced within five (5) Days or is not completed within fifteen (15) Days.

5.03.3 Service. Unless otherwise provided, the notices required by this Ordinance shall be served by personal delivery or registered mail to the Person to be served. The Responsible Party may be served by mail at his or her address as it appears on the last equalized assessment roll, except that if the records of the County Assessor that the ownership has changed since the last equalized assessment roll was compiled, notice shall be mailed to the new Responsible Party. If service cannot with diligent effort be accomplished by personal delivery or registered mail, notice may be given by posting copies of the notice along the Premises not more than one thousand feet apart and in no event shall fewer than two notices be posted.

**5.04 Voluntary Abatement.** The Responsible Party or occupier of any building, structure or Property found to constitute a nuisance under this ordinance may abate the nuisance at any time within fifteen (15) Days after being served with a notice of nuisance. The Authority shall be notified of the abatement and shall inspect the Premises to assure that the nuisance has been adequately abated, and to review additional documentation that the Responsible Party has legally recycled, composted or disposed of all abated Discards at appropriately permitted facilities. If the Enforcement Officer determines that the nuisance has been

satisfactorily abated, he or she shall cause a letter to be sent to the Responsible Party that on a specified date, the nuisance at the Premises had been adequately abated.

**5.05 Hearing.**

5.05.1 Notice of Hearing. The notice to abate nuisance and notice to appear shall contain the following:

- (a) A heading entitled "NOTICE TO ABATE NUISANCE AND NOTICE TO APPEAR" in letters not less than one-half inch in height;
- (b) A notice to appear before the Board at a specified time and place, which time shall not be less than 15 Days after service of the notice, to show cause, if there be any, why the conditions described in the notice of nuisance should not be declared to constitute a nuisance, and why such nuisance should not be abated by the Enforcement Officer.

5.05.2 Protests. Any Person contesting the existence of a nuisance shall file a written protest of objection with the Director of the Authority at least two (2) Days prior to the date specified in the notice given pursuant to Section 5.05.1 of this Ordinance. Each written protest or objection must contain a description of the Premises and the grounds of the protest or objection.

5.05.3 Procedures.

- (a) At the time and place stated in the notice to abate nuisance and notice to appear, the Board shall review the Enforcement Officer's notice of nuisance and notice to abate nuisance and notice to appear, and any filed protests or objections, copies of which shall be admitted into evidence.
- (b) The Board shall consider any and all relevant documents and testimony, and such other relevant evidence as shall be presented. The parties may be represented by legal counsel. Testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness; and to rebut evidence.
- (c) The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of

any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed unreliable. The rules of privileges shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Irrelevant and unduly repetitious evidence shall be excluded.

(d) The hearing may be continued from time to time.

5.05.4 Order of Board.

(a) Upon the conclusion of the hearing, the Board shall take one of the following actions:

(1) Terminate the abatement proceedings upon a determination that a nuisance does not exist.

(2) Confirm the existence of a nuisance, and order the Responsible Party or other affected Person to abate the nuisance within a reasonable period of time. The order shall provide that, in the event such abatement is not commenced, prosecuted or completed within the terms set by the Board, the Enforcement Officer shall be empowered and authorized to abate the nuisance. Upon the expiration of the time limits set by the Board, the Enforcement Officer shall acquire jurisdiction to abate the nuisance. The Enforcement Officer or his or her designee or agents who are to perform the work may enter upon the Premises on which the public nuisance exists for the purpose of abating the nuisance at all reasonable times.

(3) Confirm the existence of a nuisance and order the Enforcement Officer to immediately abate the nuisance.

(b) The order of the Board shall be mailed by first class mail, postage prepaid to the address of the Owner of the Premises as specified in Section 5.03.3 of this Ordinance, unless the Owner has otherwise requested in writing.

(c) The time limits, if any, set by the Board shall not commence until five (5) Days after the mailing of the order as provided herein.

(d) If the order of the Board confirms the existence of a nuisance, the Owner shall be responsible for paying the Authority's costs including, but not limited to, the costs of abatement and the costs of administration as well as any

civil penalty assessed by the Board pursuant to Section 4 of this ordinance.

- 5.06 Judicial Review.** Any Person adversely affected, having standing to appeal and who has exhausted his/her administrative remedies may bring an action to contest the Board's order in accordance with California Civil Code of Procedure Sections 1094.5 and 1094.6. Otherwise, all objections to such order shall be deemed waived.

## **SECTION 6. NUISANCE ABATEMENT**

- 6.01 Abatement by Property Owner.** The Owner of the cited Premises or Person having charge or control of the Premises may at his/her own expense, abate the nuisance as prescribed by the order of the Board prior to the expiration of the abatement period set forth in the order. If the nuisance has been inspected by the Authority and abated in accordance with the order, the proceedings shall be terminated.

**6.02 Enforcement of Abatement Order.**

- 6.02.1 After any notice and order is issued pursuant to this Ordinance shall have become final after the Board's order is rendered, no Person to whom any such order is directed shall fail, neglect or refuse to obey such order. Any Person who fails to comply with any such order after notice thereof is guilty of a misdemeanor.
- 6.02.2 If, after any notice and order has become final, the Person(s) to whom such order has been directed shall fail, neglect or refuse to obey such order after notice thereof, the Director may, without further notice:
- (a) Refer the Person(s) for criminal prosecution;
  - (b) Institute any appropriate action to abate the conditions that constitute a public nuisance. The Director may cause the same to be abated by Authority employees or private contractors.

- 6.03 Accounting.** The Enforcement Officer who abates a public nuisance pursuant to this Ordinance shall keep an accounting of the cost of each abatement and shall prepare a report showing the cost of abatement and the applicable cost of administration.

6.03.1 Accounting Report. The report shall specify:

- (a) The work done;
- (b) An itemized account of the costs and receipts of performing the work;
- (c) The identity of the Owner or Person in legal possession of the Premises, and an address, legal description or other description sufficient to identify the Premises;
- (d) The date upon which abatement of the nuisance was ordered by the Board;
- (e) The date the abatement was complete;
- (f) The cost of administration;

- (g) The civil penalty which may be imposed pursuant to Section 4 of this ordinance; and
  - (h) The total amount of the assessment proposed to be levied against the Premises.
- 6.03.2 **Accounting Hearing.** The Enforcement Officer shall serve a copy of the accounting and a notice of the date and time that the Board will meet to consider the accounting, which date shall not be less than fifteen (15) Days after the date of serving notice. The notice shall be served as provided in Section 5.03.3 of this Ordinance, unless the Owner has requested otherwise in writing. The hearing shall be conducted in accordance with Section 5.05.3 of this Ordinance.
- 6.03.3 **Confirmation of Accounting.** The Board shall meet to review the accounting and the Owner may appear and be heard on the questions whether the accounting and the costs included are accurate and reasonable. The accounting report shall be admitted into evidence and the Owner shall bear the burden of proving that the accounting is not accurate or reasonable.
- 6.03.4 **Modifications of Accounting.** The Board shall make such modifications in the accounting as it deems necessary based on the evidence at the hearing, and thereafter shall confirm the accounting by resolution. The determination of the Board as to all matters contained therein shall be final and conclusive.
- 6.04 Liability for Cost of Abatement.** The Owner of the Premises shall be liable for the cost of abatement, including the cost of administration, as determined in the Enforcement Officer's accounting, as confirmed by resolution of the Board. The Owner has five (5) business days to pay the costs of abatement, after which the Enforcement Officer shall cause a nuisance abatement lien to be placed on the Property as provided in Section 7 of this Ordinance.

## **SECTION 7. NUISANCE ABATEMENT LIEN**

- 7.01 Notice of Lien.** If the costs of abatement are not paid within five (5) business days of the passing of the resolution of the Board confirming the accounting, the Enforcement Officer shall notify the Owner of the Premises that a nuisance abatement lien will be recorded. The notice shall specify the amount of the lien, the name of the Authority, the date of the abatement order, the street address, the legal description or assessor's parcel number on which the lien is imposed, and the name and address of the Owner. The notice shall be served in accordance with 5.03.3 of this Ordinance.
- 7.02 Recording of Lien.** After notice is given in accordance with Section 7.01 above, the Enforcement Officer shall cause a notice of lien to be prepared and recorded in the office of the County Recorder. The notice of lien shall contain the following:

- (a) The address, legal description or other description sufficient to identify the Premises;
- (b) A description of the proceedings under which the special assessment was made, including the resolution of the Board confirming the assessment;
- (c) The amount of the assessment; and
- (d) A claim of lien upon the described Premises.

**7.03 Effect of Lien.** Upon recordation of the notice of lien, the amount claimed shall constitute a lien upon the described Premises. Such lien shall be both (1) a lien in parity with liens of state and county taxes and (2) a lien described in Government Code Section 95488(c), having parity with a judgment lien.

**7.04 Collection of Lien.** The lien may be collected through either of the following methods:

- 7.04.1 Special Assessment. The notice of lien, after recordation, shall be delivered to the County Auditor who shall enter the amount of the lien on the assessment roll as a special assessment. Thereafter, the amount set forth shall be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and interest, and to the same procedures for foreclosure and sale in case of delinquency, as is provided for ordinary county taxes, and all laws applicable to the levy, collection and enforcement of county taxes are made applicable to such assessment.
- 7.04.2 Civil Action. The Authority may, in its discretion, decide to enforce the lien through a civil action for a money judgment.

## **SECTION 8. ABANDONED AND INOPERATIVE VEHICLES**

**8.01 Abandoned Vehicles as Nuisances.** In addition to, and in accordance with, the determination made and the authority granted by the state of California pursuant to Section 22660 of the California Vehicle Code to remove abandoned, wrecked, dismantled or inoperative vehicles or parts thereof as public nuisances, the Board makes the following findings and declarations:

- 8.01.1 The accumulation and storage of abandoned, wrecked, dismantled or inoperative vehicles or parts thereof on private or public property creates a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare.
- 8.01.2 Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle, or parts thereof, on private or public property, except as expressly permitted in this chapter,

constitutes a public nuisance which may be abated as such in accordance with the provisions of this section.

**8.02 Definitions.** As used in this section, the following words and phrases are defined as set forth below:

- 8.02.1 **Highway** means a way or place of whatever nature, publicly maintained and open to the use of the public for purpose of vehicular travel. Highway includes street.
- 8.02.2 **Owner of the Land** means the owner of the Property on which the Vehicle, or parts thereof, is located, as shown on the last equalized assessment roll.
- 8.02.3 **Owner of the Vehicle** means the last registered owner and the legal owner of record.
- 8.02.4 **Vehicle** means a device by which any person or personal property may be propelled, moved or drawn upon a highway except a device moved by human power or used exclusively upon stationary rails or tracks.

**8.03 Exceptions.** This section shall not apply to:

- 8.03.1 A Vehicle, or part thereof, which is completely enclosed within a building in a lawful manner where the Vehicle is not visible from the Highway or other public or private Property;
- 8.03.2 A Vehicle, or part thereof, which is stored or parked in a lawful manner on private Property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise;
- 8.03.3 A Vehicle, or parts thereof, located behind a solid fence, six feet in height or not plainly visible from a Highway; or
- 8.03.4 A Vehicle, or parts thereof, of historic value or special interest as described in California Vehicle Code Section 5051.
- 8.03.5 Nothing in Section 8.03 authorizes the maintenance of a public or private nuisance as defined under provisions of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and Section 8 of this Ordinance.

**8.04 Abatement.**

- 8.04.1 Notice of Intention to Abate. Not less than ten (10) Days prior to abatement, a notice of intention to abate and remove Vehicle, or parts thereof, as a public nuisance shall be mailed by registered or certified mail to the Owner of the Land as shown on the last equalized assessment roll and to the Owner of the Vehicle, unless the Vehicle is in such a condition that identification numbers are not available to determine ownership.
- 8.04.2 Notices – Form. The notices of intention to abate shall be in substantially the following form:

To Owner of Land –

**ORDER DECLARING EXISTENCE OF PUBLIC NUISANCE AND NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLE, OR PARTS THEREOF, AS A PUBLIC NUISANCE**

TO: (Name and Address of Owner of Land)

As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned, pursuant to Section 8 of the Nuisance Abatement Ordinance of the Del Norte Solid Waste Management Authority, has determined that there exists upon said land an abandoned, wrecked, dismantled, or inoperative vehicle, or parts of an abandoned, wrecked, dismantled or inoperative vehicle, hereinafter referred to as "Vehicle." The Vehicle is registered to (name of registered owner), bears license number \_\_\_\_\_, and constitutes a public nuisance pursuant to the provisions of notice; and upon your failure to do so, the same will be abated, removed, and disposed of by the Authority; and the costs thereof, together with administrative costs, will be assessed to you as owner of the land on which said Vehicle is located.

As owner of the land on which said Vehicle is located, you are hereby notified that you may, within ten (10) calendar days after the mailing of this notice of intention, request a public hearing; and if such a request is not received by the Authority within such ten-day period, the Enforcement Officer shall have the authority to abate, remove, and dispose of said Vehicle as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such ten-day period denying responsibility for the presence of said Vehicle on said land, with your reasons for denial, and such statement shall be construed as a request for hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the Vehicle or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing.

NOTICE MAILED: \_\_\_\_\_

\_\_\_\_\_  
Enforcement Officer

To Registered and Legal Owners –

**ORDER DECLARING EXISTENCE OF PUBLIC NUISANCE AND NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLE, OR PARTS THEREOF, AS A PUBLIC NUISANCE**

TO: (Name and address of last registered owner) and  
(Name and address of legal owner of record if different than registered owner)

As last registered (and/or legal) owner of record of (description of vehicle-make, model, license, identification number, etc.), you are hereby notified that the undersigned, pursuant to Section 8 of the Nuisance Abatement Ordinance of the Del Norte Solid Waste Management Authority, has determined that said vehicle (or parts of a vehicle) exists as an abandoned, wrecked, dismantled or inoperative vehicle at (describe location on public or private property) and constitutes a public nuisance pursuant to the provisions of Section 8 of the aforementioned ordinance.

You are hereby notified to abate said nuisance by removing said vehicle within ten (10) calendar days from the date of the mailing of this notice.

As registered (and/or legal) owner of record of said vehicle, you are hereby notified that you may, within ten (10) calendar days after the mailing of this notice of intention, file a written request for a public hearing; and if such written request is not received by the Authority within such ten-day period, the Enforcement Officer shall have the authority to abate and remove said vehicle without a hearing.

If you do not request a public hearing within the ten-day period, the vehicle, or parts thereof, may be disposed of by removal to a scrapyard or automobile dismantler's yard.

If you are the registered owner of the vehicle, your failure to request a public hearing will be deemed to be an abandonment of the vehicle thereby making you liable for the cost of removal and disposition of the vehicle, including administrative costs.

NOTICE MAILED: \_\_\_\_\_

\_\_\_\_\_  
Enforcement Officer

8.04.3 Notice of Intention Not Required. A notice of intention to abate shall not be required:

- (a) If the Owner of the Land and the Owner of the Vehicle have signed releases agreeing to pay the actual costs of removal and administrative costs, and waiving further interest in the Vehicle, or parts thereof; or
- (b) All of the following conditions are satisfied:
  - (1) The Vehicle, or parts thereof, is inoperable due to the absence of a motor, transmission or wheels and is incapable of being towed;
  - (2) The Vehicle, or parts thereof, is valued at less than two hundred dollars (\$200.00) by the Enforcement Officer or any other Person authorized to make such appraisals pursuant to California Vehicle Code Section 22855;
  - (3) The Enforcement Officer has determined that the Vehicle, or parts thereof, is a public nuisance presenting an immediate threat to public health or safety;
  - (4) The Owner of the Land upon which the Vehicle, or parts thereof, is located has signed a release authorizing the removal and waiving further interest in the Vehicle, or parts thereof; and
  - (5) The Vehicle is located upon real property that is either zoned for agricultural use or is not improved with a residential structure containing one or more dwelling units.
- (c) If a Vehicle is removed pursuant to subsection (b) of this Section, prior to final disposition, the Owner of the Vehicle shall be notified of the intent to dispose of the Vehicle, or parts thereof. If the Vehicle, or parts thereof, is not claimed and removed from the scrapyards, automobile dismantler's yard or public disposal area within twelve (12) Days after the notice to dispose of Vehicle is mailed, final disposition may proceed. In such event, the Owner of the Vehicle shall be responsible for payment of the actual costs of removal and administrative costs determined.

8.04.4 No Public Hearing Requested – Vehicle Disposal. When a notice of intention is required to be mailed but no request for hearing is received within ten (10) Days after mailing notice of intention to abate and remove, the Authority shall have the authority to abate, remove and dispose of the Vehicle, or parts thereof, as a public nuisance without holding a public hearing.

- (a) The Vehicle may be disposed of by removal to a scrapyards or automobile dismantler's yard. In such event,

both the Owner of the Land and the Owner of the Vehicle are responsible for the costs of removal and the administrative costs.

- (b) The Enforcement Officer shall file an abatement lien and special assessment, which has been approved by resolution of the Board, with the County Recorder against the Property upon which the Vehicle is located in compliance with Section 8.04.9.
- (c) After a Vehicle has been removed, it shall not thereafter be reconstructed or made operable unless the vehicle qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to Section 5004 of the California Vehicle Code, in which case the vehicle may be reconstructed or made operable.

8.04.5 Public Hearing Requested. Upon written request of the Owner of the Vehicle or Owner of the Land received by the Authority within ten (10) Days after the mailing of the notices of intention to abate and remove, a public hearing shall be scheduled by the Authority to take place at the next meeting of the Board for which an agenda has not been published.

- (a) Upon a finding by the Board at the public hearing that the Vehicle, or parts thereof, is abandoned, wrecked, dismantled, or inoperative, constituting a public nuisance, the Board shall order the abatement and removal of the Vehicle and assess the administrative costs and the costs of removal and disposal of the Vehicle, or parts thereof, against the Property on which it is located.
- (b) If the Owner of the Land submits a sworn written statement denying responsibility for the presence of the Vehicle on his or her land within such ten-day period, said statement shall be construed as a request for a hearing, which does not require his or her presence.
- (c) Notice of the hearing shall be mailed, by registered mail, at least ten (10) Days before the hearing to the Owner of the Land and to the Owner of the Vehicle; unless the Vehicle is in such condition that identification numbers are not available to determine ownership.

8.04.6 Public Hearing – Procedures.

- (a) All hearings under this section shall be held before the Board which shall hear all facts and testimony deemed pertinent. Said facts and testimony may include testimony on the condition of the Vehicle, or parts thereof, and the circumstances concerning its location on the private or public Property. The Board shall not be limited by technical rules of evidence.

- (b) The Owner of the Land on which the Vehicle is located may appear in person at the hearing or present a written statement, signed under penalty of perjury, in time for consideration at the hearing, and deny responsibility for the presence of the Vehicle on the Property with his or her reasons for such denial. The Board may impose such conditions and take such other action as it deems appropriate under the circumstances to carry out the purpose of this Ordinance. It may delay the time for removal of the Vehicle, or parts thereof, if, in the Board's opinion, the circumstances justify it. At the conclusion of the public hearing, the Board may find that a Vehicle, or parts thereof, has been abandoned, wrecked, dismantled or is inoperative on private or public Property, and by resolution order the same removed from the Property as a public nuisance and disposed of as provided in this Ordinance and determine the administrative costs and the costs of removal to be charged against the Owner of the Land on which the Vehicle, or parts thereof, is located. The order requiring removal shall include a description of the Vehicle, or parts thereof, and the correct identification number and license number of the Vehicle, if available at the site.
- (c) If it is determined at the hearing that the Vehicle was placed on the Property without the consent of the Owner of the Land and that he or she has not subsequently acquiesced in its presence, the Board shall not assess costs of administration or removal of the vehicle against the Property upon which the vehicle is located or otherwise attempt to collect such costs from such Owner of the Land.
- (d) If an interested party makes a written presentation to the Board, but does not appear, he or she shall be notified in writing of the decision of the Board by the Authority.
- (e) The decision of the Board shall be final and conclusive for all purposes.

8.04.7 Vehicle Disposal after Hearing. Five (5) Days after adoption of the order declaring the Vehicle, or parts thereof, to be a public nuisance, or ten (10) Days from the date of mailing of the notice of decision, as required by Section 8.04.6 (b) and (d), whichever date is later, the Vehicle, or parts thereof, may be disposed of by removal to a scrapyard or automobile dismantler's yard. After a Vehicle has been removed, it shall not thereafter be reconstructed or made operable unless it is a Vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates pursuant to Section 5004 of the California

Vehicle Code, in which case the Vehicle may be reconstructed or made operable.

- 8.04.8 Notice to Department of Motor Vehicles. Within five (5) Days after the date of removal of the Vehicle, or parts thereof, notice shall be given to the Department of Motor Vehicles by the Person authorized to remove the vehicle identifying the Vehicle, or parts thereof, removed; at the same time, there shall be transmitted to the Department of Motor Vehicles any evidence of registration available, including registration certificates, certificates of title and license plates.
- 8.04.9 Cost Recovery. If the administrative costs and the costs of removal which are charged against the Owner of the Land pursuant to Section 8.04.5 are not paid within thirty (30) Days of the date of the order, such costs shall be assessed against the Premises pursuant to Government Code Section 25845 and shall be transmitted to the tax collector for collection. Said assessment shall have the same priority as other county taxes.
- 8.04.10 Liability Disclaimer. No local agency or contractor thereof shall be liable for damage caused to a Vehicle, or parts thereof, due to removal pursuant to Section 22661 of the California Vehicle Code and this Ordinance.

#### **8.05 Criminal Violations.**

- 8.05.1 Abandonment. It is unlawful and a misdemeanor for any Person to abandon, park, store or leave or permit the abandonment, parking, storing or leaving of any licensed or unlicensed Vehicle, or parts thereof, which is abandoned wrecked, dismantled or in an inoperative condition upon any private public Property, including, Highways, within the County for an excess of seventy-two (72) or more consecutive hours, unless such Vehicle, or parts thereof, is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private Property, or unless such Vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer or a junk yard or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.
- 8.05.2 Refusal to Abate. It is unlawful and a misdemeanor for any Person to fail or refuse to remove an abandoned, wrecked, dismantled or inoperative Vehicle or parts thereof, or refuse to abate such nuisance when ordered to do so in accordance with the abatement provision of this section or state law where such state law is applicable.

#### **8.06 Abatement – Alternative Method.**

- 8.06.1 General. The general provisions and purposes set forth in Sections 8.01 through 8.04.3, 8.04.9, 8.05.1 and 8.05.2 shall be applicable to Section 8.06. The purpose of Section 8.06 is to implement the provisions of Sections 22669 and 22581.3 of the California Vehicle Code to expedite the abatement of low-valued abandoned or inoperative Vehicles which impair the health, safety and welfare of the residents of Del Norte County.
- 8.06.2 Alternative Procedure. The provisions of Section 8.06 are applicable only to abandoned Vehicles and are an alternative to the procedures contained in Section 8.04 with reference to removal of Vehicles as public nuisances.
- 8.06.3 Definitions. For the purposes of Section 8.06, abandonment of a Vehicle consists of the voluntary leaving of a Vehicle on private or public Property by its Owner with the intent to abandon it and to relinquish any right or dominion over it.
- 8.06.4 Abandonment Prohibited. No Person shall abandon a Vehicle upon private or public Property without the express or implied consent of the Owner or Person in lawful possession or control of the property. Any Person convicted of a violation of Section 8.06.4 shall be punished by a fine of not less than one hundred dollars (\$100.00).
- 8.06.5 Determination of Abandonment. In determining whether a Vehicle has, in fact, been abandoned, the Enforcement Officer shall consider the physical evidence which may be present or apparent in, on or around the vehicle and any information received from sources such as the Owner of the Land on which the Vehicle is located.
- 8.06.6 Removal of Vehicle. The Enforcement Officer or any other peace officer, as that term is defined in Section 830 of the Penal Code, who has reasonable grounds to believe that a Vehicle has been abandoned, as determined pursuant to Section 8.06.5, may remove from private or public Property any Vehicle the Enforcement Officer or peace officer has determined to have an estimated value of less than five hundred dollars (\$500.00), subject to all of the following requirements:
- (a) Not less than seventy-two (72) hours before the Vehicle is removed, the Enforcement Officer or peace officer shall securely attach to the Vehicle a distinctive notice which states that the Vehicle will be removed by the Authority. This notice is not required if the Enforcement Officer determines the estimated value of the Vehicle is less than three hundred dollars (\$300.00).
  - (b) Immediately after removal, the Enforcement Officer or peace officer shall notify the stolen vehicle system of the Department of Justice in Sacramento of the removal.

- (c) The Enforcement Officer or peace officer shall obtain a copy of the names and addresses of all Persons having an interest in the Vehicle, if any, from the Department of Motor Vehicles.
- (d) If the names and addresses of the Owner of the Vehicle is not available from the records of the Department of Motor Vehicles, the Enforcement Officer or peace officer may issue to the lienholder who stored the Vehicle an authorization for disposal, as described in subsection (h) of this section at any time after the removal.
- (e) Within forty-eight (48) hours of the removal, excluding weekends and holidays, the Enforcement Officer or peace officer shall send a notice, by first class mail, to the Owner of the Vehicle at his/her address of record with the Department of Motor Vehicles, and to any other Person known to have an interest in the Vehicle. The notice shall include all of the following information:
  - (1) The name, address and telephone number of the Enforcement Officer;
  - (2) The location of the place of storage and description of the Vehicle, which shall include, if available, the make, license plate number, vehicle identification number and mileage;
  - (3) The fact that the Vehicle was removed pursuant to Section 8.06 of this Ordinance and California Vehicle Code Section 22669 for the purpose of protecting the health, safety and welfare of residents of Del Norte County;
  - (4) A statement that the Vehicle will be disposed of fifteen (15) calendar days from the date of the notice;
  - (5) A statement that Owners and any other interested Persons, or their agents, have the opportunity for a post-storage hearing before the Enforcement Officer to determine the validity of the storage if a request for a hearing is made in person, in writing, or by telephone within ten (10) calendar days from the date of notice; that, if the Owner or interested Person, or his or her agent, disagrees with the decision of the Enforcement Officer, the decision may be reviewed pursuant to Section 11523 of the Government Code, and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the Vehicle in question shall not be disposed of.

- (f) Any requested hearings shall be conducted within forty-eight (48) hours of the request, excluding weekends and holidays. The Authority may authorize its own officers to conduct the hearing if the hearing officer is not the same Person who directed the storage of the Vehicle.
- (g) Failure of either the registered or legal Owner of the Vehicle or other interested Person, or his or her agent, to request or to attend a scheduled hearing shall satisfy the post-storage validity hearing of this section.
- (h) If, after fifteen (15) Days from the notification date, the Vehicle remains unclaimed and the towing and storage fees have not been paid, and if no request for a post-storage hearing was requested or a post-storage hearing was not attended, the Enforcement Officer shall provide the lienholder or Person storing the Vehicle an executed Department of Motor Vehicles public agency authorization to dispose of a vehicle to a scrap iron processor or dismantler.
- (i) If the Vehicle is claimed by the Owner or his or her agent within fifteen (15) Days of the notice date, the lienholder may collect reasonable fees for services rendered, but may not collect lien sale fees as provided in California Vehicle Code Section 22851.12.
- (j) Disposal of a Vehicle pursuant to Section 8.06 shall be only to a dismantler or scrap iron processor licensed within the State. A copy of the public agency authorization to dispose of a vehicle shall be forwarded to the licensed dismantler within five (5) Days of disposal. A copy of the public agency authorization to dispose of a vehicle shall be retained by the lienholder who stored the Vehicle for a period of ninety (90) Days if the Vehicle is disposed of to a scrap iron processor.

8.06.7 Responsibility for Costs. The abandonment of any Vehicle shall constitute a prima facie presumption that the last registered owner of record, not having complied with the provisions of Vehicle Code Section 5900, is responsible for such abandonment and is thereby liable for the costs of removal and disposition of the Vehicle.

**SECTION 9. 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 10. SEVERABILITY.** If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision

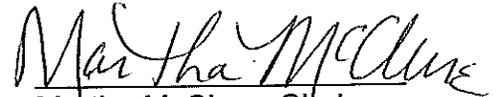
shall not affect the validity of the remaining portions of this Ordinance. The Authority hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof are declared invalid or unconstitutional.

**SECTION 11. EFFECTIVE DATE.** This Ordinance shall become effective thirty-one (31) days from its final adoption.

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

**PASSED, APPROVED AND ADOPTED** by the Board of Commissioners of the Del Norte Solid Waste Management Authority on the 8<sup>th</sup> day of October, 2008 by the following vote to wit:

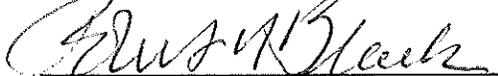
AYES: Commissioners Tynes, Hatfield, Burns, Sullivan, and McClure  
NOES: none  
ABSENT: none  
ABSTAIN: none

  
Martha McClure, Chair

**ATTEST:**

  
NAME, Clerk

**APPROVED AS TO FORM:**

  
ROBERT N. BLACK  
DNSWMA Attorney