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CHAPTER 8.75 - UNIFORM NUISANCE ABATEMENT PROCEDURE

Sec. 8.75.010. Title.

This Chapter shall be known and cited as the "Uniform Nuisance Abatement Procedure."

Sec. 8.75.020. Findings and Purpose.

The Board of Supervisors of Mendocino County determines that the establishment of an Ordinance to establish procedures for the abatement of a nuisance is derived from and consistent with the provisions of Government Code Section 25845 and is necessary for the public health and welfare. This procedure is intended to be an alternate procedure for abatement of any violation of the Mendocino County Code or any other Ordinance that is declared to be a public nuisance.

Sec. 8.75.030. Definitions.

For the purposes of this chapter:

- (A) "Board" shall refer to the Board of Supervisors of Mendocino;
- (B) "Chapter" shall refer to chapter 8.75 of the Mendocino County Code;
- (C) "County" shall refer to the County of Mendocino;
- (D) "Enforcement Officer" shall mean a County employee with authority to enforce any provision of the Mendocino County Code;

- (E) "Occupant" shall mean anyone in reasonably known to the Enforcement Officer to be in possession, control, or having charge of the subject property other than the Owner;
- (F) "Owner" shall mean the property owner or owners, or his, her or their agent or agents, as shown on the last equalized assessment roll or the supplemental roll, whichever is more current;

Sec. 8.75.040. Public Nuisance Defined.

The provisions of this Chapter shall be applicable to any nuisance as defined herein or any Ordinance of the County, Section of the Mendocino County Code, Resolution of the Board, or Statutes of the State of California.

It is a public nuisance for any person owning, leasing, occupying, or having charge of any property within the County to maintain such property in such a manner, that any one or more of the following conditions or activities are found to exist or for any person to contribute to the existence of the following conditions or activities:

- (A) The presence of garbage, dead animals or other putrescible material that constitutes a nuisance as determined by a health officer;
- (B) An excessive accumulation of solid waste, including but not limited to used tires, furniture, carpets, mattresses, or appliances, including but not limited to refrigerators, freezers, washing machines, or clothes dryers;
- (C) The unlawful disposal or burying of solid waste, including but not limited to garbage, refuse, tires, construction or demolition debris, building materials, salvage materials, appliances or parts thereof, furniture, cabinets, or other household fixtures at any place other than a permitted solid waste facility;
- (D) Causes, maintains, or permits solid waste to be deposited within the County in any manner that violates the provisions of this Chapter;
- (E) Causes or permits the deposit of solid waste on the right-of-way of any public highway, street, easement or thoroughfare, or upon any camping place or public grounds, or on any premises, or in any container, without the permission of the owner thereof, or into any stream or dry watercourse, within the County of Mendocino, State of California, and outside of the incorporated cities;
- (F) Any condition that provides or contributes to the breeding of mosquitoes;
- (G) The improper storage or disposal of hazardous waste, including but not limited to waste products from the manufacturing of methamphetamine or other illegal drugs;
- (H) Attractive nuisance dangerous to children whether in a building, on the premises of a building, or on an unoccupied lot in the form of abandoned wells, shafts, septic tanks, or other types of abandoned excavations;
- (I) Any property maintained in such a condition as to be a threat to human health, safety, or environment as determined by a health officer;
- (J) Any improvement or condition within, or adjacent to, a County road right-of-way which undermines the safe operation or integrity of the County roadway;
- (K) Interference with County Road drainage;
- (L) Any encroachment as described in California Streets and Highways Code section 1480.5;

- (M) Any condition declared by a Statute of the State of California or by an Ordinance of Mendocino County to be a nuisance;
- (N) Any public nuisance known at common law or equity;
- (O) Any condition dangerous to human life, unsafe, or detrimental to the public health or safety; or
- (P) Any use of land, buildings, or premises established, operated, or maintained contrary to the provisions of this Chapter or Chapters 6, 9, 9A, 10, 10A, 15, 16, 18, 20 or 22 of the Mendocino County Code.

Sec. 8.75.050. Public Nuisance Declared.

A public nuisance may be declared for any reason specified in any County Ordinance by an Enforcement Officer given the authority to enforce the Ordinance.

Sec. 8.75.060. Scope of Chapter.

- (A) After a public nuisance is declared, it may be abated by the Enforcement Officer and his or her County Department in accordance with the procedures provided in this Chapter, including but not limited to summary abatement, when necessary to preserve or protect the public health or safety, or administrative abatement.
- (B) The procedures set forth in this Chapter are not exclusive, but are cumulative to all other civil and criminal remedies provided by law. The seeking of other remedies shall not preclude the simultaneous commencement of proceedings pursuant to this Chapter.
- (C) Nothing in this Chapter shall be construed as imposing on the Enforcement Officer or the County any duty to declare a nuisance, or to take any other action with regard to a nuisance, and neither the Enforcement Officer nor the County shall be held liable for failure to declare a public nuisance, or for failure to take any other action with regard to a public nuisance.
- (D) Nothing in this section shall be construed to limit or restrict the ability of any other entity with enforcement authority, such as the police or fire departments, to enforce this Chapter or perform their duties.

Sec. 8.75.070. Summary Abatement.

- (A) After a public nuisance is declared, the nuisance may be summarily abated by any reasonable means and without notice or hearing when immediate action is necessary to preserve or protect the public health or safety. In addition, any public agency or public contractor, appointed by the Board, may use summary abatement to remove solid waste, which has been illegally deposited in violation of Sections 8.75.040(D) and (E).
- (B) Summary abatement actions shall not be subject to the requirements of this Chapter, nor shall summary abatement actions be prohibited after initiation of proceedings pursuant to this Chapter, if immediate action at any time becomes necessary to preserve or protect the public health or safety.

- (C) In the event a public nuisance is summarily abated, the County may recover its costs pursuant to the provisions of Sections 8.75.150 – 8.75.200. In cases of encroachments as defined by Streets and Highways Code section 1480.5, the Department of Transportation may also collect the daily penalties designated in section 1483 of the Streets and Highways Code.
- (D) When summary abatement has been carried out for illegally deposited trash and the person responsible for the illegal deposit has been identified by evidence in the trash, or through other means, and is not the owner of the property where the trash was deposited, the Enforcement Officer may impose and costs of abatement on the responsible party. Imposition of costs on the responsible party shall not relieve the Owner of his or her obligation to pay the costs until the responsibility party actually pays the costs imposed. A Notice of Assessment of Costs of Summary Abatement shall be mailed or otherwise delivered in each such case.

Sec. 8.75.080. Administrative Abatement.

- (A) After a public nuisance is declared, the Enforcement Officer may issue a Notice and Order to Abate and serve such Notice pursuant to Section 8.75.090.
- (B) The Notice and Order to Abate shall be in writing and shall:
 - 1. Identify the Owner and any Occupant other than the Owner if known or reasonably identifiable by the Enforcement Officer;
 - 2. Identify the Enforcement Officer and his or her County Department issuing the Notice;
 - 3. Describe the subject property sufficient for identification;
 - 4. State that a public nuisance has been declared along with a description of the nuisance;
 - 5. Identify the remedial action required to abate the nuisance and provide a reasonable time for the Owner or Occupant to abate the nuisance;
 - 6. State that the Owner or Occupant may, within ten (10) calendar days after the date that the Notice was served, make a request to the Department issuing the Notice and Order to Abate for a hearing to appeal the Notice and declaration of public nuisance, or to show other cause why those conditions should not be abated in accordance with the provisions of this Chapter.
 - 7. State the applicable hearing fee, if such a fee has been established;
 - 8. Contain a statement that, unless the Owner or Occupant abates the nuisance within the time specified, or makes a timely request for appeal of the Notice, the County will abate the nuisance, charge all abatement costs incurred by the County to the Owner, and that such costs may be recovered by special assessment added to the county assessment roll, may become a lien on the real property that may be recorded, or may be placed on the unsecured tax roll.
- (C) The owner or occupant may appeal the Notice and Order to Abate and the determination of the Enforcement Officer as specified in the Notice and Order to Abate. If the owner or occupant appeals the Notice and Order to Abate and declaration of public nuisance, then the provisions in Sections 8.75.100 through 8.75.140 shall apply.

- (D) Abatement by County: If the Owner or Occupant has not abated the violations pursuant to the Notice and Order to Abate and has not filed an appeal within the time prescribed, the Enforcement Officer, his or her Department, or other authorized designee may cause to be done whatever work is necessary to abate the public nuisance. If necessary, the Enforcement Officer, or authorized designee, may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of inspecting the property to determine if the nuisance remains and also for undertaking the work to abate the nuisance if the nuisance had not already been abated.
- (E) All costs of abatement incurred by the County may be recovered pursuant to the procedures set forth in Sections 8.75.150 – 8.75.200.

Sec. 8.75.090. Service of Notice and Order to Abate.

- (A) The Notice and Order to Abate shall be served on each Owner and on each Occupant, if known to the Enforcement Officer, of the subject property. Notice may be served in the following manner:
 - 1. By personal service; or
 - 2. By certified mail, postage prepaid, and return receipt requested, addressed to each Owner at the address shown on the last equalized assessment roll or last known address according to the County Assessor, and addressed to each Occupant known to the Enforcement Officer at the street address of the subject property; or
 - 3. If the first two options in this section fail, or if the Owner or Occupants cannot be located in the exercise of reasonable diligence, the notice may be served by United States first class mail, postage prepaid with certificate of mailing, and by posting a copy of the notice in a conspicuous place in front of or on the real property on which, or in front of which, the nuisance exists, or if the property has no frontage upon any street, highway, or road, then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the Enforcement Officer to be in possession of the property.
- (B) The date of service is deemed to be the date of personal service, or the date of signed delivery if by certified mail, or five (5) days after the date of posting and mailing.

Sec. 8.75.100. Hearing Officer.

Pursuant to Government Code Sections 25845(i) and 27720 et seq., the director of the Department of the Enforcement Officer seeking to enforce this Chapter shall coordinate with County Counsel to appoint and contract with a Hearing Officer pursuant to Mendocino County Code chapter 2.76 for the purpose of presiding at the administrative hearings provided for by this chapter.

Sec. 8.75.110. Procedure to Appeal Notice and Order to Abate.

Within ten (10) days from the date of a properly served Notice and Order to Abate, any Owner or Occupant may appeal the Notice and Order to Abate and the Enforcement Officer's determination declaring the public nuisance to a person designated as a Hearing Officer, except in cases regarding Animal Control issues which shall be appealed to the Animal Care and Control Advisory Board. The appeal shall:

- (A) be submitted in writing,
- (B) specify the grounds upon which the appeal is taken,
- (C) contain the name, address and telephone number of the appellant,
- (D) be accompanied by the payment of an appeal fee in an amount established by Resolution by the Board, and
- (E) be filed with the Department specified on the Notice and Order to Abate.

The Department receiving the appeal shall then cause the matter to be set for hearing by notifying the Hearing Officer directly or by requesting County Counsel to coordinate with the Hearing Officer.

Timely appeal shall stay any further abatement action until the hearing is conducted. A hearing before a Hearing Officer shall be set for a date that is not less than ten (10) and not more than thirty (30) days from the date that the notice of appeal is filed. In accordance with the noticing provisions set forth in Section 8.75.090, the Hearing Officer, or the County Counsel in cooperation with the Hearing Officer, shall notify the parties in writing, at least ten (10) days prior to the hearing date, of the date and location of the hearing. It shall be sufficient to provide notice to the appellant by using the address listed in the request for appeal.

If summary abatement has been carried out for illegally deposited trash, the person alleged responsible for the illegal deposit and who has received a Notice of Assessment of Costs of Summary Abatement may appeal said Notice in the manner set forth above.

Sec. 8.75.120. Hearing Procedures.

- (A) Pursuant to Government Code Section 27721, the Hearing Officer may issue subpoenas as necessary to require the attendance at the hearing of persons or the production of books, papers or other things related to the subject matter of the hearing.
- (B) The Enforcement Officer, or other officer within the Department with jurisdiction to cause the abatement of the alleged nuisance shall first describe the acts or conditions constituting a nuisance and shall respond specifically to the grounds set out in the demand for hearing. Thereafter, the objector shall present whatever evidence is relevant to refute the allegation.
- (C) Parties may choose to be represented by an attorney at an administrative hearing provided by the Chapter. However, formal rules of evidence or procedure in any proceeding subject to this Chapter shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Nonetheless, any failure to make a timely objection to offered evidence constitutes a waiver of the objection.
- (D) In a proceeding alleging a violation of Section 8.75.040(D) or (E), the presence of at least two (2) pieces of addressed mail or other identifying information in the dumped material shall be deemed to create a rebuttable presumption that the person so identified is responsible for the dumped material and is subject to the penalties and remedies provided for in this Chapter.
- (E) The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter who has been certified as an interpreter by either the State of California or the County of Mendocino.

- (F) Hearings shall take place at the earliest practical date following the Notice of Appeal. The failure of the appellant to appear shall not prevent the hearing from proceeding providing proper notice has been given in accordance with this Chapter. The hearing may only be continued upon request of a party to the hearing and upon a showing of good cause but in no event shall there be more than one continuance allowed.

Sec. 8.75.130. Determination by Hearing Officer.

- (A) At the conclusion of the hearing, and based on the evidence before it, the Hearing Officer shall determine:
 - 1. Whether the acts or conditions specified in the Notice of Abatement exist;
 - 2. Whether those acts or conditions constitute a public nuisance;
 - 3. If a public nuisance is determined to exist, whether it should be abated by the County; and
 - 4. The appropriateness of any penalties imposed.
- (B) If the Hearing Officer finds that the alleged nuisance does exist and should be abated, abatement of the nuisance shall be ordered. An Order of Abatement is final immediately, unless the order or a provision of this Code expressly provides otherwise.
- (C) A copy of the written decision and Order of Abatement shall be served personally or by mail upon each objector and all other persons upon whom the Notice and Order to Abate was served.

Sec. 8.75.140. Abatement after Determination by Hearing Officer.

Pursuant to the determination as described in section 8.75.130, the following shall apply:

- (A) The Order of Abatement issued by the Hearing Officer may direct that any occupancy, use or activity cease immediately if its existence or continuation is found to be an immediate threat to health or safety. Otherwise, abatement shall be commenced by the owner within five (5) calendar days of the service of the decision and Order, or any longer period provided in the Order, and shall continue with reasonable diligence until complete. Reasonable diligence shall be determined by the Enforcement Officer.
- (B) Upon the failure, neglect, or refusal to properly comply with the Order of Abatement issued by the Hearing Officer within the prescribed time period, the Enforcement Officer, his or her Department, or other authorized designee, may cause to be done whatever work is necessary to abate the public nuisance. If necessary, the Enforcement Officer, or authorized designee, may apply to a court of competent jurisdiction for a warrant authorizing entry upon the property for purposes of inspecting the property to determine if the nuisance remains and also for undertaking the work to abate the nuisance if the nuisance had not already been abated.
- (C) All costs of abatement incurred by the County may be recovered pursuant to the procedures set forth in Sections 8.75.150 – 8.75.200.

Sec. 8.75.150. Recovery of Costs of Abatement and Accounting.

All costs of abatement incurred by the County may be recovered pursuant to this section

- (A) When the County causes the abatement of a nuisance pursuant to this Chapter, the Enforcement Officer, his or her Department, or the authorized designee shall keep an accounting of the cost of abatement for each separate assessor's parcel involved in the abatement.
- (B) When the County has completed the work of abatement, or has paid for such work, the costs of abatement shall be charged and billed to the Owner by the Department that abated the nuisance. The bill shall be mailed to the address of the Owner as shown on last equalized assessment roll or the supplemental roll, whichever is more current.
- (C) The bill shall apprise the Owner that failure to pay the bill or request a hearing on the accounting within thirty (30) days from the date of mailing, may result in an abatement lien upon the property.
 - 1. The bill shall include a notice that the Owner may request the Department issuing the bill to provide a hearing within thirty (30) days of the date of mailing for the purpose of contesting the accuracy and reasonableness of the accounting of the costs of abatement.
 - 2. The bill shall further state that if hearing on accounting is requested within thirty (30) days of the date of mailing that the amount stated in the bill shall be deemed accurate and reasonable.
 - 3. The bill shall further state that any request for a hearing on the accounting shall:
 - a. be in writing,
 - b. be delivered to the Department that issued the bill within thirty (30) of the date of mailing of the bill,
 - c. be sufficiently identify the subject property and bill being contested,
 - d. contain the name, address and telephone number of the person requesting the hearing,
 - e. request a hearing on the accounting and state the grounds on which the requested is based, and
 - f. be accompanied by the hearing fee, if such fee has been established by resolution of the Board, and if such fee has been established then the bill shall state the amount of the fee.
- (D) If Owner timely and properly requests a hearing on the accounting, the director of the Department that issued the bill may adjust or waive the bill, as he or she deems appropriate, prior to the hearing on accounting. The hearing on accounting shall be heard pursuant to Section 875.160.
- (E) If a timely appeal is not requested and if the bill is not paid within thirty (30) days of mailing, the amount stated in the bill shall be deemed accurate and reasonable and the Department may proceed to collect the stated amount in the bill pursuant to the provisions in Sections 8.75.180 – 8.75.200.

Sec. 8.75.160. Hearing on Accounting.

- (A) If a timely request for hearing on accounting is received in accordance with Section 8.75.150 by the Department that issued the bill, the Department receiving the request shall then cause the matter to be set for hearing by notifying the Hearing Officer directly

or by requesting County Counsel to coordinate with the Hearing Officer. The hearing shall be set for the earliest practicable date, but no sooner than ten (10) days from the date that the notice of appeal is filed.

- (B) A timely request for hearing on accounting shall stay any further lien action, such as recording the lien, until the hearing procedures are finished.
- (C) In accordance with the noticing provisions set forth in Section 8.75.090, either the Hearing Officer, or the County Counsel in cooperation with the Hearing Officer, shall notify the parties in writing, at least ten (10) days prior to the hearing date, of the date and location of the hearing.
- (D) The hearing procedures set out in Section 8.75.120 shall apply to the hearing on accounting except as otherwise provided in this section.
 - 1. At the time and location fixed for the hearing on accounting, the Enforcement Officer, or other authorized designee within the Department with jurisdiction to enforce the bill, shall first present evidence establishing the accuracy and reasonableness of the accounting of costs of abatement and shall respond specifically to the grounds set out in the request for hearing on accounting.
 - 2. Thereafter the objector shall be heard on the issue of whether the accounting was accurate and reasonable and shall present whatever evidence is relevant to refute the accuracy or reasonableness of the accounting.
 - 3. If the objector fails to appear at the hearing, a written accounting by the Enforcement Officer, or other authorized designee within his or her Department, that includes an itemized accounting by parcel shall be prima facie evidence of the reasonableness and accuracy of the accounting as stated within the bill.

Sec. 8.75.170. Determination after Hearing on Accounting.

- (A) After hearing the evidence from the parties attending the hearing, the Hearing Officer shall determine whether the accounting of costs of abatement, as stated in the bill, was accurate and reasonable, and either confirm, deny or otherwise modify the amount stated in the bill.
 - a. If the Hearing Officer decides that denial or modification to the accounting is just and appropriate, the Hearing Officer shall order such modification by stating the item to be modified or denied, and the amount of any modification.
 - b. If the Hearing Officer decides that the accounting as stated in the bill was accurate and reasonable, the Hearing Officer shall so state and confirm.
- (B) The Hearing Officer shall issue a written decision, which shall be final and conclusive, and which shall be served personally or by mail upon each objector.
- (C) The Owner shall have thirty (30) days, or as otherwise indicated in the Hearing Officer's decision, from the date of service of decision to pay the amount as specified in the Hearing Officer's decision, which was determined to be accurate and reasonable by the Hearing Officer. If the Owner fails to pay such determined amount within the time prescribed, the Department may proceed to collect the determined amount pursuant to the provisions in Section 8.75.180 – 8.75.200.

Sec. 8.75.180. Special Assessment and Abatement Lien.

The Board, by resolution, may order that the costs of abating a nuisance pursuant to this Chapter be placed upon the County tax roll by the County Auditor as a special assessment against the respective parcels of land, or be placed on the unsecured roll, pursuant to Government Code section 25845. The Board may resolve that a notice of abatement lien be recorded against the respective parcels of real property pursuant to Government Code section 25845.

The Department that issued the bill for costs of abatement may request an the Board to make a resolution pursuant to this section either after the Owner fails to pay the bill or request a hearing of accounting in the prescribed time, or after a Hearing Officer establishes the costs of abatement after a hearing on accounting.

Sec. 8.75.190. Notice of Lien and Lien.

After the Board resolves that a notice of abatement lien be recorded against the respective parcels of real property pursuant to Section 8.75.180, the Enforcement Officer or Department that issued the bill of costs of abatement shall prepare and have recorded in the office of the County Recorder of Mendocino County a notice of lien. The notice shall contain:

- (A) A description of the real property subject to the lien sufficient to identify the premises;
- (B) The identity of the Record Owner or possessor of property subject to the lien;
- (C) A description of the proceeding under which the lien was made, including the date upon which the abatement was ordered by the Enforcement Officer or Department with jurisdiction to abate, or by the Hearing Officer if the Owner requested an appeal of the notice and order to abate within the prescribed time, the date the abatement was complete, and any subsequent order or resolution by a Hearing Officer or by the Board;
- (D) The amount of the lien;
- (E) A claim of lien upon the described premises.

Upon the recordation of a Notice of Lien, the amount claimed shall constitute a lien upon the described premises, pursuant to Section 25845 of the California Government Code. Such lien shall be at parity with the liens of State and County taxes.

Sec. 8.75.200. Collection by Special Assessment.

After the Board resolves that the costs of abating a nuisance pursuant to this Chapter be placed upon the County tax roll by the County Auditor as a special assessment against the respective parcels of land, or be placed on the unsecured roll, pursuant to Government Code section 25845, the resolution of the Board specially assess the abatement lien, along with any recorded notice of lien may be delivered to the County Auditor by the Department that issued the bill for costs of abatement. The County Auditor will then enter the amount of the lien on the assessment roll as a lien. Thereafter, the amount set forth shall be collected pursuant to Government Code section 25845.

Sec. 8.75.210. Attorneys' Fees.

Pursuant to Government Code Section 25845(c), in any action, administrative proceeding, or matter commenced by the County to abate a nuisance, or to collect the cost of abatement or

any penalty or fee related thereto, the prevailing party shall recover its attorneys' fees. The recovery of attorneys' fees under this section is limited to those actions, administrative proceedings, or matters in which the County chooses at the initiation of the action, administrative proceeding, or matter to seek the recovery of its own attorneys' fees. In no event shall an award of attorneys' fees under this Chapter exceed the reasonable amount of attorneys' fees incurred by the County in the action or proceeding.

Sec. 8.75.220. Use of Money Collected under this Chapter.

All money collected for penalties for violations of this Chapter and all money collected for recovery of costs of enforcement of this Section shall be made available to the Department responsible for the enforcement action for training and further Code enforcement actions.

Sec. 8.75.230. Violations.

It shall be unlawful for any person to refuse to allow any duly authorized officer, employee, agent, or contractor of the County to enter upon any premises for the purposes of abating the public nuisance as authorized herein or to interfere in any manner whatever with such officer, employee, agent, or contractor. Any violation of this Section shall be deemed to be a misdemeanor except with respect to Mendocino County Code Chapter 9.31. The Board of Supervisors adopts and incorporates herein by reference provisions set forth in Government Code Section 25845.5.

Sec. 8.75.240. Severability Clause.

The provisions of this Ordinance are separate and severable. If any provision of this Ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this Ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.