

**ORDINANCE NO. 84**

**AN ORDINANCE OF THE  
TAMALPAIS COMMUNITY SERVICES DISTRICT AMENDING AND ADDING  
ENFORCEMENT METHODS TO DISTRICT ORDINANCE NO. 78, AN  
ORDINANCE ESTABLISHING SOLID WASTE, GREEN WASTE, AND  
RECYCLABLE MATERIAL STORAGE AND REMOVAL STANDARDS AND  
ASSOCIATED FEES**

**RECITALS**

WHEREAS, the District Board of Directors adopted District Ordinance No. 78, an Ordinance Establishing Solid Waste, Green Waste, and Recyclable Material Storage and Removal Standards and Associated Fees, on May 10, 2006; and

WHEREAS, Article VIII, Section 1 of Ordinance No. 78 states that the District shall establish such fines, penalties and charges as it deems appropriate for violations of Ordinance No. 78 pursuant to Government Code Section 61064 and shall establish any other enforcement procedures for violations of Ordinance No. 78 as the District deems reasonable or necessary; and

WHEREAS, Article II, Section 5 of Ordinance No. 78 states that the District reserves the authority to set rules and regulations and take any appropriate action for the abatement of nuisances; and

WHEREAS, the District desires to establish fines, penalties, charges, and other enforcement procedures as authorized by Article VIII, Section 1 of Ordinance No. 78, and the District desires to set rules and regulations for the abatement of nuisances as authorized by Article II, Section 5 of Ordinance No. 78; and

WHEREAS, Government Code Section 61064 authorizes the District to punish violations or any District rule, regulation or ordinance as a misdemeanor or an infraction; and

WHEREAS, Government Code Section 61100(t) provides that the District may abate weeds and rubbish pursuant to the procedures outlined in Section 14875 et seq. of the Health and Safety Code; and

WHEREAS, Government Code Section 61069 provides instances in which the District may abate nuisances other than nuisances posed by weeds and rubbish; and

WHEREAS, Government Code Section 61115(a)(3) outlines the permissible methods for collection and enforcement of rates, charges, and penalties; and

WHEREAS, Government Code Section 61115(b) provides that the District may collect charges and penalties on the tax roll in the same manner as property taxes.

IT IS ORDAINED by the Board of Directors of the District as follows:

Part 1.            Purpose. The purpose of this Ordinance is to amend District Ordinance No. 78 to provide criminal, civil, and administrative remedies, which shall be in addition to all other legal remedies that may be pursued by the District, to prevent, discourage, abate, or otherwise address any violation of District Ordinance No. 78.

Part 2.            Amendment of District Ordinance No. 78. District Ordinance No. 78, Article I, Section 1, Article II, Section 5, Article VI, Section 4, and Article VIII, Section 1 are hereby amended to read as follows, with additions in double underline format and subtractions in strikeout format. Article VIII, General Provisions, is hereby renamed Article IX, General Provisions, and a new Article VIII, Enforcement has been added. Those portions of Ordinance No. 78 not amended by this Ordinance shall remain in full force and effect. A complete version of revised Ordinance No. 78 is attached to this Ordinance as Exhibit A.

## **“ARTICLE I.            DEFINITIONS AND APPLICABILITY OF STANDARDS**

### **Section 1.            DEFINITIONS**

For the purpose of this Ordinance, the following words and phrases are defined and shall be construed as hereinafter set out, unless it shall be apparent from the context that they have a different meaning:

“Affected Parcel” shall mean the parcel which includes any real property or portions thereof, including any buildings or other improvements located on such property, where nuisance conditions or other violations of Ordinance No. 78 allegedly exist or have previously existed.

“Americans with Disabilities Act (ADA)” means 42 U.S.C. Sections 12101-12213 and all federal rules and regulations relating thereto.

“Compost” means the product resulting from the controlled biological decomposition of organic wastes, which wastes are source separated from the municipal solid waste or are separated at a centralized facility. Compost includes the product resulting from the controlled biologic decomposition of vegetable, yard and wood wastes which are not hazardous waste.

“Composting” means the controlled microbial degradation of organic wastes yielding a safe and nuisance-free product.

“Container” means an approved container used for the disposal and temporary storage of solid waste, green waste and recyclable material.

“Costs of Abatement” shall mean all costs incurred by the District in connection with abating any nuisance. These costs include, but are not limited to, any cost incurred by the District in performing or contracting for work required to abate a nuisance and attorney’s fees.

“Day” or “Days” shall mean calendar days.

“District” means the Tamalpais Community Services District.

“District Board or Board shall mean the Board of Directors of the District.

“Enforcement Officer” means any person authorized or directed by the District Manager to enforce any provision of this Ordinance, including any peace officer. In addition to any other powers conferred upon him or her by this Ordinance, or by any other law, an Enforcement Officer shall have the authority to issue a Notice to Appear, or issue enforcement orders or notices, as described in Article VIII below, if the Enforcement Officer has cause to believe that a violation of this Ordinance No. 78 was, or is being, committed or that any nuisance condition exists.

“Garbage” means all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of food stuffs.

“Green Waste” means leaves, flowers, grass cuttings, weeds, tree twigs and branches (not more than four inches in diameter), shrubs, woodchips and sawdust.

“Hazardous waste” means any substances defined as hazardous waste, acutely hazardous waste or extremely hazardous by the State of California in Health and Safety Code Sections 25110.02, 25115, and 25117 or in future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), and any future amendments thereto.

“Manager” means the General Manager of the Tamalpais Community Services District.

“Non-Putrescible” means Solid Waste which is not organic and subject to decomposition by micro-organisms.

“Occupant” means and includes every owner of a premises, tenant of a premises, and person who has possession of, inhabits, or exercises care and control over a premises.

“Owner” shall mean the owner(s) of record of the Affected Parcel, and shall include any authorized agent(s) of the owner(s) of record.

“Premises” means any land or building where solid waste, green waste or recyclable material is generated or accumulated.

“Putrescible” means solid waste which is organic and subject to decomposition by micro-organisms.

“Recyclable Material” means any material which, in whole, or in part, may be recycled. Recyclable material shall include, but not be limited to the following: newspapers, glass, tin, aluminum, food and beverage containers, cardboard, mixed waste paper and magazines, plastic containers and other reusable household goods, and electronic waste.

“Refuse” means garbage and rubbish. For the purposes of this Ordinance, refuse does not include Recyclable Material.

“Rubbish” means non-putrescible solid wastes such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, plastics, rubber byproducts or litter.

“Solid Waste” means all putrescible and non-putrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes pursuant to Public Resources Code Section 40191.

“This Ordinance” means this District Ordinance No. 78, an Ordinance Establishing Solid Waste, Green Waste, and Recyclable Material Storage and Removal Standards and Associated Fees.

“Vectors” means all animals that may transmit disease, such as rats and mice.

“Weeds and Rubbish” shall mean any vegetation, dry grass, stubble, or brush growing upon streets, sidewalks, or private property or litter or any other flammable material which endangers the public safety by creating a fire hazard upon streets, sidewalks or private property within the District.

## **ARTICLE II. GENERAL REGULATIONS**

### **Section 5. NUISANCE**

No owner or occupant shall allow the accumulation of waste on the premises, including solid waste, green waste or recyclable material. All such waste shall be collected weekly, except such materials that are being retained for recycling or composting and do not create a nuisance or threat to the public health. Failure to properly dispose of such waste as required by the Ordinance shall constitute a nuisance. Failure to remove any existing accumulation of solid waste, green waste or recyclable material within 30 days after notification by the Manager shall be deemed a violation of this Ordinance, which may be enforced pursuant to Article VIII, Enforcement. The District reserves the authority to set

additional rules and regulations and take any appropriate action for the abatement of any such nuisance.

## **ARTICLE VI. FEES**

### **Section 4. LATE FEE PAYMENT PENALTIES**

- A. Late Payment Penalty Amount. Failure to pay the basic fee and/or alternative fee listed above when due shall result in a basic late penalty of \$100.00, which shall not exceed 10% of the original fee. An additional penalty of \$10.00 per month, which shall not exceed 1% of the original fee, shall be imposed for the nonpayment of fees in addition to the basic late penalty.
- B. Discontinuation of Service. At the discretion of the District Board, failure to pay any fee required by this Article VI may result in discontinuation of services provided pursuant to this Ordinance.
- C. Late Payment Penalty Collection. The penalties listed in Subsection 4.A. above shall be collected on the tax roll in the same manner as property taxes following notice and a hearing as set forth in Subsection 4.D. below.
- D. Notice and Hearing Prior to Collection of Penalties on Tax Roll. The general manager shall prepare and file with the District Board a report that describes each affected parcel of real property and the amount of charges and delinquencies for each affected parcel for the year. The General Manager shall give notice of the filing of the report and of the time and place for a public hearing by publishing the notice in the Marin Independent Journal once a week for two successive weeks and by mailing notice to the owner of each affected parcel. At the public hearing, the Board shall hear and consider any objections or protests to the report. At the conclusion of the public hearing, the Board shall make a final determination of each affected parcel. On or before August 10 of each year following these determinations, the General Manager shall file a copy of the final report with the county auditor and the county auditor shall enter the amount of the charges and penalties against each of the affected parcels of real property as they appear on the current assessment roll.

## **ARTICLE VIII. ENFORCEMENT**

Section 1. Separate and Continuing Violations. A separate offense shall be deemed committed each day a violation of this Ordinance occurs or continues; any penalty imposed for a violation of this Ordinance may be imposed on a "per day" basis. Any Nuisance condition where the same, or substantially similar, condition has been the subject of two or more enforcement actions within any three (3) month period is deemed to be a continuing violation.

Section 2. Criminal Penalties. Any violation of this Ordinance may be prosecuted as a criminal offense.

- A. Misdemeanor. Unless expressly described as an infraction, any violation, or failure to comply with any mandatory requirement of this Ordinance shall constitute a misdemeanor. Any person convicted of a misdemeanor pursuant to this Ordinance, unless provision is otherwise herein made, may be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the County jail for a period of not more than six (6) months or both fine and imprisonment.
- B. Infraction. Notwithstanding Subsection 2.A. above, in the discretion of the District or other enforcing authority, any violation of this Ordinance may be charged and prosecuted as an infraction. Any person convicted of an infraction pursuant to this Ordinance, may be punished by a fine of not more than two hundred and fifty dollars (\$250).
- C. Criminal Citation Procedures. If an Enforcement Officer elects to charge a violation of Ordinance No. 78 as a criminal violation, such Officer shall prepare a written Notice to Appear containing the name and address of such person, the offense(s) charged, and the time and place where and when such person shall appear in court. The Enforcement Officer shall obtain the signature of the person being cited and shall deliver to him or her a copy of the Notice to Appear. A copy of such Notice to Appear shall be retained by the Enforcement Officer.

Section 3. Property Inspections and Nuisance Abatement.

- A. Warrants. The District may request an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. Any such warrant shall state the location that it covers and shall state its purpose. The costs of obtaining such a warrant may be included as Costs of Abatement. A warrant may authorize District employees to enter property to do one or more of the following:
- a. Inspect to determine the presence of public nuisances that the district has the authority to abate.
  - b. Abate public nuisances, either directly or by giving notice to the property owner to abate the public nuisance.
  - c. Determine if a notice to abate a public nuisance has been complied with.
- B. Failure to Honor Warrant. Any person who willfully refuses to permit an inspection lawfully authorized by warrant, is guilty of a misdemeanor.
- C. Entrance to Property. Even without consent or a warrant, employees of the District may enter any property within the District where there is no reasonable expectation of privacy and subject to the limitations of the U.S. Constitution and the California Constitution for any of the following purposes:

- a. Inspect the property to determine the presence of public nuisances that the district has the authority to abate.
  - b. Abate public nuisances, either directly or by giving notice to the property owner to abate the public nuisance.
  - c. Determine if a notice to abate a public nuisance has been complied with.
- D. Costs of Abatement. The District may recover all costs of abatement, including attorney's fees.

Section 4. Weed and Rubbish Nuisance Abatement. Weeds and rubbish as defined herein, may be declared a public nuisance and may be abated as provided in this Section.

- A. Declaration of Public Nuisance. By resolution, the District may declare weeds and rubbish appearing on any street, sidewalk, or on private property within the District, a public nuisance.
- a. Contents of Resolution.
    - i. Any resolution declaring a public nuisance under this Section 4 shall refer, by the name under which it is commonly known, to the street, highway, or road upon which the nuisance exists, upon which the sidewalks are located, or upon which the private property affected fronts or abuts or nearest to which the private property is located. If the private property fronts or abuts upon more than one street, highway, or road, it is necessary to refer to only one of the streets, highways, or roads.
    - ii. The resolution shall describe the property upon which, or in front of which the nuisance exists by describing the property by reference to the tract, block, lot, code area, and parcel number as used in the records of the county assessor or in accordance with the map used in describing property for taxation purposes. No other description is necessary.
    - iii. Any number of streets, highways, roads, or parcels of private property may be included in one resolution.
- B. Notice to Destroy Weeds or Rubbish. Following the passage of a resolution declaring a public nuisance according to the procedure in Subsection 4.A. above, the District shall post a notice in front of the 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.
- a. Contents of Notice.

- i. The notice shall be in substantially the following form and the heading shall be not less than one inch in height:

NOTICE TO DESTROY WEEDS OR RUBBISH

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Board of Directors of the Tamalpais Community Services District passed a resolution declaring that dangerous weeds (or rubbish or both) were upon (or in front of) the property on (or nearest to) \_\_\_\_\_ Street (or Road), in said District, and more particularly described in said resolution and that the same constitute a public nuisance which must be abated by the removal of said dangerous weeds (or rubbish or both), otherwise they will be removed and the nuisance will be abated by the District, in which case, the cost of such removal shall be assessed upon the lots and lands from which or in front of which such weeds (or rubbish or both) are removed, and such cost will constitute a lien upon such lots or lands until paid. Reference is hereby made to said resolution for further particulars.

All property owners having any objections to the proposed removal of such weeds (or rubbish or both) are hereby notified to attend a meeting of the District Board of Directors, to be held on \_\_\_\_\_, when their objections will be heard and given due consideration.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ (Title of Enforcement Officer causing notice to be posted)

- b. Publication of Notice. Notice of the hearing described in notices pursuant to this section, shall be published once in the Marin Independent Journal, not less than 10 days prior to the date of the hearing.
- c. Alternative to Posting and Publishing of Notice. As an alternative to posting and publication, notice in the form described in Subsection 4.B.a. above, may be mailed to the property owners as their names and addresses appear from the last equalized assessment roll, or as they are known to the District.
- C. Hearing. At the time stated in the notice(s), the District Board shall hear and consider all objections or protests, if any, to the proposed removal of weeds and/or rubbish, and may continue the hearing from time to time. Upon the conclusion of the hearing the Board shall allow or overrule any or all objection, whereupon the Board shall acquire jurisdiction to proceed and



perform the work of removal, and the decision of the Board on the matter is final.

- D. Abatement Order. After final action is taken by the Board on the disposition of any protests or objections, or in case no protests or objection are received, the Board shall order a District authorized representative to abate the nuisance, or to cause it to be abated by having the weeds and/or rubbish removed. The District or its authorized representatives may enter upon private property for the purpose of removing the weeds and/or rubbish.
- E. Removal of Weeds and Rubbish by Owner. Before the arrival of a District representative, any property owner may remove weeds and/or rubbish at his or her expense. Nevertheless, in any case where an order to abate is issued, the Board by resolution or motion, may further order that a special assessment and lien shall be imposed pursuant to Subsection 4.G. below. In that case, the assessment and lien shall be limited to the costs incurred by the District in enforcing abatement upon the parcels, including investigation, boundary determination, measurement, clerical, and other related costs.
- F. Cost of Abatement/Board Consideration of Cost. The General Manager shall keep an account of the cost of abatement in front of or on each separate parcel of land and present such account in writing to the Board, showing the cost of removing the weeds and/or rubbish on or in front of each separate lot or parcel of land, or both. Before the report is submitted to the Board, a copy of the accounting of costs shall be posted for at least three days on or near the door of the Board's meeting place with a notice of the time when the report will be submitted to the Board for confirmation. At the time fixed for receiving and considering the report, the Board shall hear it and any objections of any of the property owners liable to be assessed for the work of abatement. The Board may make such modifications in the report as it deems necessary, after which, by order or resolution, the report shall be confirmed.
- G. Collection of the Cost of Abatement. The General Manager shall file a copy of the confirmed report with the county auditor and the county auditor shall enter the amount of the costs of abatement against each affected parcel of real property as they appear on the current tax roll.
- H. Cancellation or Refund of Costs Placed on Tax Roll. All or any portion of any costs of abatement placed on the tax roll may, following a claim for refund and on order of the Board, be canceled by the county auditor if uncollected, or, except in the case provided for in subsection e. below, refunded by the county treasurer if collected, or they were entered, charged or paid:
- a. More than once;
  - b. Through clerical error;

- c. Through the error or mistake of the Board or of a District representative designated by the Board to give notice or to destroy the weeds and/or rubbish, in respect to any material fact, including the case where the cost report rendered and confirmed as herein described shows that the District abated the weeds and/or rubbish, but such is not the actual fact;
  - d. Illegally;
  - e. On property acquired after the lien date by the State or by any county, city, school district or other political subdivision and because of this public ownership not subject to sale for delinquent taxes.
- I. Claim for Refund. No order for a refund under Subsection 4.H. above shall be made except on a claim:
- a. Verified by the person who paid the special assessment, his or her guardian, executor, or administrator;
  - b. Filed within three years after making of the payment sought to be refunded.

This Subsection 4.I. shall not apply to cancellations.

## **ARTICLE VIII IX. GENERAL PROVISIONS**

### **Section 1. VIOLATION OF ORDINANCE**

In addition to the enforcement methods described in Article VIII above, The the District shall may establish suchadditional fines, penalties, and charges, and other remedies as it deems appropriate for violations of this Ordinance, pursuant to Government Code Section 61064. The District shall have the further authority to establish such other remedies for violation of this Ordinance as it deems necessary and appropriate, including, but not limited to, establishment of infractions, civil penalties, notices of violation and clean-up orders. The District may further provide that if a notice of violation or clean-up order is not complied with, that the District may file a civil complaint based thereon. The District shall establish such other additional enforcement procedures for violation of this Ordinance as it deems reasonable or necessary."

Part 3. CEQA. The District Board finds and determines that the enactment of the Ordinance is not a "project" as that term is used in the California Environmental Quality Act ("CEQA"; California Public Resources Code §§21,000 et seq.) or the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15,000 et seq.). Therefore no environmental assessment or other CEQA procedures or proceedings are required or necessary.

Part 4. Severability. In the event any chapter, section, part, or portion of this Ordinance shall be determined invalid or unconstitutional, such chapter,


section, part, or portion shall be deemed severable and all other chapters, sections, parts, or portions thereof shall remain in full force and effect.

Part 5.      Effective Date. Upon adoption, this Ordinance shall be entered in the minutes of the District Board, a summary shall be published once in a newspaper of general circulation published in the District within 15 days from and after its adoption, and shall take effect and be enforced 30 days after its adoption.



Steffen Bartschat  
President, Board of Directors  
Tamalpais Community Services District

ATTEST:

  
Secretary  
(SEAL)


\* \* \* \* \*

Passed and adopted at a regular meeting of the Board of Directors of the Tamalpais Community Services District, Mill Valley, California, duly held on the 9th day of May, 2007, by the following vote:

AYES, and in favor thereof, Directors: Steffen Bartschat, Linda Johnson, Jim Jacobs and Rick Johnson

NOES, Directors:      None

ABSENT, Directors: Sandy Glading

  
Secretary

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