

**PLACER COUNTY
OFFICE OF EMERGENCY SERVICES**

M E M O R A N D U M

To: Honorable Board of Supervisors

From: Thomas Miller, County Executive Officer
by: Rui Cunha, Emergency Services Program Manager

Date: October 6, 2009

Subject: **Adopt a Resolution confirming the Director of Emergency Services Executive Order promulgated on September 30, 2009 directing final clean up and removal of fire debris and ash, a public nuisance, in the 49 Fire burn area.**

REQUESTED ACTION

Adopt a Resolution confirming the Director of Emergency Services Executive Order promulgated on September 30, 2009 directing final clean up and removal of fire debris and ash, a public nuisance, in the 49 Fire burn area.

BACKGROUND

Executive Order: Placer County Code Paragraph 2.88.050 designates that the County Executive Officer also serve as the Director of Emergency Services. Paragraph 2.88.060 authorizes the Director of Emergency Services to "make and issue rules and regulations on matters reasonably related to the protection of life and property..." and also requires the Board of Supervisors confirm any "rules and regulations" so imposed at the earliest practicable time. The Director of Emergency Services promulgated just such rules and temporary changes to County Code to streamline the abatement process by Executive Order (the Order) on September 30, 2009. In the Order owners of fire damaged property in the 49 Fire burn area were/are required to clean their properties of all fire debris and ash by October 15, 2009.

Removal of Fire Debris and Ash: The purpose of the Executive Order is to prevent exacerbating the threat caused by presence of unsecured structure ash and debris, which are collectively a public nuisance. By requiring all property owners to act by October 15, the County hopes to have all properties cleaned prior to the rainy season, thereby precluding a mixture of rain and ash from flowing into and contaminating the storm water system. The Order temporarily suspends notice, service and hearing requirements of portions of the County Code dealing with properties to be abated by the County for which a Right of Entry (ROE) has been provided by the property owner. (The owner retains the requirement to pay for all reasonable costs of debris removal). In addition, the Order suspends the requirement that appeals of nuisance abatement orders are to be heard either the Building Board of Appeals or the Planning Commission in favor of hearings conducted by a County Executive Officer or any other hearing officer appointed by the County Executive Officer. Finally, the Order delegates to the Public Health Officer the required direction and authorities to act to ensure safe, timely and complete clean up of properties by the October 15 deadline.

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FISCAL IMPACT

There is no impact to the General Fund due to your Board's confirming the Executive Order of September 30, 2009. However, the Disaster Recovery Fund may be impacted in an amount equal to 25% of full debris and ash removal costs, an amount not to exceed \$37,500. Cleaning of commercial properties is subject to a full cost recovery process.

Attachments

Resolution ratifying the Executive Order of September 30, 2009
Copy of the Executive Order of September 30, 2009

Before the Board of Supervisors County of Placer, State of California

In the matter of: **A RESOLUTION CONFIRMING
THE DIRECTOR OF EMERGENCY SERVICES
EXECUTIVE ORDER PROMULGATED ON
SEPTEMBER 30, 2009 DIRECTING FINAL CLEAN
UP AND REMOVAL OF 49 FIRE DEBRIS AND ASH**

Resol. No: _____

The following **RESOLUTION** was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held **OCTOBER 6, 2009** by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chair, Board of Supervisors

Attest:

Clerk of said Board _____

WHEREAS, Placer County Code Paragraph 2.88.050 designates the County Executive Officer to serve as the Director of Emergency Services; and

WHEREAS, paragraph 2.88.060 of Placer County Code authorizes the Director of Emergency Services to "make and issue rules and regulations on matters reasonably related to the protection of life and property..." and also requires the Board of Supervisors confirm any "rules and regulations" so imposed at the earliest practicable time; and

WHEREAS, the Director of Emergency Services promulgated just such rules and temporary changes to County Code to streamline the abatement process by Executive Order (the Order) on September 30, 2009; and

WHEREAS, the purpose of the Order is to prevent exacerbating the threat caused by presence of unsecured structure ash and debris, which collectively are a public nuisance; and

WHEREAS, the Order temporarily suspends notice, service and hearing requirements of portions of the County Code dealing with properties to be abated by the County for which a Right of Entry (ROE) has been provided by the property owner; and

WHEREAS, the Order delegates to the Public Health Officer the required direction and authorities to act to ensure safe, timely and complete clean up of properties by the October 15 deadline.

NOW, THEREFORE IT IS HEREBY RESOLVED that the Board of Supervisors of the County of Place confirms the Executive Order of the Director of Emergency Services promulgated on September 30, 2009.

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COUNTY OF PLACER

BOARD MEMBERS

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District 1

JIM HOLMES
District 3

ROBERT M. WEYGANDT
District 2

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District 4

JENNIFER MONTGOMERY
District 5

OFFICE OF COUNTY EXECUTIVE

THOMAS M. MILLER, County Executive Officer

175 FULWEILER AVENUE / AUBURN, CALIFORNIA 95603

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EXECUTIVE ORDER

WHEREAS, on the afternoon of Sunday, August 30, 2009 fire broke out near Highway 49 and Rock Creek Road in North Auburn destroying more than 60 single-family homes, three businesses and damaged several other homes and businesses; and

WHEREAS, on August 30, due to the severity of the fire, the County Executive Officer proclaimed a local emergency as provided for under the California Emergency Services Act, Section 8630 and on September 2, 2009, the Placer County Board of Supervisors approved Resolution #2009-0227 ratifying the August 30 Proclamation of Local Emergency; and

WHEREAS, on September 1, 2009, the Placer County Health Officer declared a local Health Emergency pursuant to Health and Safety Code section 101080 and the continuing State of Emergency gives the Board, or officials designated thereby, the authority to promulgate countywide orders and regulations necessary to provide for the protection of life and property. (Government Code § 8634; see also 62 Op. Attorney General 701); and

WHEREAS, a State of Emergency already exists and is continuing based on hazardous debris and materials presenting health and safety issues, I hereby confirm that there is an immediate threat to public health in Placer County caused by the presence of unsecured structure ash and debris from the 49 Fire; and

WHEREAS, I hereby determine and declare that the presence of fire-related structure ash and debris on each and any site in the unincorporated area of the County of Placer is a public nuisance because of the threat to public health posed by such ash; and

WHEREAS, this declaration of public nuisance is based both on my routine authority as County Executive Officer of the County of Placer under State Law, the County Charter, and the County's Regulatory and Administrative Codes; and on my emergency authority as Director of Emergency Services pursuant to 2.88.050 with the powers and duties set forth in Placer County code section 2.88.060.

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THEREFORE, pursuant to the authority cited above as well as California Government Code section 25845(a), and based on the continuing State of Emergency, I am ordering the following changes to County Code be implemented immediately:

The notice, service, and hearing requirements of sections 17.62.160 B, C and D of County Code are hereby suspended for cases in which an ash-related nuisance that I have declared is abated by direct County action, but with the consent and cooperation of the property owner. These streamlined procedures will apply where the County Debris Removal Program enters a site to abate an ash nuisance pursuant to a Right of Entry ("ROE") signed by the property owner. In all such cases, the owner must contract to pay to the County the reasonable cost of removal, including any insurance proceeds the owner receives for debris removal.

The requirement in sections 17.62.160 D of County Code that appeals of nuisance abatement orders be heard by the Building Board of Appeals or Planning Commission is also hereby suspended in order to streamline nuisance abatement procedures in cases where owner cooperation is lacking. Instead, these appeals may be heard by a County Executive Officer or by any other hearing officer appointed by the County Executive Officer on abbreviated notice. In such cases the County Health Officer may order that any of the time and notice requirements be modified such that an expeditious resolution of the issue may be had and that the nuisance be quickly abated.

I am further ordering as follows:

1. The Public Health Officer or his designee shall notify landowners who have structure ash and debris on their property of my determination that the presence of such ash constitutes a public nuisance that must be abated. These notices should be appropriate in form and presentation to the circumstances, e.g., a notice to an owner who has signed a Right of Entry can be given in a different manner than a notice to an owner who declined to sign a Right of Entry and failed over the course of several weeks to act to abate ash directly.
2. The Public Health Officer shall retrieve ash and debris from fire damaged structures, and arrange for the safe and legal disposal or recycling of those wastes, except at sites where owners complete this work themselves on a timely basis. The Public Health Officer shall use all available means and resources to complete this task by October 15, 2009 if possible. The Public Health Officer shall notify me if sufficient resources are not available.
3. To the extent possible consistent with overall program logistics, priority in securing ash and debris should be given to ash that is close to potential local receptors.
4. To the maximum extent feasible, the recovery of ash and debris shall be achieved in a manner that ensures protection of workers and neighbors and prevents the escape of ash.

5. To the maximum extent feasible, abatements shall be based on the consent of the land owner, which shall be signified by a Right of Entry permit or contract between the owner and the County. The Public Health Officer shall not issue an order to abate to an owner who signs an appropriate Right of Entry, but shall cooperate with such owners to abate the nuisance on their property. The Public Health Officer shall make every reasonable effort to recover from such owners any insurance proceeds paid to them for debris removal, as provided in that right of entry.

6. The Public Health Officer shall issue orders to abate to owners who do not sign the Right of Entry, and who do not initiate ash removal themselves, with sufficient lead time so that direct County abatement action on such properties can begin at about the same time that County abatement of Right of Entry sites is nearing completion.

7. Where an order to abate followed by direct County abatement is necessary, the Public Health Officer shall enter that property only pursuant to consent given by the owner, or pursuant to an abatement warrant, unless there is a clear public exigency specific to that site (i.e., the presence of ash at that site considered in isolation poses an immediate threat to life, public health, or safety). Any written consent by an owner shall be legibly countersigned by a County employee or agent. Any oral consent shall be witnessed by two or more County employees or agents, and memorialized for the site file. If the Public Health Officer concludes that public exigency requires entry onto any site without consent that conforms to these instructions or a warrant, he shall consult with County Counsel before making that entry.

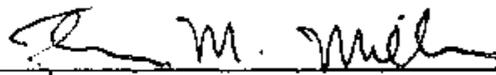
8. The Public Health Officer shall request and accept direct assistance and financial assistance from, and shall coordinate with, State and Federal Agencies that can assist in completing this mission.

9. To accomplish this mission, the Public Health Officer is authorized and directed to exercise all powers residing in me as County Executive Officer of the County of Placer, and as Emergency Services Director of the County of Placer. The Public Health Officer may also exercise such powers as may be delegated to him by any State or Federal official during this mission.

10. The Public Health Officer shall cause this order to be given widespread publicity and notice pursuant to Government Code section 8634.

Dated: September 30, 2009

By:


Thomas M. Miller,
Director of Emergency Services

