ORDINANCE NO. ___

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ESTABLISHING REQUIREMENTS AND PROCEDURES FOR THE REMOVAL OF FIRE DEBRIS FROM PRIVATE PROPERTY FOLLOWING THE REDWOOD COMPLEX FIRE

WHEREAS, on October 9, 2017, fires started within the County of Mendocino that later became known as the Redwood Complex Fire; and

WHEREAS, on October 9, 2017, by delegation, a local emergency was declared for Mendocino County, which was ratified by the Board of Supervisors at its meeting on October 10, 2017; and

WHEREAS, on October 9, 2017, Governor Edmund G. Brown, Jr., declared a state of emergency for Butte, Lake, Napa, Orange, Mendocino, Nevada, Sonoma and Yuba counties; and

WHEREAS, on October 10, 2017, President Donald J. Trump issued a major disaster declaration for the State of California as a result of the devastation caused by the fires in Butte, Lake, Mendocino, Napa, Nevada, Sonoma and Yuba counties; and

WHEREAS, on October 13, 2017, the health officer of the County of Mendocino declared a local health emergency, pursuant to Health and Safety Code section 101080, which was ratified by the Board of Supervisors at its meeting on October 17, 2017; and

WHEREAS, on October 18, 2017, the Governor of the State of California issued Executive Order B-43-17 to assist in streamlining recovery efforts in communities throughout the State that have been impacted by wildfires during October 2017; and

WHEREAS, the Redwood Complex Fire burned over 35,000 acres and destroyed or damaged several hundred homes and minor structures; and

WHEREAS, the debris resulting from the Redwood Complex Fire contains hazardous material in the ash of the burned structures and poses a substantial present and potential hazard to human health and safety and to the environment unless it is addressed and managed; and

WHEREAS, the approaching rain and snow season threatens to spread the hazardous material in the ash of the burned structures and could thereby pollute and contaminate the drinking water supply of the affected areas of Mendocino; and

WHEREAS, the scale of the damage requires a coordinated approach to ensure adequate and timely cleanup for protection of the environment and public health; and

WHEREAS, a limited window of time exists to access the additional manpower and resources currently present in the area, such as the U.S. Army Corps of Engineers, as a result of the recent fire disasters; and

WHEREAS, a swift response and short cleanup deadlines are necessary to protect the environment and public health, especially in light of the approaching rainy season, and to increase Mendocino County's ability to utilize support from the U.S. Army Corps of Engineers

and other support resources in the area, without which the abatement of the fire debris may become extremely difficult, if not impossible, to accomplish in a manner that adequately protects the environment and the public health from the immediate threat posed by the fire debris; and

WHEREAS, this ordinance helps to ensure that properties affected by the Redwood Complex Fire are made safe and ready for reconstruction or repair; and

WHEREAS, this ordinance provides for the orderly administration of the public cleanup program in coordination with the private cleanup program; and

WHEREAS, expeditious enforcement an abatement provisions are needed to ensure that all affected properties will be remediated in a timely manner; and

WHEREAS, Government Code section 25845 gives the Board authority to establish a procedure for the abatement of nuisances; and

WHEREAS, the County of Mendocino desires to adopt these regulations on an urgency basis pursuant to Government Code section 25123, which allows ordinances to become effective immediately if the ordinance is for the immediate preservation of the public peace, health or safety, which shall contain a declaration of the facts constituting the urgency, and be passed by a four-fifths vote of the Board of Supervisors; and

WHEREAS, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt such an urgency ordinance immediately upon its introduction.

NOW, THEREFORE, THE MENDOCINO COUNTY BOARD OF SUPERVISORS ORDAINS AS FOLLOWS:

**Section 1.** The above recitals are incorporated herein by this reference.

**Section 2. Urgency Findings.** The Board of Supervisors hereby finds that the adoption of this ordinance is for the immediate preservation of the public peace, health and safety.

1. The Redwood Complex Fire destroyed hundreds of residences and accessory buildings in the Redwood Valley and surrounding areas of Mendocino County.

2. The potential for widespread toxic exposures and threats to public health and the environment exists in the aftermath of a major wildfire disaster. Debris and ash from residential, commercial and other structure fires can contain hazardous substances.

3. The combustion of building materials such as siding, roofing titles, and insulation can result in dangerous ash that contains asbestos, heavy metals, and other hazardous materials. Household hazardous waste such as paint, gasoline, cleaning products, pesticides, compressed gas cylinders, and chemicals may have been stored in homes, garages, or sheds that may have also burned in the fire, also producing hazardous materials.

4. Exposure to hazardous substances may lead to acute and chronic health effects, and may potentially cause long-term public health and environmental impacts. Uncontrolled hazardous materials and debris pose significant threats to public health through inhalation of dust particles and contamination of drinking water supplies. Improper handling can expose workers to toxic materials, and improper transport and disposal of fire debris can spread hazardous substances throughout the community.

5. Standards and removal procedures are needed immediately to protect the environment and public health, and to facilitate coordinated and effective mitigation of the risks to the environment and public health from the health hazards generated in the Redwood Complex Fire disaster. Without a clear and immediate set of standards and removal procedures, residents affected by the Redwood Complex Fire may return to their properties and attempt to clean up the remaining debris and ash in a manner that may cause damage to the environment and to the public health.

6. In the absence of timely and appropriate actions by the affected private property owners, tailored enforcement procedures are needed ensure the ability of Mendocino County to remediate the fire debris and ash on those privately owned properties.

7. The rapidly approaching rainy season makes the need for immediate standards and procedures even more urgent for the purpose of providing a swift and coordinated response to minimize the rainwater runoff to our waterways containing hazardous substances picked up from the fire debris and ash.

8. The standards and removal procedures established and required by this ordinance is needed to take effect immediately in order to mitigate the harm that could be caused to the public health and safety and to the environment from improper disturbance, removal and/or disposal of debris containing hazardous materials, and to facilitate the orderly response to the Redwood Complex Fire disaster.

**Section 3. Definitions.**

(a) Affected Property. The phrase “affected property” as used in this ordinance means the private property on which the Redwood Complex Fire burned any portion of a structure.

(b) Affected Property Owner. The phrase “affected property owner” as used in this ordinance means an owner of affected property.

(c) Board. The term "Board" means the Board of Supervisors of Mendocino County.

(d) Director. The term Director shall mean the Mendocino County Director of the Division of Environmental Health and her/his designee.

(e) Division of Environmental Health. The term “Division of Environmental Health” means the Division of Environmental Health of the Mendocino County Health and Human Services Agency.

(f) Fire Debris. The term “fire debris” as used in this ordinance includes fire debris and ash from structures resulting from the Redwood Complex Fire.

(g) Private Cleanup Program. For purposes of this ordinance, the term " Private Cleanup Program" shall mean the Mendocino County 2017 Redwood Fire Complex Debris Cleanup and Removal Program and “Self-Certification” Process, to be administered by the County of Mendocino and carried out by the owners of the properties affected by the Redwood Complex Fire who either waive their rights under or are ineligible for the Public Cleanup Program.

(h) Private Cleanup. For the purposes of this ordinance, the term "private cleanup" shall mean the removal of fire debris from private property damaged by the Redwood Complex Fire by persons not eligible for or waiving their rights under the Public Cleanup Program.

(i) Public Cleanup Program. For purposes of this ordinance, the term "Public Cleanup Program" shall mean the Consolidated Debris Removal Program operated by the California Office of Emergency Services for the Redwood Complex Fire in conjunction with other State and Federal agencies, including the United States Army Corps of Engineers.

(j) Removal of Fire Debris. The term "removal of fire debris" or similar iteration such as “removing fire debris” as used in this ordinance includes all cleanup of fire debris, including removal, transport and disposal of fire debris, but does not include the removal of personal property from residential sites unless such removal of personal property involves cleanup and the removal of ash from the property.

(k) Right of Entry Permit. The term "Right of Entry Permit" means the Debris Removal Right-of-Entry Permit (For Providing Debris Removal on Private Property), approved by the California Office of Emergency Services for use in the cleanup after the Redwood Complex Fire.

**Section 4. Removal of Fire Debris and Ash from Private Property.**

1. Prohibition on Removal of Fire Debris from Private Property.

   No fire debris shall be removed from private property without a hazardous materials inspection conducted either by the U.S. Environmental Protection Agency or California Department of Toxic Substance Control through the Office of Emergency Services' fire debris clearance program or by a qualified entity approved by the Director.

2. Participation Required in either the Public or Private Cleanup Programs.

   All affected property owners must participate in either (1) the Public Cleanup Program or (2) the Private Cleanup Program. These programs provide requirements and standards for the removal of fire debris in a manner that protects the environment and the public health. Failure by an affected property

owner to participate and meet the requirements of the applicable program may result in abatement by Mendocino County.

3. Submittal to County Demonstrating Participation in a Cleanup Program.

All affected property owners must submit either a Right of Entry Permit to participate in the Public Cleanup Program or a Private Cleanup Form to participate in the Private Cleanup Program. These forms must be submitted to the Mendocino County Department of Planning and Building Services. If the County of Mendocino has not received a valid Right of Entry Permit or Private Cleanup Form by November 16, 2017 for each affected property, Mendocino County may pursue remedial action in accord with the enforcement provisions of this ordinance.

4. Removal of Fire Debris through the Public Cleanup Program.

(a) All eligible affected property owners may choose to participate in the Public Cleanup Program by timely submitting a completed Right of Entry Permit to the Mendocino County Department of Planning and Building Services.

(b) Effect of the Right of Entry Permit. The Right of Entry Permit shall function as the sole permit and authorization for participation in the Public Cleanup Program.

(c) Notwithstanding any contrary provision in the Mendocino County Code, no Mendocino County approvals or permits for fire debris removal are required for properties participating in the Public Cleanup Program, including demolition permits, other than the Right of Entry Permit.

(d) State and Federal agencies, including United States Army Corps of Engineers, will perform the necessary work to removal the fire debris from affected properties for which a timely and complete Right of Entry Permit was submitted.

5. Removal of Fire Debris through the Private Cleanup Program.

(a) The County of Mendocino hereby adopts the Private Cleanup Program.

(i) The Private Cleanup Program will be administered in the unincorporated areas of Mendocino County for all property owners pursuing private cleanup.

(ii) The County of Mendocino cleanup goals and standards of the Private Cleanup Program is modeled after the state and federal standards and cleanup goals of the Public Cleanup Program.

(iii) The Chief Executive Officer (“CEO”) of Mendocino County, or the CEO’s designee, may administratively update these standards as necessary to address ongoing changes in the administration of the

Public Cleanup Program and the need to efficiently remove hazardous fire debris from the community.

(b) Filing Requirements and procedure to successfully complete the Private Cleanup Program.

(i) First an affected property owner must submit a completed Private Cleanup Form.

(ii) Next the affected property owner must submit a completed Debris Removal Program Application concurrently with a Debris Removal Plan.

(iii) After Mendocino County approves the application and plan, the affected property owner must carry out the approved plan and remove the fire debris in conformance with the standards and requirements of the Private Cleanup Program.

(iv) Upon completion of the removal of fire debris, the affected property owner must submit a self-certification of completion form along with all associated, required documents.

(v) Successful completion of the Private Cleanup Program will occur when the Director approves all elements of the self-certification.

(c) Private Cleanup Form.

(i) Signing and submitting a completed and timely Private Cleanup Form to the Mendocino County Department of Planning and Building Services is the first step to private cleanup and indicates an intention to participate in and fully comply with the requirements of the Private Cleanup Program.

(ii) Signing the Private Cleanup Form acknowledges that the affected property owner bears the responsibility in to timely remove the fire debris without the financial, logistical or other support that will be provided to the affected property owners who choose to participate in the Public Cleanup Program.

(d) The Debris Removal Program Application and Plan.

(i) After submitting a Private Cleanup Form, the affected property owner must submit a completed 2017 Redwood Fire Complex Debris Removal Program Application to the Division of Environmental Health on a form prepared by Mendocino County. This application shall include information such as identification of appropriate licensed contractors who will perform the work.

(ii) Concurrently with this application, the affected property owner must also submit a Debris Removal Plan to the Division of

Environmental Health, demonstrating that the standards established in the Private Cleanup Program will be met. The required components of this plan are detailed in the Mendocino County 2017 Redwood Fire Complex Debris Cleanup and Removal Program documents, prepared by the County of Mendocino.

(iii) Mendocino County will not charge for its review and approval process for the Debris Removal Application and Plan unless the Board adopts a fee for such process by resolution.

(iv) Notwithstanding any contrary provision in Mendocino County Code, no Mendocino County demolition permit shall be required after a Debris Removal Plan has been approved by the Director pursuant to the Private Cleanup Program.

(v) The CEO of the County of Mendocino, or the CEO's designee, shall set the deadline for submittal of the Debris Removal Application and Plan.

(e) Removal of Fire Debris.

(i) No fire debris shall be removed by persons pursuing private cleanup until after the County of Mendocino has approved the Debris Removal Application and Plan. The County of Mendocino may rely upon the subject matter expertise of multiple departments in deciding whether to approve the application.

(ii) Fire debris cleanup operations shall not commence until after an affected property owner receives written approval of their Debris Removal Plan by the Director.

(iii) An affected property owner must follow all requirements and standards as articulated in Private Cleanup Program's supporting documents, including but not limited to the Cleanup Process, Protocols for removal, sampling and erosion control, and Cleanup Specifications. The Debris Removal Plans must also be followed as approved.

(f) Submittal of the "Self-Certification" Form and Completion of Private Cleanup.

(i) Upon completion of the work described in the approved plans and performed pursuant to the requirements and standards of the Private Cleanup Program, the affected property owner must submit a "self-certification" to the Division of Environmental Health, along with all required and necessary documentation, such as the soil sample results. The soil sample results must fall within the acceptable range as determined by the Director.

(ii) The "self-certification" form, which can be obtained from the Division of Environmental Health, identifies the required elements to report such as ash disposal, sampling results, asbestos assessment, and property owner certification.

(iii) Successful completion of Private Cleanup is contingent upon Director's approval of all elements of the "self-certification"

(iv) A complete and correct "self-certification" form, along with all supporting documents must be submitted to the Division of Environmental Health no later than February 1, 2018.

6. Hold on Building Permits.

(a) Any issued County of Mendocino building permit to repair or reconstruct a fire damaged structure or private infrastructure shall be held in abeyance and not acted upon until fire debris cleanup is completed on the affected property and completion is confirmed to the Mendocino County Building Official, either through the Public Cleanup Program or through the Private Cleanup Program.

**Section 5. Enforcement of Ordinance and Debris Removal by County.**

1. The Board's intent is to facilitate orderly remediation of a large scale disaster. Therefore, Mendocino County intends to enforce this ordinance for the purpose of protecting the environment and public health. As such, the enforcement provisions contained in this ordinance are not exclusive, but are cumulative to all other remedies provided by law. Further, nothing in the deadlines contained in this ordinance shall limit the authority of Mendocino County to abate hazards more quickly where the circumstances so warrant or enforce the provisions of this ordinance through any other applicable code enforcement mechanism.

2. The following Mendocino County employees have the authority to enforce this ordinance: the Director of the Division of Environmental Health, the Director of the Mendocino County Department of Planning and Building Services, the designee of either, any code enforcement officer of the Division of Code Enforcement of the Mendocino County Department of Planning and Building Services, or any other employee subsequently designated by resolution of the Board.

3. Declaration of Nuisance.

(a) An affected property is hereby declared a public nuisance if it contains fire debris and if the County of Mendocino has not received either a valid Right of Entry Permit or Private Cleanup Form by November 16, 2017.

(b) An affected property is hereby declared a public nuisance if it contains fire debris and an affected property owner has submitted a Private Cleanup Form, but has either (1) failed to timely submit a completed Debris Removal Application and Plan that results in approval by Mendocino

County, (2) failed to adhere to any of the approved plans, requirement or specifications as detailed in the Private Cleanup Program documentation, (3) failed to meet any of the deadlines established for the Private Cleanup Program, or (4) failed to timely complete the Private Cleanup Program successfully.

(c) An employee with the authority to enforce this ordinance may rely on his or her personal knowledge of the facts giving rise to the public nuisance, or on information provided to such employee by any other government entities or employees, or other information (including but not limited to areal and satellite images), bearing reasonable indicia of reliability.

4. For the purpose of protecting the environment and the public health, Mendocino County may abate a public nuisance declared by this ordinance by removing fire debris and doing any other work necessary to remove the public health hazard caused by the fire debris.

5. The responsibility for the costs of enforcement by Mendocino County will be on the affected property owner.

6. If an affected property is declared a public nuisance by this ordinance, the provisions of Mendocino County Code ("MCC") Chapter 8.75 shall apply, except as otherwise modified by or provided in this ordinance.

7. Notwithstanding the provision of MCC Chapter 8.75, if an affected property becomes a public nuisance pursuant to this ordinance, the following provisions shall apply:

(a) The affected property owner or occupant shall have five (5) days to appeal a Notice and Order to Abate ("NOTA") from the date that the Notice was served.

(b) Notice may be served by posting and mailing as specified in MCC section 8.75.090(A)(3), without first attempting service by personal service or certified mail as detailed in MCC sections 8.75.090(A)(1) and (2).

(c) The reasonable time to abate any of the public nuisances articulated in this ordinance shall be five (5) days from the date of service.

**Section 6. CEQA.**

The Board hereby finds that this ordinance is exempt from the California Environmental Quality Act (Public Resources Code section 21000 et seq.; "CEQA") pursuant to (a) Public Resources Code section 21080(b)(3) regarding projects to maintain, repair, restore, or replace property or facilities damaged or destroyed as a result of a declared disaster; (b) Public Resources Code section 21080(b)(4) regarding actions to mitigate or prevent an emergency; (c) CEQA Guidelines (Title 14 Cal. Code Regs. section 15000 et seq.) section 15269, as it is a project to maintain, restore or replace property damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor of California pursuant to the California Emergency Services Act; (d) CEQA Guidelines section

15307, as it is a project to assure the maintenance and restoration of natural resources; and (e) CEQA Guidelines section 15308, as it is a project to assure the maintenance and restoration of the environment. This finding is based on and supported by the evidence in the record, including the agenda summary accompanying this ordinance.

**Section 7. Effective Date and Term.**

This ordinance is an urgency ordinance adopted pursuant to Government Code Section 25123 and shall become effective immediately upon its adoption if adopted by at least four-fifths of the Board of Supervisors. This ordinance shall remain in effect until the cleanup of fire debris has been completed on all properties damaged by the Redwood Complex Fire.

**Section 8. Severability.**

If any section, subsection, sentence, clause phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2017, by the following roll call vote:

AYES:
NOES:
ABSENT:

**WHEREUPON**, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

_____
Deputy

*APPROVED AS TO FORM:*
KATHARINE L. ELLIOTT,
County Counsel

_____

_____
JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

_____
Deputy