

**ORDINANCE NO. 14-239**

**AN ORDINANCE OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS AMENDING CHAPTER 8 (PINE BARK BEETLE INFESTATION AND ABATEMENT) OF TITLE 3 (PUBLIC SAFETY) OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT CODE**

The Bear Valley Community Services District Board of Directors ordains as follows:

**SECTION 1. Findings.**

- A. Government Code section 61100(y) authorizes the District to control, abate, and eradicate pests, including pine bark beetles, in the same manner as a pest abatement district that is governed by Health and Safety Code sections 2800 and following.
- B. Under the authority of Government Code section 61100(y), the District has enacted Chapter 8 (Pine Bark Beetle Infestation) of Title 3 (Public Safety) of the Bear Valley Community Services District Code ("District Code"), which provides for the control, removal, and eradication of local pine bark beetle infestations.
- C. A critical element of controlling pine bark beetle infestations is identifying and removing the pests as expeditiously as possible, in order to prevent the rapid spread of the infestation throughout the community.
- D. Currently, the District Code provides for a dual Board hearing procedure prior to the issuance of a final abatement order for any pine bark beetle infestation within the District. In practice, this procedure adds significant time to the abatement process and thus allows the pine bark beetles to move from the original site to new sites before the District has taken or is ready to take final action. Such a dual hearing process is not required by the applicable provisions of the California Government Code or Health and Safety Code.
- E. In an effort to diligently address the devastating effects of pine bark beetles that infest local pine trees, the Board of Directors desires to amend the District Code by establishing a more streamlined procedure for identifying and eradicating pine bark beetle infestations, which is consistent with the nuisance abatement procedures outlined in Health and Safety Code sections 2856 through 2868.
- F. Consistent with the applicable Health and Safety Code sections, the procedure, as amended by this ordinance, will require the District to provide written notification to a property owner that a determination has been made that a public nuisance involving a pine bark beetle infestation exists on the property, that certain steps must be taken to eradicate the nuisance, and that the property owner has the right to appear at a scheduled hearing before the District Board of Directors to object to the nuisance finding.
- G. The Board further desires to make certain other non-substantive amendments to Chapter 8 to clarify and enhance the chapter.

**SECTION 2. Amendment of District Code Chapter 3-8.** Chapter 8 (Pine Bark Beetle Infestation) of Title 3 (Public Safety) of the Bear Valley Community Services District Code is hereby amended and restated as set forth in Exhibit A, which is attached to this ordinance and incorporated by reference.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The Board of Directors hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 4. Effective Date.** This ordinance will take effect 30 days after its final passage.

**SECTION 5. Publication.** The Secretary of the Board of Directors is directed to cause this ordinance to be published in the manner required by law.

PASSED AND ADOPTED on October 9, 2014, by the following vote:

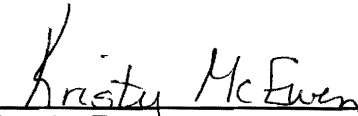
AYES: GRACE; VOVILLA; ZANUTTO; LACLAIRE; MASON

NOES: NONE

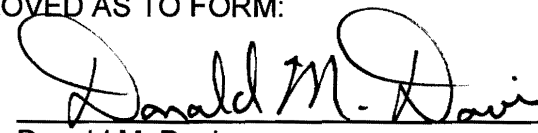
ABSENT: NONE

  
\_\_\_\_\_  
William T. Mason, Board President  
Bear Valley Community Services District

ATTEST:

BY:   
\_\_\_\_\_  
Kristy McEwen  
Secretary to the Board of Directors

APPROVED AS TO FORM:

BY:   
\_\_\_\_\_  
Donald M. Davis  
District General Counsel

## CHAPTER 8

### PINE BARK BEETLE INFESTATION AND ABATEMENT

#### 3-8-1: PURPOSE AND AUTHORITY:

The purpose of this chapter is to provide, maintain, operate, and contract for facilities and services for the control, removal, and eradication of local pine bark beetle infestations in accordance with any applicable plan or program approved by the Department of Forestry and Fire Protection ("Cal Fire") to ensure consistency with the policies of the state. This chapter is adopted under the authority of Government Code section 61100(y).

#### 3-8-2: FINDINGS:

There are many "pine trees," as defined in section 1-3-2 of this code, growing on public and private premises within the district, the loss of which would substantially depreciate the value of public and private premises and impair the safety, good order, general welfare and convenience of the public. The health and life of such pine trees is threatened by the infestation of "pine bark beetles," as defined in section 1-3-2 of this code, which can cause the death of pine trees. In addition to the aesthetic impact of dead pine trees, such dead wood poses a substantial fire hazard in the district. Using the procedures set forth in this chapter, the board intends to prevent, control and eradicate the spread of pine bark beetles within the district.

#### 3-8-3: DECLARED NUISANCES:

The following conditions are deemed public nuisances within the district:

- A. A living or standing pine tree that is infested to any significant degree with the pine bark beetle, or which harbor spine bark beetles.
- B. Any dead pine tree or dead part of any pine tree, including logs, branches, stumps, firewood or other pine material from which the bark has not been removed.

#### 3-8-4: SURVEYS; APPRAISALS:

The district may make the necessary surveys and appraisals to obtain pertinent data and information on pine bark beetle infestations and disease infections.

#### 3-8-5: INSPECTION AND ENTRY ON PRIVATE PROPERTY:

- A. The authorized representatives of the district and Cal Fire, (collectively, "inspector"), should inspect all premises within the district as often as practicable to determine whether any condition described in section 3-8-3 of this chapter exists. An inspector may enter upon private property at any reasonable time for the purposes of carrying out any of the duties assigned under this chapter. If entry is refused, the inspector may secure lawful entry through any available means as provided by law.
- B. Whenever necessary to determine the existence of pine bark beetle infestation in any pine tree, an inspector may remove or cut specimens from the tree.

**3-8-6: PROPERTY OWNER RESPONSIBILITY TO CONTROL OR ERADICATE PINE BARK BEETLES:**

Every owner of property within the district must control or eradicate pine bark beetles and such other insects and pests that are harmful to pine trees in the district. If the owner does not do so, the work may be performed by the district as provided in this chapter, and the costs assessed against the property.

**3-8-7: AGREEMENTS FOR PINE BARK BEETLE CONTROL:**

The district may enter into agreements with district property owners for the purpose of controlling or eradicating pine bark beetles damaging or threatening destruction to pine trees, and may make expenditures for such purposes.

**3-8-8: CREATION OF ZONE OF INFESTATION:**

If the board determines that there exists an area which is infested or infected with pine bark beetles or other insects harmful to pine trees or other trees in the district and the infestation or infection is of such a character as to be a menace to the pine trees and other trees of adjacent owners, the board may declare the existence of a zone of infestation or infection, and describe and fix its boundaries.

**3-8-9: DISSOLUTION OF ZONE OF INFESTATION:**

If the board determines that the control of pine bark beetles or disease control work within a designated zone of infestation or infection is no longer necessary or feasible, the board may dissolve the zone.

**3-8-10: INITIAL DETERMINATION OF PINE BARK BEETLE NUISANCE:**

Following a property inspection conducted pursuant to section 3-8-5 of this chapter, the general manager may determine that a public nuisance exists wherever any of the conditions described in section 3-8-3 of this chapter are found to exist.

**3-8-11: NOTICE TO ABATE PINE BARK BEETLE NUISANCE; FORM OF NOTICE:**

- A. Following the initial determination that a public nuisance exists, the general manager will give notice ("abatement notice") to the affected property owners on district letterhead that reads substantially as follows:

***NOTICE TO REMOVE AND DESTROY PINE TREE:***

*Notice is hereby given that the Bear Valley Community Services District has inspected the property located at [insert address] in the Bear Valley Community Services District, and determined that there are certain "pine tree(s)" infested with "pine bark beetle" (each as defined in Section 1-3-2 of the District Code) and/or there are dead pine trees, which constitute a public nuisance. The infested or dead pine tree(s) must be removed and destroyed on or before [enter date] (the "abatement deadline").*

*If the nuisance condition described in this notice is not abated on or before the abatement deadline, the District may cause the nuisance to be abated pursuant to*

*Chapter 8 of Title 3 of the Bear Valley Community Services District Code. If the District is required to abate the nuisance described in this notice, the cost of the removal and destruction of the infested pine tree(s) and/or dead pine trees will be assessed upon the property on which the tree(s) are located, and the costs will constitute a lien upon the property until paid.*

*Prior to complying with the requirements of this notice, however, any property owner having an objection to the proposed order to remove and destroy the infested pine tree(s) may attend a Public Hearing of the Board of Directors of the Bear Valley Community Services District, to be held at \_\_\_\_\_ p.m. on \_\_\_\_\_, 20\_\_, at the District's Office, located at 28999 S. Lower Valley Road, Tehachapi, California. At that time, any objections to this abatement notice will be heard and given due consideration by the Board of Directors.*

*Dated: \_\_\_\_\_*

*[Name of General Manager]  
General Manager  
Bear Valley Community Services District*

- B. At least 10 days before the date of the hearing described in the abatement notice, the notice must be given to owners of the affected property as follows:
1. By personal deliver to an owner of the property at the property identified in the notice; or
  2. By posting conspicuously in the front of the property on which the public nuisance is located, or on the portion of the property nearest to the street most likely to give actual notice to the property owner; and by mailing the notice to the owner of the property identified in the notice, as the owner's name and address appears on Kern County's latest equalized assessment roll.

**3-8-12: HEARING AND FINAL ABATEMENT ORDER:**

- A. At the time and date specified in the abatement notice, the board will conduct a public hearing to hear and consider any objections to the proposed removal and destruction of pine trees identified in the notice. The board may continue the hearing from time to time. The board will allow or overrule each objection, if any. As part of its review, the board will determine whether the initial determination of a nuisance condition is correct with respect to each property.
- B. At the conclusion of the hearing, and based on the evidence and testimony presented at the hearing, the board will, by resolution, order compliance with the requirements of the abatement notice or with any alternate orders issued by the board with respect to those properties on which a nuisance condition is found to exist. The board's decision regarding the condition of a property and any order of compliance with this chapter as set forth in the resolution will be final and subject only to judicial review under Code of Civil Procedure section 1094.5.

**3-8-13: ABATEMENT OF PINE BARK BEETLE NUISANCES:**

- A. If the person owning a property, identified as containing a public nuisance, fails or refuses to remove and destroy the nuisance-causing pine trees on or before the latter of 10 calendar days after the abatement deadline contained in the abatement notice, or 10 calendar days after the deadline specified by the board in the resolution adopted following the public hearing held pursuant to section 3-8-12 of this chapter, the general manager may cause the removal and destruction of the infested pine trees in accordance with this section.
- B. When the pine trees are not in plain view of district employees or agents from a place that the employee or agent lawfully has the right to be, the general manager will request the consent of the property owner before district employees or agents enter the property for purposes of inspection and abatement under this chapter. If consent is refused, the general manager will apply for an inspection/abatement warrant, as defined in Code of Civil Procedure section 1822.50, to enter the property for inspection and abatement purposes, and entry onto the property will be made by district employees or agents only pursuant to an inspection warrant issued in accordance with Code of Civil Procedure sections 1822.51 through 1822.59.
- C. Upon the issuance of an inspection/abatement warrant under subsection 3-8-12(B), it is unlawful for any person to interfere with, hinder, or refuse to allow district employees or agents entry onto a property to abate public nuisances pursuant to this section.
- D. Property owners may remove and destroy pine trees on their property, at their own expense, at any time before the entry onto the property by district employees or agents pursuant to this section; provided, however, that if the owner fails to timely abate the nuisance, the costs of the district to enforce the abatement upon the subject property, including investigation, boundary determinations, measurement, clerical and other related costs, may be imposed as a special assessment and lien on such property pursuant to a resolution of the board adopted under section 3-8-14 of this chapter.
- E. Any timber owner may sell, assign or use any felled tree for personal use in accordance with Cal Fire rules and regulations. If the timber owner desires that the district remove the felled tree, the timber owner must transfer ownership interest in the timber to the district. When a timber owner fails for any reason to remove any felled tree, and it is necessary to remove the felled tree to abate the infestation of pine bark beetle in accordance with this chapter, the district will be deemed the beneficiary owner and will remove the felled tree in accordance with this chapter and the rules and regulations of Cal Fire. The timber owner will receive a credit from the district from the sale of the timber of the felled tree, against the cost of the district to fell the tree in order to abate the infestation of pine bark beetles.

**3-8-14: ABATEMENT LIEN PROCEDURES:**

In any case in which the board issues an abatement order pursuant to section 3-8-12 of this chapter and such nuisance is in fact abated by the district or its agents, the board may adopt a resolution ordering that a special assessment and lien be imposed on the property in accordance with the following procedures:

- A. When enforcing the abatement of a public nuisance pursuant to this chapter, the general manager will cause to be kept a written account of the enforcement and abatement costs incurred for each property upon which a public nuisance exists, which may include costs incurred by the district for investigations, boundary determinations, measurement, abatement, and clerical work related to abatement of the public nuisance. Based on these accounts, the general manager will cause to be prepared a written report stating the enforcement and abatement costs incurred for each property.
- B. Before the general manager's report is presented to the board, a copy of the report must be posted outside the board's meeting room for at least three days before the meeting at which the board will consider the report, along with a notice of the time and date of the meeting. Copies of the report and the notice must also be mailed to the owner of each property identified in the report, using the owner's name and address as it appears on Kern County's latest equalized assessment roll, at least 15 days before the meeting. At the meeting, the board will consider the report, along with any objections by owners of property identified in the report as subject to assessment for enforcement and abatement costs. After making any necessary modifications to the general manager's report, the board will confirm the report by resolution.
- C. Upon confirmation of the general manager's report by the board, the district will submit certified copies of the general manager's report and the board's resolution confirming the report to the Kern County recorder's office for recordation. On or before the next August 10 following the board's confirmation of the general manager's report, the district will also file copies of the general manager's report and the board's resolution confirming the report with the Kern County auditor for entry of the assessments on the Kern County tax roll.

The amounts of the enforcement and abatement costs assessed to each property identified in the general manager's report will constitute special assessments against the respective properties and create liens on the properties for those amounts. The special assessments will be collected at the same time and in the same manner as property taxes of Kern County, and delinquent amounts are subject to the same penalties and foreclosure sale procedures as are county property taxes.