

ORDINANCE NO. 08-08

AN ORDINANCE DECLARING THE FAILURE TO MITIGATE THE INFESTATION OF BEETLES WITHIN THE TOWN OF ESTES PARK AS NUISANCES AND PROVIDING FOR THE ABATEMENT OF SAID NUISANCES

WHEREAS, the presence of beetles and beetle infested trees presents a real and substantial risk to the health of the lodgepole, spruce and ponderosa pine forests located in and around the Town; and

WHEREAS, the presence of mountain pine beetles and beetle infested trees within the Town is predicted to result in mortality rates of 100% of infested lodgepole pines and 60% of infested ponderosa pine if left unmitigated; and

WHEREAS, the presence of the spruce ips beetle and beetle infested trees presents a real and substantial risk to the health of the spruce forest located in and around the Town; and

WHEREAS, the presence of the douglas fir beetle and beetle infested trees presents a real and substantial risk to the health of the douglas fir forest located in and around the Town; and

WHEREAS, the presence of beetle infested trees within the Town also presents a real and substantial risk to the public health, safety and welfare in the form of an increased risk of a rapidly spreading fire, and a significant threat to the aesthetic values which are of great importance to the social and economic vitality of the Town; and

WHEREAS, there exists a growing beetle epidemic within the Town which threatens our community and its valuable natural and scenic resources, and

WHEREAS, there exists an urgent need for a Town-wide policy to effectively manage the existing and future threats to public and private property caused by the beetles, and the provisions of this Ordinance reflect such a policy; and

WHEREAS, Section 31-15-401 (1)(c) C.R.S. provides that the Town of Estes Park may declare what is a nuisance, abate the same, and impose fines upon parties who may create such nuisance or fail to abate such nuisance; and

WHEREAS, Section 31-20-105 C.R.S. provides that the Town of Estes Park, by ordinance, may cause any and all delinquent charges made or levied to be certified to the Treasurer of Larimer County and be collected and paid over by the Treasurer of Larimer County in the same manner as taxes; and

WHEREAS, the provisions of this Ordinance are necessary in order to protect the public health, safety and welfare; and

WHEREAS, the inspection provisions contained in this Ordinance are necessary in the interest of public safety within the meaning of Rule 241 (b)(2) of the Colorado Municipal Court Rules of Procedure.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO.

Section 1: The Municipal Code of the Town of Estes Park shall be amended by the addition of Chapter 8.05 entitled "Beetle Infested Trees" as follows:

8.05 Beetle Infested Trees

8.05.010 Definitions: In this chapter, include the following words shall have the following meanings, unless the context clearly requires otherwise:

"Infested Tree"	means (i) a tree alive or dead, which is infested with the mountain pine beetle, spruce ips beetle, and/or douglas fir beetle; and (ii) any species or variety of tree that is dead or substantially dead, and all deadwood to which the bark is still attached which, because of their condition, may serve as a breeding place for the mountain pine beetle, spruce ips beetle, and/or douglas fir beetle.
"Destruction"	means cutting and chipping an infested tree; or other method of disposing of an infested tree approved by the Director.
➤ "Director"	means the Public Works Director of the Town or his/her designated agent(s).
"Mountain Pine Beetle"	means the species <i>Dendroctonus ponderosae</i> .
"Spruce Ips Beetle"	means the species ips hunter and ips pilifrons.
"Douglas Fir Beetle"	means the species <i>dendroctonus pseudotsugae</i> .
"Occupant"	means any person in physical possession of any Lot, tract or parcel of real property located within the corporate limits of the Town who is not the owner of such property. For the purposes of this chapter, "occupant" does not include the owner of an easement or right-of-way across property.
"Owner" or "landowner"	means any person who owns any lot, tract or parcel of real property located within the corporate limits of the Town.

“Person”	means an individual, association, partnership, corporation or other legal entity.
“Property”	means any lot, tract or parcel of real property located within the corporate limits of the Town.

8.05.020 Duty of Landowner and Occupant to Permit Inspection:

An owner or occupant whose property may have located on it one more infested tree(s) shall allow the Director to enter such property for the purpose of immediate inspection of the trees located upon such property when at least one of the following events has occurred:

- A. The owner or occupant has requested the inspection;
- B. A neighboring landowner or occupant has reported a suspected infested tree and requested an inspection; or
- C. The Director has made a visual observation from a public right-of-way or area and has reason to believe that infested tree or trees exist on the property of the owner or occupant.

8.05.030 Inspection for Infested Trees:

- A. Subject to the requirements and limitations of this section, the Director shall have the right to enter upon any property, whether public or private, during reasonable hours for the purpose of inspecting for the existence of an infested tree when at least one of the three events described in Section 8.05.020 has occurred. However, no agent or employee of the Town shall enter upon any property to inspect for an infested tree without the permission of the owner or occupant, or without an inspection warrant issued pursuant to this section.
- B. If verbal permission to inspect the property from the affected owner or occupant is not obtained, the Town shall send written notice to the landowner and any occupant of the property advising that the Director desires to inspect the property for an infested tree. The notice shall be sent by certified mail. The notice may be sent to the landowner at the address to which tax notices are sent according to the records of the Larimer County treasurer and to the occupant at the property address. Alternatively, the Director may personally serve such notice upon the affected owner or occupant. Where possible, inspections shall be scheduled and conducted with the concurrence of the owner or occupant.
- C. If permission to enter upon and inspect the property is not obtained within 10 days after the notice described in subsection B of this section has been received, or within 10 days of date of service if the notice is personally served, the Director may request that an inspection warrant be issued by the Municipal Court. The Municipal Court Judge shall issue an inspection warrant upon presentation by the Director of an affidavit satisfying the

requirements of Rule 241 (b)(2) of the Colorado Municipal Court Rules of Procedure. The municipal court judge may issue an area-wide inspection warrant pursuant to this section unless otherwise prohibited by law.

- D. In case of an emergency involving imminent danger to public health, safety or welfare, the Director may enter the property to conduct an emergency inspection without a warrant and without complying with the requirements of this section.

8.05.040 Notice of Infestation and Removal:

- A. If the Director determines that property contains one or more infested tree(s), the Director shall notify the owner and any occupant of the property. Such notice shall be given either by certified mail or personal delivery.
- B. The notice shall:
 - 1. advise the owner and occupant that the property contains one or more infested trees;
 - 2. advise the owner and occupant of Town-approved methods for the removal and destruction of infested trees; and
 - 3. advise the owner and occupant that all infested trees must be removed within 10 days following receipt of the notice, or that an acceptable plan and schedule for removal of the infested trees must be submitted to the Director within such 10 day period.

8.05.050 Abatement Order:

- A. In the event the owner fails to comply with the Director's notice as described in Chapter 8.05.040 by removing the infested trees or submitting an acceptable schedule for such removal within the applicable 10 day period, the Town has the authority to provide for and complete the removal by obtaining and acting on an abatement order.
- B. Upon the expiration of the period of notice, or at any time thereafter if the required action has not taken place, the Town may apply to the municipal court for an abatement order.
- C. An application for an abatement order shall be accompanied by an affidavit affirming that:
 - 1. the Director has determined that the subject property has one or more infested trees;
 - 2. the Director has complied with the notice requirements of Chapter 8.05.040; and
 - 3. the owner has failed to remove the infested trees, has failed to submit an acceptable plan for removal of the infested trees within the required time, or has failed to remove the infested trees pursuant to the accepted plan.

- D. The Town shall give notice to the owner and any occupant of the property of its application for an abatement order either by certified mail or by personal service of the notice.
- E. The notice of application for an abatement order shall include a copy of the Town's application and its affidavit in support thereof, as well as the date, time, and place at which the Town will appear before the Municipal Court to request entry of the abatement order.
- F. At the stated time, date, and place, the Municipal Court Judge shall review the Town's application for an abatement order, the affidavit, any statement of the Town offered in support thereof, as well as any statement and evidence presented by the owner or occupant, if present.
- G. The Municipal Court Judge shall issue an abatement order if:
 - 1. the subject property has one or more infested trees;
 - 2. the Director has complied with the notice requirements of Chapter 8.05.040; and
 - 3. the owner has failed to remove the infested trees, has failed to submit an acceptable plan and schedule for removal of the infested trees within the required time, or has failed to remove the infested trees pursuant to the accepted plan.
- H. An owner is responsible under this chapter for any infested trees permitted to remain on the owner's property after the Director has given notice of a violation pursuant to Chapter 8.05.040.
- I. In case of an emergency involving imminent danger to public health, safety or welfare, the Town may authorize immediate removal of any infested tree without notice or an abatement order.
- J. The Town may pursue the remedies set forth in this section with or without filing a complaint in the Municipal Court, at the Town's sole discretion.
- K. The owner shall be assessed twice the whole cost of removal of the infested trees from the property, including administrative fees, incurred by the Town. If all of the costs and charges incurred by the Town are not paid within 30 days of the date of the assessment, the unpaid costs shall be certified to the Larimer County Treasurer for collection in the same manner as real property taxes.

8.05.060 Unlawful Acts:

- A. It shall be unlawful and a violation of the Municipal Code for any owner to fail or refuse to remove all infested trees from their property within the time period provided for in a notice of violation sent by the Director pursuant to section 8.05.040 of this section.

- B. It shall be unlawful and a violation of the Municipal Code for any owner or occupant to deny the Director access to the property owned or occupied by the owner or occupant if the Director presents an inspection warrant issued pursuant to this section.
- C. It shall be unlawful and a violation of the Municipal Code for any person to expose for sale, offer for sale, transfer, give away or offer to give away any infested tree anywhere within the Town.

8.05.070 Applicability: The provisions of this chapter shall apply to all public and private lands within the corporate limits of the Town.

WHEREAS, there is an immediate threat of infestation within the Town of Estes Park that needs to be abated immediately and therefore an emergency exists, this Ordinance shall take effect and be enforced immediately after its passage, adoption and signature of the Mayor.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF ESTES PARK, COLORADO THIS 13th DAY OF MAY, 2008.



TOWN OF ESTES PARK

By: _____

Mayor

Jessie Williamson
Town Clerk

I hereby certify that the above ordinance was introduced and read at a meeting of the Board of Trustees on the 13th day of MAY, 2008, and published in a newspaper of general publication in the Town of Estes Park, Colorado on the 16th day of MAY, 2008.

Jessie Williamson
Town Clerk