

ORDINANCE NO. 12

Series 2009

AN ORDINANCE REPEALING AND READOPTING WITH CHANGES CHAPTER 11 OF TITLE 5 OF THE BRECKENRIDGE TOWN CODE CONCERNING MOUNTAIN PINE BEETLES AND BEETLE INFESTED TREES

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Chapter 11 of Title 5 of the Breckenridge Town Code, entitled "Mountain Pine Beetles and Beetle Infested Trees", is repealed and readopted with changes so as to read in its entirety as follows:

CHAPTER 11

MOUNTAIN PINE BEETLES AND BEETLE INFESTED TREES

Section:

- 5-11-1: Legislative Findings
- 5-11-2: Definitions
- 5-11-3: Landowner to Remove Beetle Infested Trees; Initial Deadline; Annual Inspection and Removal
- 5-11-4: Duty of Landowner and Occupant to Permit Inspection
- 5-11-5: Inspection For Mountain Pine Beetle
- 5-11-6: Inspection Warrant
- 5-11-7: Notice of Violation
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- 5-11-9: No Development Permit Required For Removal of Beetle Infested Tree
- 5-11-10: Unlawful Acts
- 5-11-11: Applicability
- 5-11-12: Town Property
- 5-11-13: Exception
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- 5-11-15: Director To Enforce
- 5-11-16: Rules and Regulations

5-11-1: **LEGISLATIVE FINDINGS:** The Town Council hereby finds, determines and declares as follows:

- A. The presence of the mountain pine beetle and beetle infested trees presents a real and substantial risk to the health of the lodgepole forests located in and around the Town.
- B. The presence of the mountain pine beetle and 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.
- C. The presence of the mountain pine beetle and beetle infested trees within the Town is predicted to result in lodgepole pine mortality rates of up to 95% within the foreseeable future.
- D. There exists a growing mountain pine beetle epidemic within the Town which threatens our community and its valuable natural and scenic resources.
- E. 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 mountain pine beetle and beetle infested trees. The provisions of this chapter reflect such a policy.
- F. The provisions of this chapter are necessary in order to protect the public health, safety and welfare.
- G. The inspection provisions contained in this chapter are necessary in the interest of public safety within the meaning of Rule 241(b)(2)(II) of the Colorado Municipal Court Rules of Procedure.

5-11-2: **DEFINITIONS:** In this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Beetle Infested Tree" or "tree" (i) A tree, alive or dead, which is, or has been,

infested with mountain pine beetle”	infested with the mountain pine beetle; and (ii) any Lodgepole Pine tree (species <i>Pinus contorta Latifolia</i>) that is dead or substantially dead, and all deadwood to which the bark is still attached which, because of its condition, may serve as a breeding place for the mountain pine beetle.
“Destruction”	Cutting and chipping a tree which is infested with mountain pine beetle; or other method of disposing of a beetle infested tree approved by the Director.
“Good Cause”	A showing by a landowner that compliance with the requirements of section 5-11-3(B) of this chapter will result in a substantial hardship to the landowner.
“Director”	Has the meaning provided in section 9-1-5 of this code.
“Mountain Pine Beetle”	The species <i>Dendroctonus ponderosae</i> .
“Occupant”	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”	Any person who owns any lot, tract or parcel of real property located within the corporate limits of the Town.
“Person”	Has the meaning provided in section 1-3-2 of this code.
“Property”	Any lot, tract or parcel of real property located within the corporate limits of the Town.
“Town-approved Tree Removal Contractor”	A contractor who: (i) has a Town Business and Occupational License; (ii) has attended a seminar sponsored by the Town concerning the goals, objectives and requirements of this chapter; and (iii) has taken and passed a test administered by the Director concerning the goals, objectives and requirements of this chapter.

5-11-3: LANDOWNER TO REMOVE BEETLE INFESTED TREES; INITIAL DEADLINE; ANNUAL INSPECTION AND REMOVAL

- A. Each landowner has a duty to cut down and remove all beetle infested trees from the landowner’s property, and to assure that any trees on the landowner’s property that subsequently become infested with the mountain pine beetle are cut down and removed on an annual basis, all in accordance with the time limitations and requirements of this section.
- B. Not later than June 1, 2012, each landowner shall cut down and remove all beetle infested trees from the landowner’s property. Upon request made prior to June 1, 2012, and for good cause shown, the Director may extend the June 1, 2012 deadline for a specific parcel of real property by a maximum of two years.
- C. Commencing June 1, 2012, or the date to which compliance with subsection B of this section has been extended by the Director, whichever occurs first, each landowner shall annually inspect the landowner’s property to determine if additional trees have become infested with mountain pine beetle. If additional trees are found to be infested with mountain pine beetle, the landowner shall cut

down and remove such newly infested trees by September 1st of such year.

5-11-4: DUTY OF LANDOWNER AND OCCUPANT TO PERMIT INSPECTION:

An owner or occupant whose property may have located on it one or more beetle infested tree 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 beetle 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 a beetle infested tree exists on the property of the owner or occupant.

5-11-5: INSPECTION FOR MOUNTAIN PINE BEETLE:

- 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 a beetle infested tree when at least one of the three events described in section 5-11-4 has occurred. However, no agent or employee of the Town shall enter upon any property to inspect for a beetle 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 Director may request that an inspection warrant be issued by the municipal court. Where possible, inspections shall be scheduled and conducted with the concurrence of the owner or occupant.
- C. 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.

5-11-6: INSPECTION WARRANT:

- A. The municipal court judge shall issue an inspection warrant authorizing the inspection of property located within the Town pursuant to this chapter upon presentation by the Director of an affidavit satisfying the requirements of Rule 241(b)(2) of the Colorado Municipal Court Rules of Procedure; provided, however, that when issuing an area-wide inspection warrant pursuant to subsection B of this section the Municipal Judge shall not require a showing that the owner or occupant of the property to be inspected has refused entry to the Town inspector or that the premises are locked and the Town inspector has been unable to obtain permission of the owner or occupant to enter.
- B. The municipal court judge shall issue an area-wide inspection warrant for two or more properties upon a finding that:
 - 1. The Town has established and currently maintains a program to inspect properties throughout the Town for beetle infested trees.
 - 2. There are a significant number of publicly and privately owned lands within the Town that need to be inspected for beetle infested trees, and an urgent public need to implement the provisions of this chapter.
 - 3. Because of the significant number of properties that need to be inspected it is not practical for the Town to attempt to obtain the individualized permission from each affected landowner before going onto the property to inspect for beetle infested trees.
 - 4. Requiring the Town to first attempt to obtain permission from the numerous landowners within the area to be inspected would frustrate the purpose of an area-wide inspection warrant; would create an undue delay in the performance of the necessary inspections for beetle infested trees; would be an unreasonable burden and precondition to the issuance of an area-wide inspection warrant; and,

as a result, would jeopardize the public health, safety and welfare.

5. No good reason exists to require the Town to first seek the permission of the landowners of lands to be included in an area-wide inspection warrant, and there is no need to impose such a requirement on the Town as a precondition to the issuance of the requested inspection warrant.

C. An inspection warrant issued pursuant to this chapter shall contain the following conditions:

1. The inspector shall attempt to verbally notify the affected landowner or occupants prior to beginning the inspection. This shall be done by knocking on the front door of any building located on the property and, if the landowner or an occupant is present, the inspector shall present his or her credentials identifying the inspector as an employee or agent of the Town. The inspector shall also explain to the property landowner or occupant the purpose of the inspection. If: (a) neither the landowner nor an occupant is home when the inspector goes to inspect the property; (b) the building is locked; or (c) the property consists of unimproved property, no notice shall be required prior to the inspector entering the property to inspect for beetle infested trees.
2. No Town inspector acting pursuant to an inspection warrant shall enter any residence, building, or structure located upon any property without the permission of the landowner or occupant.

D. The municipal judge may impose such other conditions on an inspection warrant as may be necessary in the judge's opinion to protect the private property rights of the landowner of the property to be inspected, or to otherwise make the warrant comply with applicable law.

5-11-7: NOTICE OF VIOLATION:

- A. On and after June 1, 2012, or the date to which compliance with subsection B of this section has been extended by the Director pursuant to section 5-11-3(B), whichever first occurs, if the Director determines that a landowner has not complied with the requirements of section 5-11-3, the Director shall notify the landowner. Such notice shall be given either by certified mail or personal delivery.
- B. The notice shall:
 1. advise the landowner that the Director believes that the landowner has not complied with the requirements of section 5-11-3;
 2. advise the landowner of Town-approved methods for the removal and destruction of beetle infested trees, and the list of Town-approved tree-removal contractors described in section 5-11-14; and
 3. advise the landowner that all trees infested with mountain pine beetle must be removed from the property within 10 days following receipt of the notice, or that an acceptable plan and schedule for removal of the beetle infested trees must be submitted to the Director within such 10 day period.
- C. If the landowner disputes that the property contains one or more trees infested with mountain pine beetle, the landowner shall notify the Director of such dispute within 10 days of receipt of the Director's notice. If a timely notice of dispute is given, the Town shall not file an application for an abatement order until the Director has met with the disputing party in an effort to resolve the dispute. If the Director meets with the disputing party and is unable to resolve the dispute, the Town may file an application for an abatement order pursuant to section 5-11-8.

5-11-8: ABATEMENT ORDER:

- A. In the event the landowner fails to comply with the Director's notice as described in Section 5-11-7 by removing the beetle 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 trees infested with mountain pine beetle;
 2. the Director has complied with the notice requirements of Section 5-11-7;
 3. the landowner has not disputed the Director's determination that the subject property has one or more trees infested with mountain pine beetle; or that the owner has disputed the Director's determination and that the parties have met without being able to resolve the dispute; and
- i. the landowner has failed to either remove the beetle infested trees or to submit an acceptable plan and schedule for removal of the beetle infested trees within the required time.
- D. The Town shall give notice to the landowner 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. If the municipal judge determines that:
1. the subject property has one or more trees infested with mountain pine beetle;
 2. the Director has complied with the notice requirements of Section 5-11-7; and
 3. the landowner has failed to either remove the beetle infested trees or to submit an acceptable plan and schedule for removal of the beetle infested trees within the required time,
- the municipal court judge is authorized to enter an order permitting the Town to enter upon the property, remove the beetle infested trees, and recover its costs as provided in subsection J of this section.
- H. In case of an emergency involving imminent danger to public health, safety or welfare, the Town may authorize immediate removal of any beetle infested tree without notice or abatement order.
- I. 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.
- J. The landowner shall be assessed twice the whole cost of removal of the beetle infested trees from the property, including administrative fees. 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 Summit Treasurer for collection in the same manner as real property taxes.

5-11-9: NO DEVELOPMENT PERMIT REQUIRED FOR REMOVAL OF BEETLE INFESTED TREE: No Development Permit shall be required to remove any beetle infested tree if the landowner either: (i) contacts the Department of Community Development prior to the landowner beginning removal of a beetle infested tree, or (ii) contracts for the removal of the beetle infested tree with a Town-approved tree removal contractor. A Class D development permit is required if the landowner does not contact the Department of Community Development prior to beginning removal of the beetle infested trees or if the landowner contracts for the removal the beetle infested trees with a contractor who is not a Town-approved tree-removal contractor. If a Class D development permit is required, the Director must mark all beetle infested trees prior to their removal.

5-11-10: UNLAWFUL ACTS:

- A. It shall be unlawful and a misdemeanor offense for a 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.
- B. It shall be unlawful and a misdemeanor offense for any person to sell, expose for sale, offer for sale, transfer, give away or offer to give away any beetle infested tree anywhere within the Town.

5-11-11 APPLICABILITY: Except as provided in section 5-11-11 and 5-11-12, the provisions of this chapter shall apply to all public and private lands within the corporate limits of the Town.

5-11-12: TOWN PROPERTY: The Town shall remove all beetle infested trees from Town-owned real property by June 1, 2012. This deadline may be extended by not more than two years if budgetary constraints or site-specific constraints preclude compliance with the June 1, 2012 deadline. Any extension of the June 1, 2012 deadline shall be made by a nonemergency ordinance duly adopted by the Town Council. Town-owned open space parcels will be treated for mountain pine beetle based upon the recommendations of the "Mountain Pine Beetle Hazard Analysis for Town of Breckenridge Open Space Parcels" as amended from time to time, on file with the Department of Community Development.

5-11-13: EXCEPTION: The provisions of this chapter shall not apply to property that has steep slopes or poor access making it unreasonable for the landowner to be required to inspect and remove beetle infested trees. The Director's regulations shall more specifically identify the property to which the exception in this section applies.

5-11-14: TOWN-APPROVED TREE REMOVAL CONTRACTORS: For the purpose of attempting to make certain that tree removal contractors working within the Town are familiar with the goals of this chapter, but not to regulate the means, methods, training, equipment, or business practices of tree removal contractors, the Director shall maintain a list of Town-approved tree removal contractors. The Town makes no guarantees or representations whatsoever concerning the qualifications, experience, ability, competence, or business practices of any Town-approved tree removal contractor. The Town has no liability to any person with respect to the work or business practices of a Town-approved tree removal contractor, and no action at law or in equity shall lie against the Town as a result of a person being placed on or removed from the Director's list of Town-approved tree removal contractors. The Director may provide in his rules and regulations for the removal of a contractor from the list of Town-approved contractors.

5-11-15: DIRECTOR TO ENFORCE: The Director shall administer and enforce the provisions of this chapter. The Director shall assure that all staff members involved in the administration of this chapter are adequately trained with respect to the identification of beetle infested trees, and the goals and objectives of this chapter.

5-11-16: RULES AND REGULATIONS: The Director has the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as necessary for the proper administration of this chapter. Such regulations shall be adopted in accordance with the procedures established by Title 1, Chapter 18 of this Code.

Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 3. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

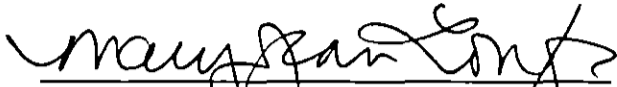
Section 4. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the provisions of: (i) Section 31-15-103, C.R.S., (concerning municipal police power); (ii) Section 31-15-401, C.R.S. (concerning municipal police power); (iii) the powers contained in the Breckenridge Town Charter; and (iv) other powers possessed by home rule municipalities in Colorado.

Section 5. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.


INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
PUBLISHED IN FULL this 14th day of April, 2009. A Public Hearing shall be held at the regular
meeting of the Town Council of the Town of Breckenridge, Colorado on the 28th day of April,
2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE



Mary Jean Loufek, CMC, Town Clerk



John G. Warner, Mayor

The public hearing on this ordinance was held on April 28, 2009.


READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE
ONLY this 28th day of April, 2009. This ordinance is available for inspection in the office of the
Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE




Mary Jean Loufek, CMC, Town Clerk



John G. Warner, Mayor

APPROVED IN FORM



Town Attorney

4/28/09

Date

This ordinance was published by title only in the Summit County Journal, a newspaper of
general circulation within the Town of Breckenridge on May 15, 2009.