

ORDINANCE NO. 18

SERIES 2016

AN ORDINANCE REPEALING AND REENACTING CHAPTER 11 OF TITLE 5 OF THE VAIL TOWN CODE, CONCERNING ABATEMENT OF DISEASED TREES AND WILDFIRE FUELS

WHEREAS, in 2007, the Town adopted a new Chapter 11 of Title 5 of the Vail Town Code to address wildfire danger caused by the mountain pine beetle;

WHEREAS, since that time, the mountain pine beetle has been replaced with other pests causing similar tree damage and wildfire danger; and

WHEREAS, the Town wishes to repeal and reenact Chapter 11 of Title 5 of the Vail Town Code to address all diseased trees and their associated wildfire danger, regardless of the cause.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

Section 1. Chapter 11 of Title 5 of the Vail Town Code is hereby repealed in its entirety and reenacted to read as follows:

CHAPTER 11

ABATEMENT OF DISEASED TREES AND WILDFIRE FUELS

5-11-1: DEFINITIONS:

For purpose of this Chapter, the following terms shall have the following meanings:

DISEASED TREE: A tree, alive or dead, which is or has been infested/infected with any insect or disease identified in the most recent version of the "Field Guide to Diseases and insects of the Rocky Mountain Region".

DIRECTOR: The Town of Vail Fire Chief or designee.

OWNER: A person who owns any lot, tract or parcel of real property located within the corporate limits of the Town.

PROPERTY: A lot, tract or parcel of real property located within the corporate limits of the Town.

WILDFIRE FUELS: Vegetation such as trees, shrubs, forbs or grasses and other materials such as firewood, construction material or

debris surrounding a structure, which represent an imminent threat to life or property during a fire as determined by the Director.

5-11-2: INSPECTION:

A. An owner whose property contains diseased trees or any wildfire fuels shall allow the Director to enter such property for the purpose of immediate inspection when at least one of the following events has occurred:

1. The owner has requested the inspection;
2. A neighboring landowner has reported a diseased tree or wildfire fuels and requested an inspection; or
3. The Director has made a visual observation from a public right-of-way or adjacent property and has reason to believe that diseased trees or wildfire fuels exist on the property.

B. 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 diseased tree or any other wildfire fuels. However, no agent or employee of the Town shall enter upon any property to inspect for a diseased tree or other wildfire fuels without the permission of the owner or a warrant.

C. If permission to inspect the property is not obtained, the Town shall send written notice to the owner advising that the Director desires to inspect the property. The notice shall be delivered by certified mail or personal service. The notice may be mailed to the owner at the last address on file with the Eagle County Treasurer. Where possible, inspections shall be scheduled and conducted with the concurrence of the owner.

D. If permission to inspect is not obtained within ten (10) days after the date of the notice described in Subsection C, the Director may request an inspection from the Municipal Court. The Municipal Judge shall issue an inspection warrant upon presentation by the Director of an affidavit satisfying the applicable legal requirements for such a warrant.

5-11-3: EMERGENCIES

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

5-11-4: NOTICE OF VIOLATION:

A. If the Director determines that a property contains diseased trees or wildfire fuels, the Director shall provide written notice of such findings to the owner either by certified mail or personal service.

B. The notice shall:

1. Advise the owner that the property contains diseased trees or wildfire fuels;

2. Describe approved methods for the removal of diseased trees or wildfire fuels; and

3. Require that all diseased trees and wildfire fuels be removed within thirty (30) days of the date of the notice, or that an acceptable plan and schedule for removal of the diseased trees and wildfire fuels be submitted to the Director within such time.

C. If the owner disputes that the property contains diseased trees or wildfire fuels, the owner shall notify the Director of such dispute within thirty (30) days of the date of the notice. If a timely notice of dispute is given, the Director shall meet with the owner in an effort to resolve the dispute. If the Director meets with the owner and is unable to resolve the dispute, the Town may file an application for an abatement order pursuant to Section 5-11-5.

5-11.5: ABATEMENT ORDER:

A. If an owner fails to comply with a notice provided pursuant to Section 5-11-4, the Town may obtain an abatement order.

B. An application for an abatement order shall be accompanied by an affidavit affirming that:

1. The Director has determined that the property contains diseased trees or wildfire fuels;

2. The Director has complied with the notice requirements of Section 5-11-4; and

3. Within the required time, the owner has failed to remove the diseased trees or wildfire fuels, or has failed to submit an acceptable plan and schedule for such removal.

D. The Town shall provide notice to the owner of its application for an abatement order either by certified mail or by personal service. The notice shall include a copy of the Town's application and affidavit, 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.

E. At the stated time, date and place, the Municipal 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, if present.

F. The Municipal Judge is authorized to enter an order permitting the Town to enter upon the property, remove the diseased trees and wildfire fuels, and recover its costs, if the Municipal Judge finds that:

1. The property has diseased trees or wildfire fuels;
2. The Director has complied with the notice requirements of Section 5-11-4; and
3. The owner has failed to either remove the diseased trees or wildfire fuels, or has failed to submit an acceptable plan and schedule such removal.

5-11-6: COSTS:

A. The owner shall be assessed twice the total cost of any removal of diseased trees and wildfire fuels performed by the Town, including administrative fees.

B. The Town shall provide written notice to the owner the costs to be assessed either by certified mail or by personal service.

C. If all costs incurred by the Town are not paid within thirty (30) days from the date of the written notice advising the owner of such costs, the unpaid costs shall be certified to the Eagle County Treasurer for collection in the same manner as real property taxes.

5-11-7: PERMIT FOR REMOVAL:

An owner desiring to remove diseased trees shall file an application for a permit with the Community Development Department. There shall be no application fee for the permit. The application shall contain a written narrative describing the type, size, quantity and general location of the diseased trees proposed to be removed. The Director may perform a site visit prior to taking any action on the permit application.

5-11-8: UNLAWFUL ACTS:

A. It is unlawful for an owner to fail or refuse to remove diseased trees or wildfire fuels from the owner's property within the time period provided for in a notice under Section 5-11-4.

B. It is unlawful for an owner to deny the Director access to the owner's property if the Director presents an inspection warrant or abatement order issued pursuant to this Chapter.

C. It is unlawful to sell, expose for sale, offer for sale, transfer, give away or offer to give away any tree or part of a tree which is, at the time of the transfer, infested/ infected with an insect or disease restricted by local, state or federal regulations.

5-11-9: PENALTY:

A person convicted of violating any provision of this Chapter shall be punished as provided in Section 1-4-1 of this Code; provided, that each separate act in violation of this Chapter, and each and every day or portion thereof during which any act in violation of this Chapter is committed, continued, or permitted, shall be deemed a separate offense.

Section 2. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3. Retroactivity. The amendment of any provision of the Vail Town Code as provided in this ordinance shall not affect any right which has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision amended. The amendment of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

Section 4. Repeal. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING this 2nd day of August, 2016 and a public hearing for second reading of this Ordinance is set for the 16th day of August, 2016, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk

READ AND APPROVED ON SECOND READING AND ORDERED PUBLISHED
this 16th day of August, 2016.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk