

BEFORE THE BOARD OF COMMISSIONERS
HOOD RIVER COUNTY, OREGON

IN THE MATTER OF REPEALING ORDINANCE)
NO. 263 AND ADOPTING A REVISED ORDINANCE) **ORDINANCE NO. 325**
FOR FRUIT TREES: INSECT PESTS AND DISEASES)

WHEREAS, the Hood River County Board of Commissioners adopted Ordinance No. 263 – Fruit Trees: Insect Pests and Diseases on June 20, 2005; and

WHEREAS, on May 18, 2015 the Commissioners voted to hold a public hearing on June 15, 2015 to consider amendments to Ordinance No. 263; and

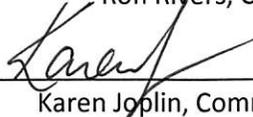
NOW, THEREFORE BE IT ORDAINED, that Ordinance 263 is hereby repealed and a new Ordinance for Fruit Trees: Insect Pests and Diseases is hereby adopted.

Adopted this 15th day of June, 2015

**HOOD RIVER COUNTY
BOARD OF COMMISSIONERS**



Ron Rivers, Chair



Karen Joplin, Commissioner



Maui Meyer, Commissioner



Robert Benton, Commissioner

Les Perkins, Commissioner

Chapter 8.16

Fruit Trees: Insect Pests and Diseases

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8.16.015 Definitions.

Unless context dictates otherwise, as used in this chapter:

- A. "Alternative Pest Control" means the control of disease organisms and insect-pest without the use of synthetic herbicides, insecticides, or fungicide, including "organic" and "pesticide free" farming practices.
- B. "Board" means the Hood River County Board of Commissioners.
- C. "Disease organisms" means those disease organisms as identified and defined by the Oregon Department of Agriculture, including, but not limited to. Pseudomonas blight (*Pseudomonas syringae*), Coryneum blight (*Coryneum carpophilum*), Peach leaf curl (*Taphrina deformans*), Fire blight (*Erwinia amylovora*), Apple scab (*Venturia inaequalis*), and Pear scab (*Venturia pirina* Aderh).

- D. "Ground fall fruit" means fruit that has fallen to the ground.
- E. "Host tree" or "host plant" means any portion or fruit of the following plants: Pear (Pyrus sp.), Quince (Cydonia sp.), Apple (Malus sp.), Peach (Prunus sp.) Apricot (Prunus sp.), Cherry (prunus sp.), Hawthorn (Crataegus sp.), and may include other hosts of disease organisms or pests in accordance with policies established by the Oregon Department of Agriculture.
- F. "Infest" or "Infestation" means the presence of disease organisms or insect-pests in sufficient quantities to potentially harm fruit produced on neighboring properties.
- G. "Insect-pest" means those insects as identified and defined by the Oregon Department of Agriculture, including, but not limited to Codling Moth (*Carpocapsa pomonella*), Oriental Fruit Moth (*Grapholita molesta*), Pear Psylla (*Psylla pyricola*), San Jose Scale (*Aspidiotus perniciosus*), Shot Hole Borer (*Scolytus rugulosus*), Apple Maggot (*Phagoletis pomonella*), Cherry fruit fly (*Rhagoletis indifferens*), and Peach Twig Borer (*Anarsia linetella*).
- H. "Orchard" means one or more host trees or plants.
- I. "Organic" means the techniques and processes of raising and producing agricultural products in compliance with the United States Department of Agriculture National Organic Program, which may include the use of non-synthetic pesticides such as biological and botanical agents.
- J. "Pest" means, and generally refers to, both "disease organisms" and "insect-pests."
- K. "Pesticide" includes:
- (1) 'Defoliant' which means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant with or without causing abscission;
 - (2) 'Desiccant' which means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue;
 - (3) 'Fungicide' which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungus;
 - (4) 'Herbicide' which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed;

- (5) "Insecticide" which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever;
 - (6) 'Nematocide' which means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating nematodes;
 - (7) 'Plant regulator' which means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments; and
 - (8) Any substance, or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating all insects, plant fungi, weeds, rodents, predatory animals or any other form of plant or animal life which is, or which the county may declare to be a pest, which may infest or be detrimental to vegetation, humans, animals, or be present in any environment thereof.
- L. "Property" or "Subject Property" means the parcel or contiguous parcels on which host trees and plants are located.
 - M. "Property Owner" means the means the owner of the real property on which host trees or plants are located.
 - N. "Tenant Orchardist" means any person or entity vested with the legal right to the maintain host trees and plants on the property of another

8.16.025 Control Officer.

The Public Works Director may appoint and supervise Control Officers authorized to carry out the provisions of this Chapter on behalf of the County.

8.16.035 Disease and pest control.

- A. Except as otherwise provided in sections 8.16.045 and 8.16.137, all host trees and plants shall be treated with appropriate and adequate pesticides, as recommended by the Oregon Department of Agricultural, to prevent infestation by disease organisms and insect pests.
- B. The application of pesticides on host trees and plants shall conform with all federal and state regulations, including but not limited to all buffer restrictions.

- C. The application of pesticides on host trees and plants shall comply with all applicable manufacturer's specifications.
- D. All costs associated with treatment of host plants and trees in conformance with this chapter shall be the responsibility of the property owner.

8.16.045 Organic and Pesticide Free cultivation; registration.

- A. Property Owners or tenant orchardists employing alternative infestation control methods shall register their property as an "Alternative Pest Control" orchard with the Hood River County Department of Public Works.
 - (1) The County shall not charge a fee for registration under this section.
 - (2) Registrations under this section, including renewals, shall be valid for a period of five years.
- B. The County may not require or otherwise cause the use of synthetic pesticides on a registered Alternative Infestation Control orchard.

8.16.055 Pests; control measures.

- A. If disease organisms or insect pests are found within an orchard the County may direct the property owner, to:
 - (1) Employ reasonable disease and pest control measures;
 - (2) Strip and dispose of all fruit from host trees or plants in compliance with section 8.16.65;
 - (3) Cut down any and all host trees and plants and treat the remaining stump and root systems with adequate and appropriate chemicals to prevent the spread of disease or pests; and
 - (4) Remove any or all host trees and plants within the orchard, including their complete root structures.
- B. In addition to measures set forth in Section A, if insect pests or disease organisms are found within a registered Alternative Pest Control orchard, the County may direct the property owner to:
 - (1) Clear all undergrowth and objects from beneath host trees and plants so that all ground fall fruit will be clearly visible;

- (2) Remove and properly dispose of all ground fall fruit at least twice a week until commercial harvest is complete;
 - (3) Harvest all fruit as soon as possible or as otherwise directed by the County;
 - (4) Strip all trees, including pollinators, of fruit by the end of commercial harvest; and
 - (5) Continue to apply such measures for a 24 month period after the insect pest or disease organism is discovered.
- C. All costs associated with treatment of host trees and plants required under this chapter shall be the responsibility of the property owner.

8.16.065 Disposal of fruit.

Fruit disposed of in accordance with this chapter shall be:

- (1) Processed for juice or sauce using approved cold treatment methods; or,
- (2) Buried under procedures approved by Oregon Department of Agriculture.

8.16.075 Implied consent; right of access.

- A. By keeping a host tree or host plant, a property owner voluntarily and impliedly consents to:
- (1) County inspection of such trees or plants;
 - (2) The County's abatement of any nuisance arising from the keeping of such trees or plants under section 8.16.117;
 - (3) Reasonable access to orchard and subject property for the purpose of inspection or abatement under this chapter.
- B. The entrance upon property by County employees or agents for the purpose of enforcing this chapter shall be deemed permissive and shall not constitute civil or criminal trespass.
- C. All inspections and abatements conducted under this chapter shall take place at reasonable times.

8.16.087. Nuisance; Notice and Order

- A. Host trees or plants infested with disease organisms or insect-pests are a public nuisance.
- B. Upon finding reasonable grounds to believe that nuisance exists under section A, the County shall provide written notice to the property owner containing:
 - (1) The street address and a legal description sufficient for identification of the property upon which the nuisance is located.
 - (2) A statement that the County has determined that a nuisance exists, with a concise description of the conditions found which constitute a nuisance.
 - (3) A statement ordering the work required to abate the nuisance, which may include the specific methods and materials required.
 - (4) A statement ordering that the work to be completed by a specific date.
 - (5) A notice stating that if the nuisance is not abated as directed the County may petition the court for authority to:
 - (a) Abate the nuisance at the County's discretion;
 - (b) Charge the costs of the abatement against property owner or tenant orchardist;
 - (c) Impose a civil penalty equal to 50% of the reasonable cost of the abatement; and
 - (d) Place a lien against the property for the reasonable cost of the abatement as well as the applicable civil penalty.

8.16.097. Service of notice

- A. Notice required under 8.16.087 shall be sufficient if provided to the property owner:
 - (1) In person; or
 - (2) By certified mail to mailing address on file with the County tax assessor.
- B. The County may, but is not required, to provide additional notice to any tenant orchardist operating on the subject property; such notice may be provided in person or by US Mail.

8.16.107. Proceedings; abatement

- A. Where a property owner has been previously served notice of a public nuisance and has failed or refused to abate such nuisance within the time and in the manner specified in such notice, the County may petition the Circuit Court to declare a nuisance and order the abatement thereof.
- B. A civil action for abatement under this Chapter shall be conducted in accordance all applicable provisions of Oregon Statute, Hood River County Code, and Oregon Rules of Civil Procedure.

8.16.117. Abatement; order; costs.

- A. The purpose of this section is to provide for nuisance abatement by County action and for the recovery of the cost of such abatement, including the cost of litigation. This abatement procedure may be pursued in addition to any other available remedy.
- B. Upon finding that a nuisance exists, the Court shall issue an order authorizing the County, or its agents to:
 - (1) Enter upon the property;
 - (2) Abate the nuisance at the County's discretion;
 - (3) Collect from the property owner or tenant orchardist the reasonable costs of abatement, including reasonable legal fees and court costs;
 - (4) Impose a civil penalty equal to 50% of the reasonable costs of the abatement;
and
 - (5) Charge the reasonable costs of the abatement, together with the applicable civil penalty, as a lien against the subject property;
- C. Any abatement carried out by the County under this section shall employ measures that are reasonably calculated to:
 - (1) Remove the nuisance in its entirety, including the threat of potential reoccurrences; and
 - (2) Accomplish the removal in an efficient manner.

8.16.127 Civil Penalties

- A. In addition to all other remedies, the violation of a Notice and Order to Abate a Nuisance, under 8.16.087, shall be subject to a civil penalty under this section, where
 - (1) A property owner was served notice under 8.16.087; and
 - (2) Failed to abate such nuisance within the time, and in the manner, specified.
- B. The amount of civil penalty under this section shall be equal to 50% of the County's actual, reasonable cost in prosecuting the abatement, including reasonable attorney's fees and court costs.

8.16.137 Exemptions.

- A. Scientific experiments conducted under the authority of Oregon State University, and employing accepted scientific methods and controls, are exempt from the provisions of this chapter.
- B. Scientists conducting experiments under this section shall take all reasonable steps to limit any threat, harm, or inconvenience to other orchardists or their crops.
- C. The County shall communicate to Oregon State University all reasonable allegations of harm, threat or inconvenience created by scientific experiments being conducted under the University's authority.