

ORDINANCE NO. 2023-01

AN ORDINANCE OF THE SAN DIEGO COUNTY CITRUS PEST CONTROL DISTRICT DECLARING NONCOMPLIANCE WITH ASIAN CITRUS PSYLLID TREATMENT PROTOCOLS TO BE A PUBLIC NUISANCE, AND ESTABLISHING ABATEMENT AND COST RECOVERY PROCEDURES

The Board of Directors of the San Diego County Citrus Pest Control District ordains as follows:

Section 1. **FINDINGS**

The Board of Directors of the San Diego County Citrus Pest Control District (“District”) makes the following findings in support of the adoption and application of this Ordinance:

- A. On August 8, 2012, the San Diego County Board of Supervisors (“Board of Supervisors”) adopted Resolution No. 12-137, Protection of Citrus Trees from a Devastating Disease.

- B. Citrus Greening Disease, or Huanglongbing (HLB) is considered the world’s most destructive disease of citrus trees. Originating in Asia, HLB causes bitter, misshapen fruit, and ultimately leads to the death of the tree by blocking the normal flow of nutrients. HLB is transmitted by a small insect, the Asian Citrus Psyllid (ACP). HLB has devastated the citrus industries in Florida and Texas, resulting in a five-year loss of over \$1.3 billion in lost revenue to the citrus industry in Florida, alone.

- C. San Diego County’s estimated \$115 million annual citrus crop industry is also at risk. ACP was first detected in San Diego County in 2008. Since that time, San Diego County has been under quarantine for ACP. In December 2020, HLB-infected trees were discovered within San Diego County, indicating that the threat of disease has spread despite the quarantine.

- D. Pursuant to Sections 8451 *et seq.* of the California Food and Agriculture Code, to address the growing threat presented by ACP and HLB, and to provide for the management of other citrus diseases, the Board of Supervisors duly approved the formation of the District during a regularly scheduled public meeting on April 12, 2017. Support for the District comes from Board of Supervisors Policy Statement I-133, Support and Encouragement of Farming in San Diego County.

- E. The proposed Ordinance supports the County of San Diego’s Public Health Services Strategic Plan, including the Sustainable Environments and Healthy Families Initiatives. Specifically, the Ordinance supports the local agricultural economy, which is fundamental to preserving long-term diversified agricultural production in the County, provides local food system support, and expands the growth potential and distribution of healthy food options to County residents.

- F. The District currently spans an area measuring approximately 45.15 square miles, with approximately 4,223 acres of commercial citrus groves.
- G. Under Food and Agriculture Code Sections 8551 *et seq.*, the District's general powers include causing assessments to be levied to pay any obligation of the District, to make contracts, to eradicate, remove, or prevent the spread of any and all citrus pests, to enter into or upon any land within the boundaries of the District for the purpose of inspection and treatment, and to perform any and all acts necessary or proper to fully and completely carry out the purposes for which the District was organized.
- H. As provided in the California Department of Food and Agriculture's *September 2019 Action Plan for Asian Citrus Psyllid and Huanglongbing (Citrus Greening) in California*, suppressing the ACP population through area-wide treatments is critical to managing the spread of HLB. In addition, the position of the Agricultural Commissioner on the Proposed Formation of the District noted that the effectiveness of the suppression of ACP "depends on the level of grower participation. Better control of ACP is achieved when all of the growers treat their crops around the same time preventing ACP in untreated properties from migrating back to treated properties. Assuring that at least 90% of growers apply their treatments within the specified time period, further increases the effectiveness of the ACP population suppression measures."
- I. On May 31, 2017, the District adopted Resolution No. 2017-2 approving an engineer's report for a citrus pest control assessment that included the District's Pest Management Plan, which outlines the approach and protocol for citrus pest control procedures within the District boundaries, including following published guidelines and treatment recommendations from the University of California as well as licensed pest control advisors.
- J. FAs needed, from time to time, periodically, during a regularly scheduled public meeting, the District Board of Directors identifies the particular chemicals, methodology, and time period for treatment of ACP based on the Pest Management Plan, and then notifies each citrus grove owner within the District boundaries in writing of the ACP Treatment Protocol that has been adopted, with specific instructions for implementation and documentation of compliance.
- K. Citrus grove owners within the District's boundaries refusal to comply with the ACP Treatment Protocol dramatically increases the risk of ACP infestation and HLB infection within the District, and catastrophic losses to the local citrus economy.
- L. On January 24, 2023, multiple additional citrus trees located in the City of Rancho Bernardo within San Diego County, tested positive for HLB, prompting an additional 95-square mile area quarantine to be declared by the California Department of Food and Agriculture.

- M. The current quarantine area north of San Diego County now spans a contiguous 2,127 square mile area and includes portions of Los Angeles, San Bernardino, Riverside, Orange, and Ventura Counties. The current quarantine area within San Diego County spans (163) square miles.
- N. Now, pursuant to the ongoing State of Local Emergency and ongoing quarantine in San Diego County, as well as the authority under Food and Agriculture Code Sections 5401 and 8551 *et seq.*, ordinance is necessary in order for the District to declare noncompliance with the ACP Treatment Protocol to be a public nuisance, and to enforce compliance with the ACP Treatment Protocol through the nuisance abatement process.

Section 2. PURPOSE AND AUTHORITY

The purpose of this Ordinance is to establish that noncompliance with adopted treatment protocols for Asian Citrus Psyllid constitutes a public nuisance as provided in Food and Agriculture Code Section 5401, and to establish abatement and cost recovery procedures as authorized under Food and Agriculture Code Sections 8551 *et seq.*

Section 3. DEFINITIONS

- A. ACP Treatment Protocol. The treatment protocol adopted by the District Board of Directors for the purposes of eradicating Asian Citrus Psyllid, based on the Pest Management Plan.
- B. Commercial Citrus Grove. Any citrus grove containing 25 or more citrus trees.
- C. Noncompliant Citrus Grove. Any Commercial Citrus Grove located within District boundaries that is caused, maintained or permitted to exist in violation of the ACP Treatment Protocol.

Section 4. NONCOMPLIANT CITRUS GROVES CONSTITUTE A PUBLIC NUISANCE

Compliance with the ACP Treatment Protocol is necessary for the successful suppression of ACP, as provided in Section 1 of this Ordinance. Therefore, Noncompliant Citrus Groves, as defined herein, constitute a public nuisance under the authority provided in Food and Agriculture Code Sections 5401 and 8551 *et seq.*, and violations may be enforced and abated as provided herein.

Section 5. DISTRICT MANAGER AUTHORITY

Pursuant to the Citrus Pest District Control laws under Section 8551(g) of the California Food and Agricultural Code, the District Manager is authorized to enter upon any land included within the boundaries of the District to in order to identify, investigate, report, and treat Noncompliant Citrus Groves.

Section 6. DISTRICT PUBLIC NUISANCE ABATEMENT PROCEDURES

- A. Advisory Notice. Upon identification of a Noncompliant Citrus Grove, the District Manager shall issue a written Advisory Notice to the Noncompliant Citrus Grove owner as such person's name and address appears on the last San Diego County Equalized Assessment Roll. The Advisory Notice shall:
1. Specify the manner in which the Commercial Citrus Grove is noncompliant, and shall specify the ACP Treatment Protocol required to bring the Noncompliant Citrus Grove into compliance; and
 2. Contain a statement that failure to bring the Noncompliant Citrus Grove into compliance and provide written evidence thereof within ten (10) calendar days from the date of the Advisory Notice will be issued a Notice of Violation and may subject the Noncompliant Citrus Grove owner to civil litigation, administrative and civil fees, costs, and penalties, and may result in the imposition of a special tax assessment against the Noncompliant Citrus Grove property for abatement costs and fees related to the enforcement of this Ordinance and abatement of the Noncompliant Citrus Grove.
- B. Notice of Violation. If the Noncompliant Citrus Grove owner fails to comply with the Advisory Notice, then the District Manager shall issue a written "Notice of Violation" to the Noncompliant Citrus Grove owner as such person's name and address appears on the last San Diego County Equalized Assessment Roll. The "Notice of Violation" shall:
1. Include a reference to the previously-issued "Advisory Notice";
 2. Specify the manner in which the Commercial Citrus Grove is noncompliant, as well as the ACP Treatment Protocol required to bring the Noncompliant Citrus Grove into compliance;
 3. Contain a statement that failure to bring the Noncompliant Citrus Grove into compliance and provide written evidence thereof, or make a written request for a hearing to the District Board of Directors within ten (10) calendar days from the date of the Notice of Violation, may subject the Noncompliant Citrus Grove owner to civil litigation, administrative and civil fees, costs, and penalties, and may result in the imposition of a special tax assessment against the Noncompliant Citrus Grove property for abatement costs and fees related to the enforcement of this ordinance and abatement of the Noncompliant Citrus Grove.
- C. The owner of the Noncompliant Citrus Grove shall then have ten (10) calendar days from the date of the "Notice of Violation" to provide the District Manager with written evidence that the Noncompliant Citrus Grove has been brought into

compliance, or to request a hearing before the District Board of Directors.

- D. Upon failure of the owner of the Noncompliant Citrus Grove to provide written evidence of compliance or request a hearing as provided in Section 7 of this Ordinance, the District Manager is authorized to immediately seek an Inspection, Eradication and Abatement Warrant pursuant to the California Code of Civil Procedure Sections 1822.50. *et seq.*, as may be amended. The Inspection, Eradication and Abatement Warrant shall authorize the District to enter upon, inspect, eradicate, and abate the Noncompliant Citrus Grove pursuant to the authority provided by Food and Agriculture Code Sections 8551 *et seq.* The District Manager shall also be authorized to pursue all available civil and administrative remedies, including but not limited to recovery of any and all penalties and costs associated with bringing the Noncompliant Citrus Grove into compliance.

Section 7. APPEAL OF NOTICE OF VIOLATION

- A. The recipient of a Notice of Violation may appeal the validity of the Notice of Violation by filing a written request for a hearing with the District. The written request for a hearing must be filed within ten (10) calendar days of service of the Notice of Violation. Failure to properly file a written request for a hearing within this time period shall constitute a waiver of the right to have a hearing regarding the Notice of Violation. The written request for a hearing shall contain the following information:
1. A brief statement setting forth the requestor's interest in the proceedings;
 2. A brief statement of the material facts which the requestor claims support a contention that no violation exists;
 3. The request for a hearing must be signed by the requestor under penalty of perjury.

Section 8. HEARING BEFORE THE DISTRICT BOARD OF DIRECTORS

- A. Upon receipt of a written request for a hearing from a Noncompliant Citrus Grove owner, the District Board of Directors shall place the hearing on the Agenda for a regular or special Board of Directors meeting.
- B. Notice of the hearing shall be mailed or delivered at least ten (10) calendar days prior to the hearing to the owner of the subject Noncompliant Citrus Grove as shown on the latest equalized assessment roll.
- C. During the hearing, the District Board of Directors shall receive testimony and evidence from the District Manager and the owner of the Noncompliant Citrus Grove or the owner's representatives regarding the Noncompliant Citrus Grove.

In conducting the hearing, the District Board of Directors shall not be limited by the technical rules of evidence. Upon the conclusion of the hearing, the District Board shall make its decision, and shall affirm or set aside the Notice of Violation.

- D. If the Board of Directors affirms the Notice of Violation, then the District Manager is authorized to immediately seek an Inspection, Eradication and Abatement Warrant pursuant to California Code of Civil Procedure Sections 1822.50, *et seq.*, as may be amended. The Inspection, Eradication and Abatement Warrant shall authorize the District to enter upon, inspect, eradicate, and abate the Noncompliant Citrus Grove pursuant to the authority provided by Food and Agriculture Code Sections 8551 *et seq.* The District Manager shall also be authorized to pursue all available civil and administrative remedies, including but not limited to recovery of any and all costs associated with bringing the Noncompliant Citrus Grove into compliance.

Section 9. ABATEMENT COST RECOVERY

- A. All costs associated with the investigation, administration, eradication, and abatement of Noncompliant Citrus Groves shall be recovered.
- B. At any time during the pendency of the enforcement of this Ordinance, costs may be recovered through collection, civil action, or as follows:
1. The District Manager shall prepare a verified Statement of Costs and shall demand payment of said costs within thirty (30) days of the preparation of the Statement of Costs.
 2. The Statement of Costs shall be issued to the owner of the Noncompliant Citrus Grove in the same manner as set forth in Section 10 of this Ordinance, and shall notify the owner of the Noncompliant Citrus Grove of the opportunity to request a hearing to appeal the Statement of Costs.
 3. Any owner of a Noncompliant Citrus Grove who receives a Statement of Costs shall have the opportunity to appeal the Statement of Costs by requesting a hearing before the District Board of Directors.
 4. A written request for a hearing shall be filed with the District within ten (10) calendar days of service of the Statement of Costs. Failure to properly file a written request for a hearing within this time period shall constitute a waiver of the right to request a hearing to appeal the Statement of Costs.
 5. The hearing required by this Section shall be held before the District Board of Directors and shall be conducted in the manner set forth in Section 8 of this Ordinance.
 6. In determining the validity of the amount set forth in the Statement

of Costs, the Board of Directors shall consider whether the costs and fees contained in the Statement of Costs are reasonable based on the circumstances of the case. A copy of the decision shall be filed with the Clerk of the San Diego County Board of Supervisors and mailed to the property owner in the same manner as set forth in Section 6.A. of this Ordinance.

7. If payment is not made within thirty (30) calendar days after the Board of Directors' decision is issued, the District Manager shall transmit the Statement of Costs and the Board of Directors' decision to the County Auditor, who shall place the amount thereof on the Assessment Roll as a Special Assessment to be paid with County taxes, unless sooner paid. At the same time, the District Manager shall file with the County Recorder a Notice of Abatement Lien, describing the real property affected, a summary of the action taken to abate the Noncompliant Citrus Grove, if any, and the amount of the lien claimed by the District.
8. Upon payment in full of the amount set forth in the Statement of Costs or as decided by the District Board of Directors, the District Manager shall execute and record with the County Recorder a release of any recorded lien. If an assessment has been placed on the assessment roll and is thereafter paid, the District Manager shall notify the County Auditor, who shall cancel the assessment on the tax roll.

Section 10. NOTICES

Unless otherwise specifically provided for in any other section of this Ordinance, notices shall be issued in the following manner:

- A. **SERVICE OF NOTICE.** Notices required pursuant to this Ordinance may be served in any of the following methods:
 1. Personal service; or
 2. By posting a copy of the notice in a visible place on the property and mailing a copy to the property owner as such person's name and address appears on the last San Diego County Equalized Assessment Roll. Service by mail and posting shall be deemed complete five (5) calendar days after the date of deposit in the mail and posting, whichever is later.
- B. **FAILURE TO RECEIVE NOTICE.** The failure of any property owner to receive such notice shall not affect the validity of the notice.

Section 11. SEVERABILITY

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 12. EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after it is adopted by the Board of Directors.

INTRODUCED at a regular meeting of the Board of Directors of the San Diego County Citrus Pest Control District on this 5th day of October, 2023; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the Board of Directors of the San Diego County Citrus Pest Control District on this 2nd day of November, 2023, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

By: _____
Chairman of the Board

ATTEST:

By: _____
Clerk of the Board

APPROVED AS TO FORM:

By: _____
General Counsel for the District