ORDINANCE NO. 2008-379

AN ORDINANCE OF THE CITY OF BIG BEAR LAKE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADDING A NEW CHAPTER 8.94 (NATIVE BRUSH AND SHRUBS) OF TITLE 8 (HEALTH AND SAFETY) OF THE BIG BEAR LAKE MUNICIPAL CODE

WHEREAS, according to the California Department of Forestry and Fire Protection (CalFire), vegetation management is one of the keys to allowing firefighters to protect and save homes without unacceptable risk to their lives; and

WHEREAS, the City of Big Bear Lake has a Community Wildfire Protection Plan ("CWPP") that was developed in collaboration with the United States Forest Service, California Department of Forestry, San Bernardino County Fire Department, Big Bear Lake Fire Department, Big Bear City Fire Department and the Big Bear Valley Fire Safe Council; and

WHEREAS, the CWPP’s goals regarding native brush and shrub modification are designed to create a healthy forest environment, protect the watershed, and minimize the potential of a catastrophic wildfire that could destroy the forest and surrounding community and result in a significant loss of life; and

WHEREAS, this Ordinance will affect three of the defined CWPP Wildland Urban Interface Management Units: (1) Millcreek; (2) Big Bear Lake; and (3) Moonridge; and

WHEREAS, California Public Resources Code Section 4291 reflects an effective fire safety policy for individuals who own, lease, control, operate or maintain buildings or structures in, upon, or adjoining any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered with flammable material; and

WHEREAS, one of the objectives of California Public Resources Code Section 4291 is to disrupt the vertical and/or horizontal continuity of flammable and combustible vegetation with the goal of reducing fire intensity, inhibiting fire in the crowns of trees, reducing the rate of fire spread, and providing a safe environment for firefighters to suppress wildfire; and

WHEREAS, the City Council of the City of Big Bear Lake finds that establishing Chapter 8.94 (Native Brush and Shrubs) of Title 8 (Health and Safety) is reasonably necessary to assist in fire prevention and prevent nuisances because:

(1) The City is subject to periods of relatively low amounts of precipitation and low humidity levels, and high temperatures, particularly in the summer when the temperature can exceed 90 degrees with relative humidity levels of less than 10 percent. These climatic conditions are conducive to the spread of drought conditions and fires.
(2) The winds channeled by the valleys of the San Bernardino Mountains, which result in strong offshore and downslope winds, are commonly referred to as the “Santa Ana Winds,” which can reach speeds of 60 miles per hour. The Santa Ana Winds are characterized by warm temperatures, low relative humidity and low-level wind shears.

(3) The City is located in an area that, due to its climate, geology, and topography is highly susceptible to fires, strong winds and extreme weather conditions.

(4) The combination of the bark-beetle infestation in the San Bernardino Mountains; dense brush, including native brush and shrubs; and increased human habitation in the City have resulted in substantial fire hazards to homes and residents.

WHEREAS, strong wind conditions, dry weather, and dry and dense native brush and shrubs contributed to the loss or damage of approximately 150,000 acres and 1,100 homes in the surrounding area resulting from the San Bernardino County fires in the Fall of 2003, including the Grand Prix Fire and Old Fire; and

WHEREAS, strong wind conditions, dry weather, and dry and dense native brush and shrubs contributed to the loss or damage of approximately 122,440 acres and 272 homes in the Slide Fire, 1,247 acres and 200 structures in the Grass Valley Fire, and 14,039 acres and three structures in the Butler 2 Fire, in September and October of 2007; and

WHEREAS, these fires have resulted in tragic loss of lives along with enormous property losses; and

WHEREAS, in the City of Big Bear Lake there is residential and commercial development subject to the City’s wind and weather conditions and anticipated development which will be subject to the same; and

WHEREAS, the August 17, 2001 edition of the Federal Register identified the City of Big Bear Lake as a community at high risk from a wildfire; and

WHEREAS, the City of Big Bear Lake can best protect the community by first focusing its resources on the highest fire-risk areas, which include vacant lots that tend to be overrun by native brush and shrubs and the Urban Interface, which is comprised of those lands on the southern boundary of the City which are in and adjacent to the National Forest lands; and

WHEREAS, the City Council believes the City’s resources can best be used by implementing this Ordinance in zones, with the first zone comprised of vacant lots and the Urban Interface due to the high public health and safety risk those areas present to the City and the community-at-large; and
WHEREAS, the City Council of the City of Big Bear wishes to amend the Municipal Code to address these dangers to the citizens of Big Bear Lake and the surrounding community, as well as preventing any and all nuisances; and

WHEREAS, an environmental Initial Study was prepared pursuant to the California Environmental Quality Act (CEQA), which Initial Study determined that the Ordinance would not have a significant effect on the environment and a Negative Declaration was prepared, and the Initial Study and proposed Negative Declaration were circulated for public review from February 1, 2008 to March 3, 2008.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BIG BEAR LAKE DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council declares that the recitals and findings noted above, which are hereby incorporated by reference, are true and correct.

SECTION 2. A new Chapter 8.94 (Native Brush and Shrub) of Title 8 (Health and Safety) of the Big Bear Municipal Code is hereby added to read as follows:

“Chapter 8.94

NATIVE BRUSH AND SHRUB

Section 8.94.010 Native Brush and Shrubs
Section 8.94.020 Environmental Exemptions
Section 8.94.030 Exceptions to Ordinance
Section 8.94.040 Certificate of Compliance Record
Section 8.94.050 Precedence Over Other Code Provisions
Section 8.94.060 Enforcement – Parcels Over Five Acres
Section 8.94.070 Notice to Abate – Method of Issuance
Section 8.94.080 Notice to Abate - Form
Section 8.94.090 Protection of Sensitive Biological Resources
Section 8.94.100 Notice to Abate - Appeal
Section 8.94.110 Appeal Procedure
Section 8.94.120 Abatement by City - Procedure
Section 8.94.130 Abatement by City – Cost Recovery
Section 8.94.140 Authorization for Fee for Service
Section 8.94.150 Definitions/Administration and Enforcement
Section 8.94.160 Violation - Penalty

“Section 8.94.010 Native Brush and Shrubs.

A. It shall be the duty of every owner of real property in the City of Big Bear Lake to abate as a nuisance from such real property and from all parkways, Native Brush and shrubs, that constitute a fire, health, or safety hazard, or which may
endanger or injure neighboring property, or the health, safety, or well-being of persons or property.

B. Juniper Shrubs, Spanish Broom, and Native Brush shall not be planted or maintained within fifteen (15) feet of any building or structure, including, without limitation, any deck or patio. All owners of any real property in the City of Big Bear Lake shall be required to fully comply with this provision by modifying the offending Native Brush and shrub, which shall be considered a nuisance, from within fifteen (15) feet of any building or structure.

C. All Native Brush and shrubs shall be installed and maintained in a manner that minimizes fire risk, including, without limitation, by removing dead branches and twigs at all heights, modifying the lower foliage of branches, and selectively pruning to reduce the density of the plant.

D. Native Brush shall be installed and maintained with horizontal spacing such that the space between two shrubs (horizontally) shall be a minimum of two times the height of the tallest shrub. Individual shrubs or groups of shrubs clumped together shall be modified so that their diameter does not exceed fifteen (15) feet. Groups of shrubs clumped together with a diameter of fifteen (15) feet or less shall be treated as a single plant.

E. Paragraphs B, C and D of this Section shall not apply to an isolated shrub or shrubs that have been heavily modified by thinning and limbing up, nor to activities within the boundaries of a plant conservation easement area, that do not, in the opinion of the Fire Chief, or his or her designee, constitute a fire hazard. In deciding whether such shrub or shrubs constitute a fire hazard, the Fire Chief, or his or her designee, shall consider (i) the proximity of the shrub(s) to other buildings or structures; (ii) the types of shrub(s) involved; (iii) the potential threat of the shrub(s) to the public health, welfare and safety; and (iv) any other factors that the Fire Chief, or his or her designee, deem relevant when considering the public health, safety and welfare, including, without limitation, whether such shrub(s) is endangered, rare or threatened.

F. Cut and/or thinned vegetation shall be disposed of no later than ten (10) days after cutting.

Section 8.94.020 Environmental Exemptions

The modification of brush or shrubs, as described in this Chapter, shall be exempt from the provisions of this Chapter if any or all of the following would occur:
A. The activities would result in the taking of endangered, rare, or threatened plant or animal species. By way of example, and not by way of limitation, the following species of plant are, as of the date of the ordinance adopting this Chapter, not threatened or endangered and are subject to the provisions of this Chapter:

1. The arctostaphylos patula species of manzanita.

2. The cercocarpus ledifolius species of mountain mahogany (brush form) (commonly known in Big Bear Valley as Ironwood).

3. Sage species that occur in the Big Bear Valley.

B. The activities would result in significant erosion and sedimentation of surface waters. The owner of each piece of real property within the City of Big Bear Lake shall, when performing modifications required by this Chapter, keep soil disturbance to a minimum, especially on steep slopes. Erosion control techniques such as leaving rootballs intact, minimizing use of motorized equipment, and covering exposed disturbed soil areas with mulch or similar materials shall be employed in order to help reduce soil erosion and plant regrowth.

8.94.030 Exceptions to Ordinance

A. Nurseries, and other similar agricultural and/or horticultural uses shall be exempt from Chapter 8.94, provided the Fire Chief, or his or her designee, shall have the discretion to enforce the provisions of this Chapter with respect to such businesses as he or she deems necessary to promote the public health, safety and welfare as it relates to fire safety and/or the health of the forest. In using his or her discretion, the Fire Chief, or his or her designee, shall consider: (i) the health of the brush and/or shrubs involved; (ii) whether the brush and/or shrubs pose a risk to the public health, safety or welfare of the community; (iii) the type of brush and/or shrubs involved; (iv) the owner's maintenance activities involving the brush and/or shrubs; and (v) any other factors that the Fire Chief, or his or her designee, deem relevant when considering the public health, safety and welfare, including, without limitation, whether such shrub(s) is endangered, rare or threatened.

B. Up to 2 inches of dead pine needles, leaves and other soils amendments for soil replenishment and forest safety may be permitted when in the opinion of the Fire Chief or his/her designee they do not constitute a fire hazard. In deciding whether they present a fire hazard, the Fire Chief or his/her designee shall consider:
1. The proximity of the pine needles and leaves to buildings or structures;

2. The height of the lower branches of shrubbery from the ground (as per Section 8.94.010 C., above);

3. The condition of the shrubbery, (e.g. free from dead and dying limbs and leaves) (as per Section 8.94.010 C., above);

4. The sectioning of the shrubbery (as per Section 8.94.010 D., above); and

5. Any other factors that the Fire Chief or his/her designee deem relevant when considering the public health, safety and welfare.

8.94.040 Certificate of Compliance Required.

Upon the effective date of the Ordinance adopting this Chapter, the owner of the each piece of real property within the City of Big Bear Lake: (i) As a condition precedent to, the issuance of any discretionary permit or any building permit; or (ii) As a condition precedent to, the issuance of an initial private home rental license (other than the continuous renewal thereof) from the City, shall be required to obtain a “Certificate of Compliance” from the Fire Chief, or his or her designee, stating that said property is in compliance with Chapter 8.94 of the City of Big Bear Lake Municipal Code relating to Native Brush and Shrubs.

8.94.050 Precedence Over Other Code Provisions

The provisions of Chapter 8.94 shall supersede any conflicting provisions in the City of Big Bear Lake Municipal Code or Development Code. However, if there is a provision in the California Fire Code, as adopted by the City of Big Bear Lake, that is more stringent than the provisions in this Chapter, the California Fire Code provision shall apply.

8.94.060 Enforcement – Parcels Over Five Acres.

If there is a parcel of land, or contiguous parcels under the same ownership, that comprise over five (5) acres, native brush and/or shrubs within a forty-foot wide (40’) strip of land at the boundaries of the land and around any structure, shall be modified and continued to be modified in accordance with Section 8.94.010. Brush and shrub modification in the remaining land other than the forty-foot wide (40’) perimeter boundary is subject to the discretion of the Fire Chief, or his or her designee, as he or she deems necessary to promote the public health, safety and welfare as it relates to fire safety. In exercising his or her discretion, the Fire
Chief, or his or her designee, shall consider, without limitation, the following: (i) the type of brush and/or shrubs growing on the property; (ii) the placement of the parcel in relation to other parcels; (iii) the ability of the owner to comply with the Chapter’s provisions; (iv) the location of the parcel, i.e., whether it is in an high fire-risk area; (v) number of past violations and/or attempts (or lack thereof) to cure such violations;; and (vi) any other factors that the Fire Chief, or his or her designee, deem relevant when considering the public health, safety and welfare, including, without limitation, whether such shrub(s) is endangered, rare or threatened.

8.94.070 Notice to Abate – Method of Issuance.

A. It shall be the duty of any individual or public agency as designated in Section 8.94.150 of this Chapter, whenever such individual or agency deems it necessary to enforce the provisions set forth in this Chapter, to issue a “Notice to Abate” as follows:

1. Mail to the owner as shown on the tax rolls. Such mailing shall be U.S. Mail.

2. By personal service to the occupant, manager or controller of such property.

3. In the event service cannot be effectuated by at least one method set forth above, by posting a notice in a clearly visible location on the subject property.

B. An attachment will accompany the “Notice to Abate” that includes information explaining the provisions of Section 8.94.090 and instructions on how to comply with the provisions. The information shall include, but not be limited to, a map of the extent of potential sensitive shrub resource areas, instructions for determining whether sensitive plant surveys are needed, and instructions for conducting sensitive plant surveys. In addition, educational material regarding sensitive shrub/hemi-parasitic herb species and flammable native brush/shrub species, as well as protection for nesting birds will also be included.

8.94.080 Notice to abate – Form.

The form “Notice to Abate” shall be substantially in the following form:
NOTICE TO ABATE

Date. ________________

Month Day Year

By virtue of Chapter 8.94 of the City of Big Bear Lake Municipal Code YOU ARE HEREBY NOTIFIED TO ABATE from your property described as

________________________________________
Lot, Block, etc.

or located at ________________________________
Number Street

taken from the County of San Bernardino Assessor's Records, which lists the owner as ________________________________
Name

of ________________________________
Address Post Office State Zip Code

specific mentioned items: (describe what specific action(s) need to be taken)

________________________________________
________________________________________

If said items are not abated within thirty (30) days following the date of this notice; or within such additional time required for compliance with Section 8.94.090, Protection of Sensitive Biological Resources; or if there is good cause for the reasons given below as determined by the Fire Chief, or his or her designee, or other duly designated officer as determined by Section 8.94.150, in his or her discretion, when taking into account the public health, safety and welfare, such officer may order said items abated by public employees, a private contractor, or other authorized person. If abatement is to be undertaken by a public employee or private contractor hired by the City a copy of the Notice to Abate shall be forwarded to the Department of Planning to ensure compliance with Section 8.94.090. The cost of the abatement shall be levied and assessed against the property as a special assessment lien, or billed directly to the owner. The property may be sold after three years by the tax collector for unpaid delinquent assessments.
Additional Time for Abatement Granted for Good Cause: Yes __  No ___

If Yes, _________________ ( ___ ) days.

Good Cause:

________________________________________________________________________

Initials of Issuing Officer: __________

Any appeal from this order must be brought within twenty-one (21) days following its receipt, and directed to the undersigned officer, who will set the same for hearing before the Fire Protection District Board and notify you of the date of such hearing. The decision by the Fire Protection District Board shall be final.

________________________________________________________________________

Name and Title of Issuing Officer
8.94.090  Protection of Sensitive Biological Resources

A. Should any owner receive a NOTICE TO ABATE form that mandates the modification of native brush or shrubs other than the following shrub species: juniper, Spanish broom or native brush species: manzanita, service berry, mountain whitethorn, sage, or mountain mahogany and the property falls within the Potential Sensitive Shrub Resource Area (as set forth in the City's official records, and which may be amended from time to time), a sensitive plant survey will be required for the property prior to any abatement activities. If it unclear whether a particular property falls within the Potential Sensitive Shrub Resource Area or whether or not sensitive plant surveys are required, the owner must contact the City of Big Bear Lake, Planning Department. The City's Planning Department shall provide requesting owners with a list of qualified surveyors, which list may be updated or revised at the discretion of the City. Ideally, sensitive plant surveys should be conducted between June and August to encompass the blooming periods of those sensitive plants that are the most difficult to detect outside the blooming period; however, the sensitive plant survey can be conducted during other parts of the year (aside from periods when snowfall is covering the ground) if necessary. Upon completion of the survey, the surveyor shall advise the owner as to any known or potential sensitive plants that should be avoided during abatement activities. A form shall be completed at the end of the survey that will provide details as to the results of the survey. The surveyor shall provide a copy of the form to the owner and the Planning and Fire Departments. The owner shall not conduct any modification without prior written approval of the City. All surveys required by this paragraph shall be conducted within a reasonable time, as determined by the Fire Chief, or designee.

B. If any native brush modification is required for more than 20 shrubs and vegetation modification activities cannot be performed outside the nesting season (typical nesting season is March 15-August 15), a nesting bird survey shall be performed less than one week prior to vegetation modification activities. Should the owner be required to conduct a nesting bird survey, he/she shall contact the City of Big Bear Lake Planning Department for a list of qualified nesting bird surveyors, which list may be updated or revised at the discretion of the City. Upon completion of the survey, the surveyor shall advise the owner as to any shrub(s) containing nesting birds that should not be modified until the completion of the nesting cycle. A form shall be completed at the end of the survey that will provide details as to the results of the survey. The surveyor shall provide a copy of the form to the owner and the Planning and Fire Departments. The owner shall not conduct any modification without prior written approval of the City. All
surveys required by this paragraph shall be conducted within a reasonable time, as determined by the Fire Chief, or designee.

C. Any owner receiving a NOTICE TO ABATE form (for any number of shrubs) will also receive a pamphlet pertaining to providing protection for nesting birds. The pamphlet will describe the Migratory Bird Treaty Act, and suggest that if vegetation modification will occur during the nesting season (March 15-August 15), owners need to check for the presence of active bird nests and avoid modification of any vegetation containing an active bird nest (or vegetation within 25 feet of the active bird nest) until the young have fledged.

8.94.100 Notice to Abate – Appeal.

Any owner may appeal to the Fire Protection District Board within the time for compliance with the order, by an appeal in writing filed with the issuing officer. Timely appeal shall stay any further action until the decision on appeal is rendered. The officer receiving the written appeal shall inform the issuing officer, who shall set the matter for hearing before the Fire Protection District Board and notify the appellant of the date set for such hearing, at least fifteen (15) days prior to such date. If the appellant resides outside the city, the above period of notice shall be at least twenty-one (21) days. The Fire Protection District Board shall act on the appeal, and its decision shall be the final administrative decision.

8.94.110 Appeal Procedure.

A. When an appellant files for an appeal pursuant to Section 8.94.100, he or she shall pay to the City Clerk an appeal fee equal to the current filing fee, which may be set by resolution of the City Council from time to time, as needed.

B. The Fire Protection District Board shall conduct the hearing under such rules of procedure as are appropriate to quasi-judicial proceedings, provided that the appellant and the parties shall be entitled to present relevant evidence, testify under oath, and call witnesses who shall testify under oath and that the parties shall not be bound by the statutory rules of evidence in the hearing, except that hearsay evidence may not be the sole basis for the determination of the Fire Protection District Board. The City shall have the initial burden of proof. In its discretion, the City shall cause a transcript of the hearing to be taken and prepared.

C. In making its determination, the Fire Protection District Board shall consider the evidence presented by the appellant, as well as evidence presented by the Fire Chief, or his or her designee. The Fire Protection District Board shall
also consider the following factors, without limitation, in making its decision regarding the appeal:

(1) The effect that the Fire Chief’s decision will have on the overall public health, safety and welfare of the City of Big Bear Lake and the community;

(2) The immediate danger and/or threat to the public if the Fire Chief’s decision is not upheld;

(3) The financial hardship to the owner should he or she be required to modify the brush and/or shrubs pursuant to this Chapter;

(4) Other adverse effects on the owner should he or she be required to modify the brush and/or shrubs pursuant to this Chapter;

(5) The owner’s attempts to comply (or lack of attempts to comply) with the provisions of this Chapter;

(6) Any or all of the factors the Fire Chief considered in making his or her determination regarding the modification of the brush and/or shrubs;

(7) Any other factors the Fire Protection District Board deems valid in making its determination.

8.94.120 Abatement by City – Procedure.

A. Except for Subsection (B), if, at the end of the time allowed for compliance in the original “Notice to Abate,” or as extended in cases of appeal, compliance has not been accomplished, the officer issuing the notice may order Native Brush, as defined in Section 8.94.150(A)(2), or other shrubs to be abated by (i) public officers or employees of the city, or (ii) a private contractor selected and approved by the City Manager, or his or her designee, in the manner and under the terms specified the City Manager, or his or her designee. Such abatement shall be collected as a special assessment and the real property shall be subject to a special assessment lien. The amount of such lien shall be the actual cost of abatement and disposal of such material, which shall include, without limitation, the actual administrative and staff costs associated with the abatement procedures outlined in this Chapter. The City Council may set by resolution, from time to time, reasonable hourly rates for administrative and other costs incurred by the City implementing this Chapter.

B. If the officer who issued the “Notice to Abate” finds that a substantial amount of Native Brush, as defined in Section 8.94.150(A)(2), or other shrubs have been abated from the land at the end of the compliance period as indicated in
the “Notice to Abate,” or as extended in the cases of appeal, the officer shall issue a second “Notice to Abate” in accordance with the provisions of Sections 8.94.070 and 8.94.080 prior to commencing the city-initiated abatement proceedings as described in Subsection (A); provided however that the mailed delivery method specified in Section 8.94.070(A)(1) for such second notice shall be made by a method that provides for a proof of receipt and tracking.

8.94.130 Abatement by City – Cost Recovery.

A. Procedure for Payment. When said abatement has been completed, the Fire Chief, or his or her designee, or officer responsible for the abatement proceedings, shall render to the finance director, or his or her designee, an itemized statement covering work necessary for such abatement. The finance director, or his or her designee, shall pay the same from the general funds of the city, and by mail, the finance director, or his or her designee, shall present to the owner a demand for payment, including interest calculated at the maximum rate permitted by law. Interest will continue to accrue at such rate until the payment is received by the City. If payment is not made on behalf of the owner within sixty (60) days after mailing the bill, the finance director, or his or her designee, shall certify to the county tax collector the unpaid amount, together with the information required by law. The county tax collector shall cause the amount to be entered upon the property from which abatement was accomplished, and the special assessment and tax shall be included upon the next succeeding tax statement. Thereafter, the amounts of the assessment shall be collected at the same time and in the same manner as ordinance municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinance municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such assessment.

B. Appeals. Any appeal from these charges must be filed within sixty (60) days from the date of billing from the finance director or receipt of a tax bill which shows abatement charges. The appeal procedure shall be as set forth in Section 8.94.100 and 8.94.110, and the Fire Protection District Board’s decision shall be final. Failure to appeal shall constitute a waiver of any and all claims.

C. Cancellation of Claim. All or any portion of any such special assessment, penalty, or costs entered, shall on order of the Fire Protection District Board be cancelled by the finance director, or his or her designee, if uncollected, or, except in the case provided for in Subsection (C)(5), refunded by the country treasurer if collected, if it or they were entered, charged or paid:
1. More than once;

2. Through clerical error;

3. Through the error or mistake of the Fire Protection District Board or of the officer, board or commission designated by the Fire Protection District Board to give notice or to destroy the brush or shrubs, in respect to any material fact, including where a cost report erroneously shows that the city abated the brush or shrubs;

4. Illegally; or

5. On property acquired after the lien date by the state or by any county, city, school district or other political subdivision, and because of this public ownership, not subject to sale for delinquent taxes.

D. Procedure for Refund of Payment. No order for a refund under this section shall be made except on a claim:

1. Verified by the person who paid the special assessment, or his or her guardian, executor, or administrator, or

2. Filed within three (3) years after making the payment sought to be refunded. The provisions of this Section do not apply to cancellations.

8.94.140 Authorization for Fee for Service

The City Council may establish by resolution, from time to time, fees for service to recover up to, but no more than, one hundred percent (100%) of the cost of the administering this Chapter, which shall include, without limitation, the actual administrative and staff costs associated with the inspection and the abatement procedures outlined in this Chapter. The fee shall not exceed the estimated reasonable cost of providing the service for which the fee is charged.

8.94.150 Definitions/Administration and Enforcement.

A. For the purposes of this Chapter, these following terms shall be defined as follows:

1. Modify or abate shall mean any action that physically affects a plant, ranging from pruning or thinning to complete removal (other than the removal of the rootball).

2. Native Brush shall be defined as manzanita (arctostaphylos patula), service berry, mountain whitethorn, sage and mountain mahogany (cercocarpus
ledifolius) (brush form) (commonly known in Big Bear Valley as Ironwood), as well as such other species as the Fire Chief, or his or her designee, may, from time to time, determine constitutes a fire hazard. In making such a determination, the Fire Chief shall consider, without limitation, the following: (i) the type of native brush and/or shrub species the Fire Chief, or his or her designee, is considering adding to the definition of “Native Brush” and whether such species is threatened or endangered; (ii) the fire, health or safety hazard of such native brush and/or shrub species to the City of Big Bear Lake and the surrounding community; (iii) the ability of the native brush and/or shrub species to damage neighboring property; (iv) the ability of the native brush and/or shrub species to adversely impact the health, safety or welfare of persons and/or property; and (v) any other factors that the Fire Chief, or his or her designee, deem relevant when considering the public health, safety and welfare.

3. Owner shall mean any person, firm, corporation or entity, including without limitation, any homeowner’s association, that has any legal or equitable interest in real property, as shown on public records. In the event real property is leased or rented, the lessee or tenant shall be responsible for all obligations imposed on any owner under this Chapter.

4. Shrubs shall mean a woody plant smaller than a tree, usually having multiple permanent stems branching from or near the ground. Shrubs include, without limitation, Native Brush.

5. Vacant Lot(s) shall mean a parcel(s) of property currently undeveloped or unimproved by any building or structure.

6. Zone 1 shall mean all developed properties (i.e., not a Vacant Lot) and Vacant Lots, south of Highway 18.

7. Zone 2 shall include any property within the City of Big Bear Lake not within Zone 1.

B. Upon the effective date of the ordinance adopting this Chapter, the Fire Chief, or his or her designee, shall immediately begin enforcing the provisions of this Chapter with respect to any and all Vacant Lots, and any and all properties within Zone 1. In determining which properties within such areas to apply this Chapter, the Fire Chief, or his or her designee, shall consider (i) the proximity of the brush and/or shrubs to other buildings or structures; (ii) the types of brush and/or shrubs involved; (iii) the potential threat of the brush and/or shrubs to the public health, welfare and safety; (iv) the determination of any other public agencies as to the fire danger of the area; and (v) any other factors that the Fire
Chief, or his or her designee, deem relevant when considering the public health, safety and welfare.

C. The Fire Chief, or his or her designee, shall enforce the provisions of this Chapter with respect to any and all properties within Zone 2 as he or she deems necessary for the public health, safety and welfare. In making such a determination, the Fire Chief, or his or her designee, shall consider (i) the proximity of the brush and/or shrubs to other buildings or structures; (ii) the types of brush and/or shrubs involved; (iii) the potential threat of the brush and/or shrubs to the public health, welfare and safety; (iv) the determination of any other public agencies as to the fire danger of the area; and (v) any other factors that the Fire Chief, or his or her designee, deem relevant when considering the public health, safety and welfare.

D. For the purposes of enforcing this Chapter, the City may designate any person as its deputy to perform of the duties provided by this Chapter, including, but not limited to, the inspection of property, the delivery of notices, the conduct of appeal hearings, or the abatement/modification as required by this Chapter, or any combination thereof. Such designee may include, but not be limited to, the Fire Chief, or his or her designee, any officer of any public agency designated by the City, or any combination thereof.

E. Any public official or person designated to administer or enforce the Chapter shall be authorized to enter upon private property in order to conduct an inspection, post notices, perform abatement/modification, or any other action necessary or convenient to the administration and enforcement of this Chapter. In the event a judicial warrant is required, such person or designee shall obtain a warrant pursuant to the California Code of Civil Procedure, sections 1822.50 et seq.

8.94.160 Violation – Penalty.

A. It shall be a misdemeanor for any owner of any real property to fail to perform any duty required by this Chapter, or to fail to comply with the requirements in the “Notice to Abate” set forth in Section 8.94.080, or to interfere with the performance of the duties specified in this Chapter for any of the officers named in this Chapter or their deputies, or to refuse to allow any such officers or their deputies or employees, or approved private contractors, to enter upon any premises for the purpose of abating any offending brush and/or shrubs or other material described in this Chapter, or to interfere in any manner whatsoever with the officers in the work of abatement provided in this Chapter.
B. Any person, firm, company or corporation violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon arrest and conviction or plea of guilty or no contest shall be punished by a fine of not more than five hundred dollars ($500) or imprisonment of not more than ninety (90) days, or both such fine and imprisonment.

C. Each such owner shall be guilty of a separate offense for each and every day during any portion of which any violation of or failure to comply with any provision of this Chapter is committed, continued, or permitted by such owner and shall be punishable accordingly.

D. In addition to the remedies provided by this Chapter or elsewhere by law, any condition caused or permitted to exist in violation of any of the provisions of this Chapter (including, without limitation, the failure to comply with a Notice to Abate) shall be deemed a public nuisance and may be enjoined or abated by the City by means of a civil action or administrative abatement.

SECTION 4. The City Council hereby finds that, based on the Initial Study and Negative Declaration conducted pursuant to the requirements of the California Environmental Quality Act, the public hearing, and substantial evidence in the record, the proposed Ordinance will not have a significant effect on the environment. The Negative Declaration prepared has been reviewed and considered and reflects the independent judgment of the City Council, and is hereby adopted. Staff is directed to file a Notice of Determination with the Clerk of the Board of Supervisors within five (5) working days of adoption of this ordinance.

SECTION 5. If any section, subsection, subdivision, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases to be declared unconstitutional, invalid, or ineffective.

SECTION 6. The Mayor shall sign this Ordinance and the City Clerk shall cause the same to be published within fifteen (15) days after its passage, at least once, in a newspaper of general circulation, published and circulated in the City of Big Bear Lake, California. City staff is hereby directed to transmit this Ordinance and its findings to the State, as required by law. This ordinance shall take effect thirty (30) days after its final passage.
PASSED, APPROVED AND ADOPTED this 14th day of April, 2008.

AYES: Harris, Herrick, Karp, Jahn, Mulvihill
NOES: None
ABSENT: None
ABSTAIN: None

April 14, 2008
Date

ATTEST:

Katherine E. Jefferies, CMC
City Clerk

REVIEWED AND APPROVED:

Stephen P. Deitsch
Best Best & Krieger LLP
City Attorneys

Richard T. Herrick, Mayor
Ordinance No. 2008-379

STATE OF CALIFORNIA )
COUNTY OF SAN BERNARDINO ) ss
CITY OF BIG BEAR LAKE )

I, Katherine E. Jefferies, City Clerk of the City of Big Bear Lake do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing ordinance, being Ordinance No. 2008-379 is a full, true and correct original of Ordinance No. 2008-379 of the said City of Big Bear Lake, California, entitled:

AN ORDINANCE OF THE CITY OF BIG BEAR LAKE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADDING A NEW CHAPTER 8.94 (NATIVE BRUSH AND SHRUBS) OF TITLE 8 (HEALTH AND SAFETY) OF THE BIG BEAR LAKE MUNICIPAL CODE

was duly passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of the said Council on the 14th day of April, 2008, and that the same was so passed and adopted by the following vote:

AYES: Harris, Herrick, Jahn, Karp, Mulvihill
NOES: None
ABSENT: None
ABSTAIN: None

I do hereby further certify that pursuant to the provisions of Section 36933 of the Government Code of the State of California that the foregoing Ordinance No. 2008-379 was duly and regularly published according to law and the order of the City Council and circulated within said City.

Katherine E. Jefferies, CMC
City Clerk