

# **2008 INFECTED OR DISEASED ORCHARD ORDINANCE**

## **TOWNSHIP OF BAINBRIDGE**

### **BERRIEN COUNTY, MICHIGAN**

#### **ORDINANCE NO. 48A**

Adopted: October 13, 2008

Published: October 16, 2008

Effective: November 16, 2008

An ordinance to control or eradicate abandoned or under maintained orchards and other plants that attract insect pests and plant diseases which are liable to spread to other plants, plant products or places to the injury thereof, or to the injury of man and animals, and all trees, shrubs, vines, fruit plants, cuttings, scions, grass, plants and plant parts within Bainbridge Township; to prohibit and/or regulate injurious insect pests and plant diseases and the abandoned or under maintained orchards and plants that attract them; to establish methods of control of injurious insect pests and plant diseases and the abandoned or under maintained orchards and plants that attract them; to require compliance with this ordinance; to provide for the payment and reimbursement of costs of the eradication of injurious insect pests and plant diseases and the abandoned or under maintained orchards and plants that attract them; to provide for inspection, monitoring and enforcement of this ordinance; to repeal all ordinances which are in conflict with this ordinance and to provide penalties for the violation of this ordinance; and to promote the public health, safety and general welfare of persons and property in Bainbridge Township.

## **THE TOWNSHIP OF BAINBRIDGE, COUNTY OF BERRIEN, MICHIGAN, ORDAINS:**

### **ARTICLE 1 – GENERAL**

#### **Section 1 - Statutory Authority and Title.**

This ordinance is adopted in accordance with Act 246 of 1945, as amended, being MCL 41.181, as amended, and Act 189 of 1931, as amended, being MCL 286.201, as amended, and other applicable state and federal laws.

The Township of Bainbridge shall administer, implement, and enforce the provisions of this ordinance. Any powers granted, or duties imposed, upon the Township of Bainbridge may be delegated in writing by the Township Board to persons or entities acting in the beneficial interests of or in the employ of the Township.

## **Section 2 - Findings.**

The Township finds that:

- (1) Untreated and improperly treated or abandoned orchards or plants harbor injurious insect pests.
- (2) Untreated and improperly treated or abandoned orchards or plants harbor plant diseases.
- (3) Insects and plant diseases migrate from one orchard or plant to another orchard or plant causing damage and destruction.
- (4) The residents of the Township and the Township economy are heavily dependent on agriculture.
- (5) Any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance.

## **Section 3 - Applicability and General Provisions.**

This ordinance shall apply to all property and plants in Bainbridge Township.

## **Section 4 - Definitions.**

For the purpose of this ordinance, the following words and phrases shall have the meanings respectfully ascribed to them by this Section, unless the context in which they are used specifically indicates otherwise:

- (1) “Eradicate” means to completely eliminate from the root in such a manner that the plant is no longer present.
- (2) “Insect pests” means insects or other invertebrates or vertebrates injurious to plants and plant products.
- (3) “Plant diseases” means fungi, bacteria, nematodes, and viruses, injurious to plants and plant products, and the pathological condition in plants and plant products caused by fungi, bacteria, nematodes, and viruses.
- (4) “Plants” and “plant products” mean trees, shrubs, vines, fruit, forage and cereal plants and all other plants, cuttings, grafts, scions, buds and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber and all other plant products.

- (5) "Property" means real estate, personal property, and any things or substance connected therewith, with or without value.

## **ARTICLE 2 – PROHIBITIONS, PROCEDURES AND AUTHORIZATIONS**

### **Section 1 - Prohibited Activities.**

- (1) It is unlawful for any person, firm or corporation who is the owner or occupant of land to allow the uncontrolled growth of any plants which may serve as favorable host plants and promote the prevalence and abundance of insect pests and plant diseases, or any stages thereof, that have the potential to threaten, destroy or injure other plants essential to the welfare of the people of this Township and are hereby declared a nuisance.
- (2) It is not necessary to show actual injury or destruction of plants for a violation of this ordinance.

### **Section 2 - Procedures.**

- (1) If the Township determines that any species or variety of tree, shrub, vine or other plant growing within Bainbridge Township is a host plant nuisance as defined above, and if in the sole judgment of the Township such species or variety of plant is a potential threat to agriculture and should be eradicated from this Township or from any part thereof, in order to safeguard the other plants and plant products of the Township or any part thereof, the Township shall give written notice by ordinary first class mail to the owner, occupant or person in charge of the land and public notice thereof designating the plant the eradication of which is proposed, the area of the Township involved and the reasons why the eradication of such plant is necessary.
- (2) The notice shall designate a place and a time, which time shall not be less than 30 days after the date of such notice, for a public hearing before the Township Board at which the owner, occupant or person in charge and all persons in the Township interested in the proposed action of the Township may be heard.
- (3) If, after such hearing, the Township, in its sole discretion, shall determine that such species or variety of plant should be eradicated, the Township shall give written notice by ordinary first class mail to the owner, occupant or person in charge of the land and public notice of the fact, naming the species or variety of plant or area to be eradicated, describing the boundaries of the Township from

which such plants shall be eradicated and the date when such notice shall become effective.

- (4) The written notice to the owner, occupant or person in charge of the land where such nuisance is found shall specify the condition constituting such nuisance, the method by which and the time within which such nuisance shall be abated or eradicated.
- (5) The owner or person in charge, or occupant, shall proceed to remove, cut, destroy or otherwise completely eradicate the host plants constituting the nuisance within the time and the manner described in such notice.

### **Section 3 - Authorizations.**

- (1) Whenever such owner or other person in charge, or occupant, cannot be found or shall fail, neglect or refuse to obey the requirements of the notice, the Township may proceed to abate or eradicate such nuisance, and assess the costs thereof on the property and collect the costs in the same manner as the general property taxes.
- (2) In the course of eradication of such nuisance the Township is authorized to treat, remove, cut or destroy the host plant nuisance.

## **ARTICLE III - INSPECTION MONITORING, REPORTING AND RECORD KEEPING**

### **Section 1 - Inspection and Sampling.**

The Township may inspect and/or obtain samples from any plant or orchard within the Township. Upon request, the owner, person in charge, or occupant of any property where orchards or plants are located shall allow properly identified representatives of the Township or authorized enforcement agency to enter the premises at all hours necessary for the purpose of such inspection. The Township or authorized enforcement agency shall provide reasonable advance notice to the property owner, person in charge, or occupant of the need for such access, if possible, and consistent with the protection of public health and safety and the environment. The properly identified representatives may place on the premises equipment and devices used for such sampling and inspections and/or treatment or eradications.

## **ARTICLE IV - ENFORCEMENT - SANCTIONS FOR VIOLATION**

### **Section 1 - Municipal Civil Infraction.**

- (1) Except as otherwise provided and notwithstanding any other provision of the Township's laws, ordinances and regulations to the contrary, a person who violates any provision of this ordinance is responsible for a municipal civil infraction, subject to the payment of a civil fine of not less than \$100.00 per day for each infraction, plus costs and other sanctions as permitted by law.
- (2) The owner, person in charge, or occupant found responsible for violating this ordinance shall pay the actual costs of prosecution and related expenses. If payment is not made, then the Township may levy the costs of prosecution and related expenses including the eradication of any designated plants or orchards and may levy the costs of such work as a special assessment against the lands and premises upon which such plants or orchard was growing, the same to be added to the next Township roll and collected in the same manner as other Township taxes.

### **Section 2 - Cumulative Remedies.**

The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of this ordinance, or of any permit, order, notice or agreement issued or entered into under this ordinance, shall not preclude the imposition by the Township, the authorized enforcement agency, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial or administrative proceeding, conference, or hearing regarding the person.

## **ARTICLE V - OTHER MATTERS**

### **Section 1 - Interpretation.**

Words and phrases in this Ordinance shall be construed according to their common and accepted meanings, except those words and phrases defined in Article I Section 5 shall be construed according to the respective definitions given in that section. Technical words and technical phrases not defined in this ordinance but which have acquired particular meanings in law or in technical usage shall be construed according to such meanings.

### **Section 2 - Catch-Line Headings.**

The catch-line headings of the articles and sections of this ordinance are intended for convenience only and shall not be construed as affecting the meaning or interpretation of the text of the articles or sections to which they may refer.

**Section 3 - Severability.**

The provisions of this ordinance are hereby declared to be severable and if any part or provision of this ordinance should be declared invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect any other part or provision of this ordinance.

**Section 4 - Other Ordinances.**

This ordinance shall be in addition to other ordinances of the Township and shall not be deemed to repeal or replace other ordinances or parts thereof, provided that in the event of any inconsistency or conflict between this ordinance and any other provision of any other ordinance, the provisions of this ordinance shall prevail.

**Section 5 - Effective Date.**

This ordinance shall become effective November 16, following its publication.

I hereby certify the foregoing is a true and correct copy of the Infected or Diseased Orchard Ordinance for Bainbridge Township, Berrien County, Michigan, duly adopted on the 13th day of October, 2008.

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Debra A. Grieser, Clerk  
Bainbridge Township

A motion that said the Infected or Diseased Orchard Ordinance be enacted was made by Jerry Jollay and supported by Debra A. Grieser at a regular meeting of the Bainbridge Township Board on the 13th day of October, 2008.

The names of the Township Board members and their votes are as follows:

<u>Name</u>	<u>Yes</u>	<u>No.</u>
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Jerry Jollay	X	
Debra Grieser		X
Mark Epple	X	
Don Baiers	X	
John Yetzke	X	

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the Bainbridge township Board at a meeting held on the 13th day of October, 2008, the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in compliance with the Open Meetings Act, Act No. 167 of the Public Acts of Michigan 1976, including in the case of a special or rescheduled meeting, notice by posting at least eighteen (18) hours prior to the time set for said meeting.

Dated: October 13, 2008

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Debra A. Grieser, Township Clerk

I hereby certify that a summary of the foregoing Ordinance was published in the Tri-City Record, Watervliet, Michigan, on the 16th day of October, 2008.

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Debra A. Grieser, Township Clerk