

**ORDINANCE NO. BBFA2016-003**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF  
THE BIG BEAR FIRE AUTHORITY, A CALIFORNIA  
JOINT POWERS AUTHORITY, ESTABLISHING  
PENALTIES AND ADMINISTRATIVE CITATIONS FOR  
VIOLATIONS OF THE FIRE CODE**

WHEREAS, the Big Bear Fire Authority (“Authority”) exists pursuant to the laws of the state of California and that certain Joint Powers Agreement entered into by and between the Big Bear City Community Services District and the Big Bear Lake Fire Protection District, a subsidiary fire protection district of the City of Big Bear Lake; and

WHEREAS, Health and Safety Code section 13869.7 authorizes the Authority to adopt building standards relating to fire and panic safety that are more stringent than those building standards adopted by the State Fire Marshal and contained in the California Building Standards Code, subject to the ratification of the City of Big Bear Lake and San Bernardino County; and

WHEREAS, the Authority has adopted a more stringent version of the California Fire Code (“Fire Code”) in compliance with section 13869.7 and the Authority is authorized by such adoption to enforce the Fire Code; and

WHEREAS, the Authority desires to encourage compliance with the Fire Code; and

WHEREAS, Government Code section 53069.4 authorizes the Authority to issue administrative citations to enforce its ordinances; and

WHEREAS, currently, there is no comprehensive and uniform procedure for the issuance and appeal of administrative citations for Fire Code violations; and

WHEREAS, the purpose of this Ordinance is to provide a comprehensive and uniform procedure for the issuance and appeal of administrative citations in the enforcement of the Fire Code; and

**NOW THEREFORE**, the Board of Directors of the Big Bear Fire Authority does ordain as follows:

Section 1. Penalties and Applicability

- A. No person shall violate or fail to comply with any provision or requirement of the Fire Code as adopted and amended by the Authority, or any Authority Ordinance. Any person who shall violate or fail to comply with any provision or requirement of the Fire Code or any Authority Ordinance, or a condition of any permit issued pursuant to the Fire Code or any Authority Ordinance, shall be guilty of a misdemeanor unless (1) such a violation or failure is designated as an infraction or is subsequently prosecuted as an infraction, in which case such person shall be guilty of an infraction; or (2) such a violation or failure is prosecuted as a civil

- (1) Continuing Violation that does not create an immediate danger to public health and safety

Where the violation is a Continuing Violation that does not create an immediate danger to public health and safety, the citation shall set forth a reasonable period of time, which shall not be less than fifteen (15) days, for the person responsible for the continuing violation to correct or otherwise remedy the violation prior to the imposition of the administrative fine.

- (2) Continuing Violation that creates an immediate danger to public health and safety

Where a violation is a Continuing Violation that constitutes an immediate danger to the public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two-hour time period, the Authority shall have the option to initiate abatement procedures or impose the administrative citation provisions laid out herein.

- (3) Individual Violation that does not create an immediate danger to public health and safety

Where a violation is an Individual Violation that does not create an immediate danger to public health and safety, a written notice to correct the violation shall be issued for the first offense. For second and subsequent violations of the same code provision, the person responsible for the violation shall not have an opportunity to correct or otherwise remedy the violation prior to the administrative fine being imposed. Each person, firm, or corporation shall be guilty of a separate offense for each day and every day during any portion of which any violation is committed.

- (4) Individual Violation that creates an immediate danger to the public health and safety

Where a violation is an Individual Violation that constitutes an immediate danger to the public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two-hour time period, the Authority shall have the option to initiate abatement procedures or impose the administrative citation provisions laid out herein.

- C. Each administrative citation shall contain the following information:
- (1) The date of the violation;
  - (2) The address or a definite description of the location where the violation occurred;
  - (3) The section of the Fire Code or other law violated and a description of the violation;
  - (4) The amount of the fine for the Fire Code or other law violation;
  - (5) A description of the fine payment process, including a description of the time and the place to which the fine shall be paid;
  - (6) An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;
  - (7) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a Request for Hearing form to contest the administrative citation may be obtained; and
  - (8) The name and signature of the citing Enforcement Officer.
- D. Each provision of the Fire Code or other law that is violated constitutes a separate violation. Each day such a violation continues shall be regarded as a new and separate violation.

Section 4. Amount and Payment of Fines

- A. Pursuant to the authority granted in Section 53069.4 of the California Government Code, the amount of administrative fines for Fire Code or other violations imposed pursuant to this Ordinance shall be assessed in the amounts specified:
- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
  - (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same code provision within one (1) year from the date of the first violation, except that for second violations of a building and safety code the fine shall be five hundred dollars (\$500.00).
  - (3) A fine not exceeding one thousand dollars (\$1,000.00) for a third or more violation(s) of the same code provision within one (1) year from the date of

the first violation, except that for third violations of a building and safety code the fine shall be two thousand dollars (\$2,000.00).

- (4) For a violation of the Fire Code specified by the Fire Code or other applicable law to be punishable as a misdemeanor, or which is punished as a misdemeanor under Section 1.A of this Ordinance, for which no fine is specifically provided, the amount of the administrative fine shall be one thousand dollars (\$1,000) for each violation.

B. Payment of the Fine

- (1) The fine shall be paid to the Authority within thirty (30) days from the date of the administrative citation. A late payment charge of twenty-five dollars (\$25.00) and interest at the legal rate of ten percent (10%) shall be imposed on a monthly basis for any administrative citation amount remaining unpaid to the Authority.
- (2) Any administrative citation fine paid pursuant to this Ordinance shall be refunded, if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.
- (3) Payment of a fine under this Ordinance shall not excuse or discharge any continuation or repeated occurrence of the Fire Code or other law violation that is subject of the administrative citation.

Section 5. Appeal Hearing Upon Request

- A. Any recipient of an administrative citation may contest that there was a violation of the Fire Code or other law, or that he or she is the responsible party, by completing a Request for Hearing form and returning it to the Authority within fifteen (15) calendar days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an Advance Deposit Hardship Waiver has been filed.
- B. A Request for Hearing form may be obtained from the place specified on the administrative citation.
- C. Any appeal not timely filed shall be rejected. Failure of any person to file an appeal in accordance with the provisions of this Section 5 shall constitute a waiver of that person's rights to administrative determination of the merits of the citation and the amount of the fine.

Section 6. Advance Deposit Hardship Waiver

- A. Any person who intends to request a hearing to contest that there was a violation of the Fire Code, or other law, or that he or she is the Responsible Person, and who is financially unable to make the advance deposit of the fine as required in this Ordinance may file a request for an Advance Deposit Hardship Waiver at the time of filing the hearing request.
- B. The requirement of depositing the full amount of the fine as described in section 5(A) shall be stayed until the Senior Finance Officer makes a determination on the Advance Deposit Hardship Waiver request.
- C. The Senior Finance Officer may waive the requirement of an advance deposit only if the requesting party submits to the Senior Finance Officer a sworn declaration, together with any supporting documents or materials, demonstrating to the satisfaction of the Senior Finance Officer the person's actual financial inability to deposit with the Authority, the full amount of the fine in advance of the hearing.
- D. The Senior Finance Officer shall issue and mail a written decision to the person who applied for the Advance Deposit Hardship Waiver. The written decision shall list the reasons for his or her decision. The written decision of the Senior Finance Officer shall be final.
- E. If the Senior Finance Officer determines not to grant the advance deposit hardship waiver, the person shall remit the deposit to the Authority within ten (10) calendar days of the date of the written decision.

Section 7. Dismissal of Citation

- A. At any time before the hearing, if the Enforcement Officer determines that there was no violation as charged in the administrative citation or that the citation should be dismissed in the interest of justice, the Enforcement Officer may dismiss the administrative citation, cancel the requested hearing, and refund any advance deposit paid pursuant to this Ordinance.

Section 8. Appeals Board

- A. The Appeals Board established in Section 108.1 of the Fire Code shall serve as the appropriate body for the administrative citation hearing. The employment, performance, evaluation, compensation, and benefits of the Appeals Board, if any, shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the Appeals Board.

Section 9. Hearing Procedure

- A. No hearing to contest an administrative citation or other administrative decision governed by this Ordinance before the Appeals Board shall be held unless and until

a timely written request for a hearing has been submitted in accordance with Section 5, and the fine has either been deposited in advance or waived in accordance with Section 6.

- B. A hearing before the Appeals Board shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Ordinance. The person requesting the hearing shall be notified of the time and place for the hearing at least ten (10) days prior to the date of the hearing.
- C. The Appeals Board shall only consider evidence that is relevant to whether the violation(s) occurred or administrative citation should be upheld, or whether the responsible person has caused or maintained the violation of the Fire Code or other law on the date(s) specified in the administrative citation.
- D. The Responsible Person contesting the administrative citation shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation.
- E. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.
- F. The administrative citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- G. If the Enforcement Officer submits any additional documents concerning the administrative citation to the Appeals Board for consideration at the hearing, then a copy of the additional documents shall also be mailed to the person requesting the hearing prior to the date of the hearing.
- H. No other discovery is permitted. Formal rules of evidence shall not apply.
- I. The Appeals Board may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation prior to issuing a written decision.

#### Section 10. Appeals Board's Decision

- A. After considering all of the testimony and evidence submitted at the hearing, the Appeals Board shall issue a written decision to uphold or dismiss the administrative citation and shall list in the decision the reasons for that decision. The decision of the Appeals Board shall be final.

- B. If the Appeals Board determines that the administrative citation should be upheld, then the fine amount on deposit with the Authority shall be retained by the Authority.
- C. If the Appeals Board determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an Advance Deposit Hardship Waiver, the Appeals Board shall set forth in the decision a payment schedule for the fine.
- D. If the Appeals Board determines that the administrative citation should be dismissed and the fine was deposited with the Authority, the Authority shall refund the amount of the deposited fine in accordance with standard operating procedures established by the Authority.
- E. The recipient of the administrative citation shall be mailed a copy of the Appeals Board's written decision.

Section 11. Failure to Pay Fines

- A. The failure of any person to pay a fine assessed by the administrative citation within the time specified on the administrative citation constitutes a debt to the Authority. To enforce the debt, the Authority may file a civil action, impose a special assessment as set forth below, or pursue any other legal remedy to collect such debt, including reasonable costs of collection and attorney's fees.
- B. The Authority may impose a special assessment or lien against the property that is the subject of an administrative citation if the citation has been issued to the property owner.
- C. For a special assessment, a copy of the assessment shall be turned over to the San Bernardino County tax collector. At that point, it will be the duty of the tax collector to add the amounts of the respective assessments to the next regular property tax bills levied against the lots and parcels of land for municipal purposes. Those amounts shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes.
- D. In the alternative or in addition, the Fire Chief may record a notice of lien in the San Bernardino County Recorder's Office for the amount of the lien assessed. After recordation, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

Section 12. Right to Judicial Review

- A. Any person aggrieved by an administrative decision of the Appeals Board on an administrative citation may obtain review of the administrative decision by filing a petition for review with the San Bernardino County Superior Court in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

Section 13. Notices

- A. The administrative citation and all notices to be given by this Ordinance shall be provided to the Responsible Person in accordance with the provisions of this section. Unless different provisions herein are otherwise specifically made, such administrative citation or notice may be given by either personal delivery thereof to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified, at his last known business or residence address as the same appears in the public records of the jurisdiction where the property is located or other records pertaining to the matter to which such notice is directed. Notice by mail shall be deemed to have been completed at the time of deposit with the U.S. Postal Service.
- B. Failure to receive any notice specified in this part does not affect the validity of proceedings conducted hereunder.

Section 14. Civil or Criminal Actions Not Affected

- A. Any administrative citation issued pursuant to this Ordinance shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate the public nuisance or violation or to seek compensation for damages suffered. A civil or criminal action may be brought concurrently with any other process regarding the same public nuisance or violation.

Section 15. Severability - If any section, subsection, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of this Ordinance shall not be affected thereby. The Board hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

Section 16. Date of Effect - This Ordinance shall take effect and be in force thirty (30) days after its final passage at a public meeting as required by law. First read at a regular meeting of the Board of Directors of the Authority, held on the 4th day of October, 2016, and finally adopted in the manner required by law at the meeting on the 13th day of December, 2016, by the following vote:



**PASSED, APPROVED, AND ADOPTED** by the Big Bear Fire Authority Board of directors at its regular meeting held the 13<sup>th</sup> day of December, 2016 by the following vote:

AYES: Caretto, Green, Jahn, Oxandaboure, Putz, Russo, and Ziegler

NOES: Walsh

ABSENT: Jackowski and Herrick

ABSTAIN: None



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Randall Putz  
Chairman, Board of Director  
Big Bear Fire Authority

ATTEST:



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Dawn Marschinke  
Secretary, Big Bear Fire Authority

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

I, Dawn Marschinke, Secretary of the Big Bear Fire Authority Board, do hereby certify that the whole number of members of the said Board is ten; that the foregoing ordinance, being Ordinance No. BBFA2016-003 was duly passed and adopted by the said Board, approved and signed by the Chair of said Board, and attested by the Secretary of said Board, all at a meeting of the said Board held on the 13th day of December 2016, and that the same was so passed and adopted by the following vote:

AYES: Caretto, Green, Jahn, Oxandaboure, Putz, Russo, and Ziegler  
NOES: Walsh  
ABSENT: Jackowski and Herrick  
ABSTAIN: None

Witness my hand and the official seal of said Authority this 13th day of December, 2016.



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Dawn Marschinke  
Secretary  
Big Bear Fire Authority