

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDINANCE NO.

An ordinance of San Bernardino County, State of California, to add section 11.0206(a)(1)(C) to Chapter 2 of Division 1 of Title 1 of the San Bernardino County Code relating to increased fines for the unlawful removal of Joshua trees.

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. The Board of Supervisors of San Bernardino County finds that:

(a) At just over 20,000 square miles, San Bernardino County (County) is the largest county in the contiguous United States. Among the features that contribute to the attractiveness and livability of the County desert communities are its Joshua trees growing as single specimens or in clusters. These trees have significant psychological and tangible benefits for both residents and visitors. The County and its residents have a deep appreciation for the Joshua tree as a symbol of resiliency and determination to survive and thrive in the desert. The Joshua tree contributes to the visual framework of the County by providing scale, color, silhouette and mass. The Joshua tree also provides screens and buffers to separate land uses and contributes to the protection of other natural resources by providing erosion control for the soil, oxygen for the air and habitat for wildlife. The Joshua tree contributes to the economy of the County by sustaining property values and as an iconic emblem of the region.

(b) The County has a strong desire to protect and preserve the Joshua tree, as shown by the adoption of local regulations designed to regulate the removal of Joshua trees, to prevent unnecessary loss, to encourage replacement planting, and to effectively enforce unlawful removal. The County's local regulations apply to all subspecies of Joshua trees, commonly referred to as the western Joshua tree (*Yucca brevifolia*) and the eastern Joshua tree (*Yucca brevifolia jaegeriana*).

(c) On October 21, 2019, a petition to list the western Joshua tree as

1 threatened under the California Endangered Species Act (CESA) was submitted to the
2 Fish and Game Commission (Commission). Thereafter, at its scheduled public meeting
3 on September 22, 2020, the Commission found that sufficient information existed to
4 indicate the petitioned action may be warranted and accepted the petition for
5 consideration. Upon publication of the Commission's notice of its findings, the western
6 Joshua tree was designated a candidate species under CESA on October 9, 2020.

7 (d) The Commission's action designating the western Joshua tree as a
8 candidate species triggered the California Department of Fish and Wildlife's (Department)
9 process for conducting a status review to inform the Commission's future decision on
10 whether listing the species is warranted.

11 (e) At its scheduled public meeting on April 21, 2022, the Department provided
12 the Commission with its status review report which recommended that the Commission
13 find that the petition to list the western Joshua tree as a threatened species is not
14 warranted. At its scheduled public meeting on June 15 and 16, 2022, the Commission is
15 expected to consider the Department's status review and make a determination on
16 whether to list the western Joshua tree as a threatened species under CESA.

17 (f) During the candidacy period the western Joshua tree has received
18 protection from removal (i.e., take) under CESA, including enhanced punishment for the
19 violation of an unlawful removal. (Fish and Game Code §§ 12000-12300.) In the event
20 the Commission accepts the Department's recommendation regarding the western
21 Joshua tree and local regulation is restored, the County's misdemeanor fines for the
22 unlawful removal of Joshua trees do not provide an appropriate deterrence given the
23 importance and value of the Joshua tree as described in subsection (a). In order to
24 protect the public peace, health, and safety that the Joshua tree provides, this ordinance
25 provides for increased fines to deter violators and make enforcement actions more
26 impactful in order to prevent the unlawful removal of the Joshua tree.

27 (g) This ordinance is not subject to review under the California Environmental
28 Quality Act (CEQA) pursuant to CEQA Guidelines, 14 California Code of Regulations,

1 sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably
2 foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3)
3 (there is no possibility the activity in question may have a significant effect on the
4 environment). In addition to the foregoing general exemptions, the Board of Supervisors
5 further finds that the ordinance is categorically exempt from review under CEQA under
6 the Class 8 Categorical Exemption, 14 California Code of Regulations section 15308
7 (regulatory activity to assure protection of the environment). There are no unusual
8 circumstances under CEQA Guidelines, 14 California Code of Regulations, section
9 15300.2, subdivision (c) that would render these exemptions inappropriate. Each
10 exemption stands as a separate and independent basis for determining that this
11 ordinance is not subject to CEQA.

12
13 SECTION 2. Section 11.0206(a)(1)(C) is added to Chapter 2, Division 1, Title 1 of
14 the San Bernardino County Code to read:

15 **11.0206 Criminal Actions.**

16 ...

17 (C) *Violations of Chapter 88.01.* Notwithstanding the penalty
18 provisions in Section 88.01.050(j)(1), upon conviction of a misdemeanor, or upon a plea
19 of nolo contendere (commonly called “no contest”) involving misdemeanor violations of
20 Chapter 88.01 related to the unlawful removal of a Joshua tree, the penalty shall be as
21 follows:

22 (I) Any person convicted of a misdemeanor for the
23 unlawful removal of a Joshua tree in violation of Chapter 88.01 shall be punished by a
24 base fine of up to \$5,000.00 upon a first conviction, by a base fine of up to \$10,000.00 for
25 a second conviction, by a base fine of up to \$20,000.00 upon a third or subsequent
26 conviction, or by imprisonment in the County jail for a period of not more than six months,
27 or by both such base fine and imprisonment;

28 (II) The unlawful removal of each Joshua tree in violation

1 of Chapter 88.01 shall be a new and separate offense.

2

3 SECTION 3. The Board of Supervisors declares that it would have adopted this
4 ordinance and each section, sentence, clause, phrase, or portion of it, irrespective of the
5 fact that any one or more sections, subsections, clauses, phrases or portions of it be
6 declared invalid or unconstitutional. If for any reason any portion of this ordinance is
7 declared invalid or unconstitutional, then all other provisions of it shall remain valid and
8 enforceable.

9

10 SECTION 4. This ordinance shall take effect thirty (30) days from the date of
11 adoption.

12

13

CURT HAGMAN, Chairman
Board of Supervisors

14

15

16 SIGNED AND CERTIFIED THAT A COPY
17 OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

18

19 LYNNA MONELL, Clerk of the

20 Board of Supervisors

21 _____

22

23

24

25

26

27

28

1 STATE OF CALIFORNIA)
2 SAN BERNARDINO COUNTY) ss.
3)

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of San Bernardino County,
5 State of California, hereby certify that at a regular meeting of the Board of Supervisors of
6 said County and State, held on the _____ day of _____, 2022, at which meeting
7 were present Supervisors: _____

8 and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to
9 wit:

10 AYES: SUPERVISORS:

11 NOES: SUPERVISORS:

12 ABSENT: SUPERVISORS:

13 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal
14 of the Board of Supervisors this ____ day of _____, 2022.

15 LYNNA MONELL, Clerk of the
16 Board of Supervisors of
17 San Bernardino County,
18 State of California

19 _____
20 Deputy

21 Approved as to Form:

22 TOM BUNTON
23 County Counsel

24 By: _____
25 JOLENA E. GRIDER
26 Deputy County Counsel

27 Date: _____
28