ORDINANCE NO. 26-XX

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT AMENDING TITLE 4, CHAPTER 1 OF THE DISTRICT CODE OF ORDINANCES (TRAFFIC AND ROAD ORDINANCE) TO DECLARE THE CHARACTER OF THE DISTRICT ROAD SYSTEM, TO LIMIT ACCESS TO AND USE OF DISTRICT ROADS PURSUANT TO GOVERNMENT CODE SECTION 61105, AND TO ESTABLISH A COST-OF-SERVICE FRAMEWORK AND RECORDKEEPING REQUIREMENTS FOR DISTRICT ROAD SERVICE

RECITALS

WHEREAS, the Bear Valley Community Services District ("District") is a community services district organized and existing under the Community Services District Law, Government Code section 61000 *et seq.* ("CSD Law"); and

WHEREAS, Government Code section 61100(l) authorizes the District to acquire, construct, improve, and maintain streets, roads, rights-of-way, bridges, culverts, drains, curbs, gutters, sidewalks, and any incidental works, and the District has exercised that power continuously since its formation; and

WHEREAS, Government Code section 61103 provides that a district exercising the power conferred by section 61100(l) has the powers, duties, and authority of a county with respect to those works, including the authority conferred by Part 3 (commencing with Section 8300) of the Streets and Highways Code, Division 11 (commencing with Section 21000) of the Vehicle Code, and Article 4 (commencing with Section 35700) of Chapter 5 of Division 15 of the Vehicle Code; and

WHEREAS, the District owns and maintains approximately 110 miles of roads serving approximately 3742 parcels within the Bear Valley Springs community; and

WHEREAS, the District road system is a closed system, it connects to the public road network of the County of Kern only at the District’s controlled entrance gates, it carries no through traffic, and every roadway within the system terminates within the District; and

WHEREAS, with the exception of those roads identified as dedicated roads in the Road Inventory required by this ordinance, the roads owned by the District have not been formally dedicated to, and are not kept open for use by, the public for the purpose of vehicular travel; and

WHEREAS, Government Code section 61105(g) expressly provides that the Bear Valley Community Services District may, for roads owned by the District that are

not formally dedicated to or kept open for use by the public for the purpose of vehicular travel, by ordinance, limit access to and the use of those roads to the landowners and residents of the District, and the Legislature in enacting section 61105(a) found and declared that the unique circumstances existing in certain communities justify special statutory powers for specific districts; and

WHEREAS, since 2009 the District has restricted entry through its gates under sections 4-1-3 and 4-1-4 of this Code, and has issued entry credentials only upon proof of ownership, residency, tenancy, or employment, and has admitted all other persons only under permits sponsored by, requested by, or issued for the benefit of an identified parcel, resident, owner, or the District or the Association; and

WHEREAS, the Board intends that persons who are not landowners or residents of the District and who seek to patronize, attend, or visit a commercial, religious, or other non-residential establishment within the District be admitted under the same objective, destination-specific permit procedures, applied without regard to the nature or content of the lawful activity conducted at the establishment, so that no such establishment or activity is treated more or less favorably than any other; and

WHEREAS, the District road system is the sole means of lawful vehicular ingress to and egress from every parcel within the District, and is the sole means by which fire protection, emergency medical response, law enforcement, water and wastewater service, solid waste collection, propane delivery, mail and package delivery, school transportation, and utility service are delivered to each parcel; and

WHEREAS, road service is therefore immediately available to every parcel within the District within the meaning of article XIII D, section 6(b)(4) of the California Constitution, and no owner may decline that service while retaining the ability to use, occupy, develop, insure, or convey the parcel as access over the District road system is inseparable from ownership of the parcel and is not the product of a voluntary election to consume a service (compare *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409; *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205; *Paland v. Brooktrails Township Community Services Dist.* (2009) 179 Cal.App.4th 1358); and

WHEREAS, because entry to the District road system is credentialed and every credential, permit, and authorized entry is issued to, sponsored by, or derived from a relationship to an identified parcel, resident, owner, or occupant, the road service the District provides is not available to the public at large in substantially the same manner as it is provided to parcels within the District, and is not a general governmental service within the meaning of article XIII D, section 6(b)(5); and

WHEREAS, parcels within the District place measurably different demands on the road system depending on land use, trip generation, and the weight and configuration of the vehicles they draw, and the Board intends that any charge imposed for road service be derived from a documented cost-of-service analysis allocating costs in proportion to those demands, consistent with article XIII D, section 6(b)(3) and *Coziahr v. Otay Water Dist.* (2024) 103 Cal.App.5th 785.

WHEREAS, the Board is aware of the opinion of the Attorney General at Opinion No. 86-1005 (June 24, 1987), concluding that a community services district could not impose a uniform per-parcel fee for road maintenance and improvement for roads open to the public under former Government Code section 61621 because such a fee was not a "rate or other charge," and the Board finds that opinion, which is advisory and entitled to consideration but is not binding on this Board or on any court, does not govern the action contemplated here because: (i) it construed a statute repealed and reenacted by the CSD Law of 2005; (ii) it addressed a uniform exaction bearing no relation to service or benefit, whereas any charge contemplated by this ordinance must be derived parcel by parcel from a cost-of-service analysis; (iii) it predates article XIII D of the California Constitution, which at section 2(e) expressly recognizes and regulates a levy imposed upon a parcel or upon a person as an incident of property ownership, the very category of exaction the 1987 opinion concluded did not then exist in the CSD Law; and (iv) its observation that district roads are public roads is inapplicable to this District, as addressed by the Legislature's subsequent enactment of Government Code section 61105(g); and

WHEREAS, the District has funded road maintenance principally through a per-parcel road assessment that has remained at $340 per parcel since 1996, while construction costs, materials costs, and the deferred maintenance backlog have increased substantially, and the Board finds that a documented, cost-based, and legally durable funding mechanism is necessary to arrest the decline of the road system; and

WHEREAS, this ordinance does in of itself impose any fee, charge, or assessment, and no fee, charge, or assessment for road service shall be imposed except by separate action taken after completion of a cost-of-service study and full compliance with the applicable notice, hearing, protest, and where required, ballot procedures of article XIII D of the California Constitution and Government Code section 53750 *et seq.*; and

WHEREAS, the Board has conducted a duly noticed public hearing on this ordinance and has considered all written and oral testimony.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE BEAR VALLEY COMMUNITY SERVICES DISTRICT DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

The recitals set forth above are true and correct and are adopted as findings of the Board of Directors.

SECTION 2. AMENDMENT OF SECTION 4-1-1 (PURPOSE, SCOPE AND SHORT TITLE).

Section 4-1-1 of the District Code is amended to read:

> **§ 4-1-1 PURPOSE, SCOPE AND SHORT TITLE.**
>
> A. This chapter is enacted for the purpose of regulating the use of district roads and rights-of-way, of declaring the character of the district road system, of limiting access to and use of district roads as authorized by Government Code section 61105, and of establishing the basis on which the district provides and funds road service to parcels within the district.
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> B. This chapter is adopted pursuant to Government Code sections 61060, 61100(l), 61103, and 61105, and pursuant to the powers of a county conferred on the district by Government Code section 61103.
>
> C. This chapter may be cited as the district's TRAFFIC AND ROAD ORDINANCE.

SECTION 3. ADDITION OF SECTION 4-1-2.1 (CHARACTER OF THE DISTRICT ROAD SYSTEM; NO DEDICATION).

Section 4-1-2.1 is added to the District Code to read:

> **§ 4-1-2.1 CHARACTER OF THE DISTRICT ROAD SYSTEM; NO DEDICATION.**
>
> A. **Road Inventory:** The General Manager shall prepare and maintain, and the Board shall approve by resolution, a Road Inventory identifying every roadway within the district and stating, for each, (1) the owner of the roadway and of the underlying fee or easement, (2) the instrument of conveyance or acceptance, if any, (3) whether the roadway has been formally dedicated to, or is kept open for use by, the public for the purpose of vehicular travel, and (4) whether the roadway is included in the county road system. The Road Inventory shall be on file in the office of the district and shall be updated not less than every five (5) years.
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> B. **Findings as to Character:** Except as to any roadway identified in the Road Inventory as formally dedicated to public use, the Board finds and declares that district roads: (1) are owned by the district; (2) have not been formally dedicated

to, and are not kept open for use by, the public for the purpose of vehicular travel; (3) connect to the public road system only at controlled entrance gates; (4) carry no through traffic and terminate within the district; and (5) are used only by persons authorized to enter under section 4-1-3 of this chapter.

C. **No Dedication; No Waiver:** Nothing in this chapter, and no act of the district in constructing, maintaining, repairing, plowing, signing, striping, patrolling, or applying provisions of the California Vehicle Code to district roads, and no admission of any person to district roads under section 4-1-3 or section 4-1-4, constitutes or shall be construed as a dedication of any district road to public use, an acceptance of any offer of dedication, or a holding open of any district road for use by the public for the purpose of vehicular travel.

D. **Protective Measures:** The General Manager is directed to (1) post and maintain signs at each entrance gate and at such other locations as the General Manager determines appropriate, in the form and manner described in Civil Code section 1008, stating that district roads are privately owned and maintained, are not open to the public for vehicular travel, and that entry is by permission of the district only, and (2) cause to be recorded in the office of the Kern County Recorder a notice of consent under Civil Code section 813 as to district roads and rights-of-way.

E. **Vacation Authority Reserved:** Nothing in this section limits the district's authority, as a district exercising the powers of a county under Government Code section 61103, to vacate any roadway pursuant to Part 3 (commencing with Section 8300) of Division 9 of the Streets and Highways Code.

SECTION 4. ADDITION OF SECTION 4-1-2.2 (LIMITATION OF ACCESS PURSUANT TO GOVERNMENT CODE SECTION 61105).

Section 4-1-2.2 is added to the District Code to read:

§ 4-1-2.2 LIMITATION OF ACCESS PURSUANT TO GOVERNMENT CODE SECTION 61105.

A. **Declaration:** Pursuant to Government Code section 61105(g), the district hereby limits access to and the use of district roads not formally dedicated to or kept open for use by the public for the purpose of vehicular travel to the landowners and residents of the district, and to such other persons as are admitted under section 4-1-3 of this chapter by reason of, on behalf of, or at the request of a landowner, resident, the district, or the association.

B. **No Public Right of Passage:** No member of the public has a right of passage over district roads. Entry to and use of district roads is a privilege extended by the district under this chapter and may be conditioned, suspended, or revoked as provided in this chapter.

C. **Access Derives from a Parcel:** Every credential, gate permit, and authorized entry issued or allowed under sections 4-1-3 and 4-1-4 is issued to, sponsored by, requested by, or issued for the benefit of an identified parcel, landowner, resident, tenant assignee, or the district or the association in the performance of services to parcels within the district. The district shall not issue a credential or gate permit that is not so attributable.

D. **Commercial and Other Non-Residential Establishments:** The Board finds that commercial establishments operating within the district are generally understood to serve the landowners and residents of the district. Entry by a person who is not otherwise authorized to enter under section 4-1-3 or section 4-1-4(A), for the purpose of patronizing, attending, or visiting a commercial, religious, or other non-residential establishment within the district shall be under a gate permit issued pursuant to section 4-1-4(B)(3)(h) and shall be recorded as provided in sections 4-1-4(C) and 4-1-17. Entry for each such purpose shall be governed by the same procedures and standards, without regard to the nature or content of the lawful activity conducted at the establishment. The Board finds that admission of a person under section 4-1-4(B)(3)(h) for the limited purpose of traveling to and from an identified non-residential establishment, on a permit that is recorded and attributed to that establishment's parcel, is derivative of the parcel visited as provided in section 4-1-3(D) and does not constitute a holding open of district roads for use by the public for the purpose of vehicular travel.

SECTION 5. AMENDMENT OF SECTION 4-1-3 (ENTRY TO DISTRICT AND ACCESS TO DISTRICT ROADS).

Section 4-1-3 of the District Code is amended by adding subsections C and D to read:

C. **Access as an Incident of Ownership or Occupancy:** The right of a landowner or resident to enter the district and use district roads arises from and is appurtenant to the ownership or lawful occupancy of a parcel within the district. That right may not be separated from the parcel, transferred apart from the parcel, waived, or declined. No parcel within the district has lawful vehicular access to or from the county road system other than over district roads.

D. **Derivative Entry:** Persons admitted under subsection B2 or B3 of this section, and permittees admitted under section 4-1-4, enter the district to serve, deliver to, protect, visit, or perform work for or at an identified parcel or for the district or the association. Such entry is derivative of the parcel served and does not constitute use of district roads by the public.

SECTION 6. AMENDMENT OF SECTION 4-1-4 (GATE PERMITS).

Section 4-1-4 of the District Code is amended by adding subparagraph h to subsection B3 and by adding subsection C, to read:

h. **Permits for Visitors to Non-Residential Establishments:**

(1) **Establishments and Sponsors:** This subparagraph applies to any parcel within the district that is lawfully used for a commercial, religious, or other non-residential purpose (a "non-residential establishment"). The owner of such a parcel, and the operator or lessee of the parcel acting with the owner's written authorization, is a "sponsor" for purposes of this subparagraph.

(2) **Day Permits:** The district shall issue a gate permit, valid only on the day of issuance, to any person who, upon proper identification, states that the person is entering the district to patronize, attend, or visit a non-residential establishment and identifies that establishment by name. No authorization from a sponsor, landowner, or resident is required for a day permit.

(3) **Standing Permits:** Upon written request of a sponsor, the district shall issue gate permits, valid for one (1) year and renewable annually, to persons identified by the sponsor as regularly patronizing, attending, or visiting the sponsor's non-residential establishment who are not otherwise authorized to enter the district under section 4-1-3 or subsection A of this section. The sponsor shall update its list as required, but not less than semiannually.

(4) **Objective Criteria:** A permit under this subparagraph h shall be issued upon (i) proper identification of the permittee and the vehicle, (ii) identification of the non-residential establishment to be visited, and (iii) for a standing permit, the request of the sponsor. Except as provided in paragraph (6), the district shall not deny, condition, or limit a permit on any other basis, and shall not consider the nature or content of any lawful activity conducted at the establishment.

(5) **Scope and Attribution:** A permit issued under this subparagraph h authorizes travel on district roads only to and from the identified non-

residential establishment and does not authorize use of community facilities operated by the association. Each entry under such a permit is attributable to the establishment's parcel and shall be recorded as provided in subsection C of this section and section 4-1-17.

(6) **Misuse:** A person who obtains a permit under this subparagraph h by a false statement of purpose, or who uses the permit for travel other than to and from the identified establishment, violates this chapter. After written notice and an opportunity to be heard, the General Manager may suspend, for a period not to exceed [one (1) year], the eligibility for day permits of a person who has so violated this chapter, and may suspend the sponsorship privileges of a sponsor that repeatedly requests standing permits for persons who are not patronizing, attending, or visiting its establishment.

(7) **Parity:** Permits under this subparagraph h shall be issued on the same terms to visitors of every non-residential establishment, and on terms no less favorable than those afforded to any other classification of permittee under subsection B3 of this section.

* * *

C. **Access Records:** The district shall create and retain records sufficient to identify, for each entry through a controlled gate, the credential or permit under which entry was made and the parcel, landowner, resident, tenant assignee, sponsor, or district or association function to which that credential or permit is attributable. Records shall be retained in accordance with the district's records retention schedule and for not less than [five (5)] years. Such records constitute a part of the administrative record supporting the district's road service charges and the findings set forth in sections 4-1-2.1 and 4-1-2.2. Nothing in this subsection requires the district to disclose personally identifying information except as required by law.

SECTION 7. AMENDMENT OF SECTION 4-1-11 (RESTRICTIONS ON USE OF ROADS).

Section 4-1-11 of the District Code is amended by adding subsection B to read:

B. **Heavy Vehicles:**

1. **Findings:** The Board finds that pavement deterioration attributable to vehicle loading increases sharply with axle weight, and that a limited number of heavy vehicles account for a substantial share of the load-related consumption of district pavement.

2. **Weight Limits:** Pursuant to the authority conferred on the district by Government Code section 61103(a)(4) and Article 4 (commencing with Section 35700) of Chapter 5 of Division 15 of the Vehicle Code, the Board may by resolution establish weight limits for commercial vehicles on designated district roads, and may designate truck routes within the district. No such limit or route designation shall be enforced until signs giving notice thereof are erected as required by section 4-1-7(F) of this chapter.

3. **Heavy Vehicle Permits:** The General Manager may require a permit for the operation of any vehicle exceeding a gross weight established by resolution of the Board, and may condition the permit on route restrictions, seasonal or weather restrictions, and payment of a permit fee not exceeding the district's reasonable cost of issuing the permit, inspecting the affected roadway, and repairing damage attributable to the permitted operation. Permit records shall be retained and reported as provided in section 4-1-17.

4. **Exemptions:** This subsection does not apply to emergency vehicles, to vehicles of the district or the association, or to vehicles exempted by resolution of the Board.

SECTION 8. ADDITION OF SECTION 4-1-16 (ROAD SERVICE; COST OF SERVICE; FUNDING).

Section 4-1-16 is added to the District Code to read:

§ 4-1-16 ROAD SERVICE; COST OF SERVICE; FUNDING.

A. **Road Service Defined:** "Road service" means the district's provision, operation, maintenance, repair, rehabilitation, reconstruction, and administration of the district road system, including snow and ice control, drainage appurtenant to district roads, traffic control devices, striping and signing, pavement management, and the financing costs associated with any of the foregoing.

B. **Cost-of-Service Study Required:** No charge for road service shall be imposed or increased except on the basis of a written cost-of-service study that:

1. states the revenue requirement for road service for each fiscal year covered by the study, derived from the district's adopted budget, capital improvement program, pavement management program, and debt service obligations;

2. classifies each cost of service to functional components and states the documented basis for each classification;

3. allocates the revenue requirement among parcels in proportion to the cost of service attributable to each parcel or class of parcels, on the basis of documented and stated factors;

4. states the resulting charge for each parcel; and

5. demonstrates that the total revenue derived from the charge does not exceed the funds required to provide road service.

The charge for each parcel shall be derived from the analysis required by this subsection. No charge shall be established by reference to a predetermined revenue target.

C. **Constitutional Limitations:** Any charge imposed for road service shall conform to article XIII D, section 6 of the California Constitution, and in particular: revenues shall not exceed the funds required to provide road service; revenues shall not be used for any purpose other than road service; no charge shall exceed the proportional cost of road service attributable to the parcel; no charge shall be imposed on a parcel for which road service is not actually used by or immediately available to the owner; and no charge shall be imposed for general governmental services.

D. **Procedure:** Any charge for road service shall be imposed or increased only after the notice, public hearing, and majority protest procedures required by article XIII D, section 6(a), and after any election required by article XIII D, section 6(c). The Board may provide for collection of charges and penalties on the county tax roll as authorized by Government Code sections 61115 and 61116.

E. **Restricted Fund:** All revenue derived from charges for road service shall be deposited in a separate Road Service Fund and shall be expended solely for road service. Interest earnings shall be credited to the fund. Revenues in the fund shall not be transferred to, borrowed by, or expended for any other district program, and shall not be used to supplant any other lawful funding source dedicated to road service.

F. **Capital Funding Policy:** It is the policy of the Board that the pavement rehabilitation program identified in the district's pavement management program be funded principally on a pay-as-you-go basis from road service revenues, with debt financing reserved for discrete capital projects for which the Board makes findings supporting the use of debt. The cost-of-service study shall reflect the capital funding policy adopted by the Board.

G. **Annual Report:** The General Manager shall present to the Board, at or before adoption of each annual budget, a report stating the revenues and expenditures of the Road Service Fund, the road service revenue requirement for the ensuing fiscal year, the condition of the road system, and whether charges then in effect exceed the cost of road service. If the report shows that charges exceed the cost of service, the Board shall reduce the charges, suspend collection, or apply the excess as a credit in the ensuing fiscal year.

H. **Periodic Restudy:** The cost-of-service study shall be updated not less than every five (5) years.

I. **Instruments Reserved:** Nothing in this section limits the authority of the Board to fund road service by assessment under article XIII D, section 4, by special tax, by grant, or by any other lawful means, or to combine such means.

SECTION 9. ADDITION OF SECTION 4-1-17 (ROAD SYSTEM RECORDS AND REPORTING).

Section 4-1-17 is added to the District Code to read:

§ 4-1-17 ROAD SYSTEM RECORDS AND REPORTING.

A. **Traffic and Access Data:** The General Manager shall cause the district to collect and retain: (1) gate entry data as required by section 4-1-4(C); (2) traffic counts at representative segments of the district road system, (3) records of heavy vehicle permits issued under section 4-1-11(B); and (4) records of road service expenditures by category.

B. **Pavement Management:** The General Manager shall maintain a pavement management program stating the condition of each roadway segment, the treatment and year programmed for each segment, and the estimated cost of the program by fiscal year.

C. **Availability:** The records described in this section shall be maintained as public records of the district and shall constitute part of the administrative record supporting any charge imposed for road service.

SECTION 10. RELATIONSHIP TO THE VEHICLE CODE.

Nothing in this ordinance limits the application of section 4-1-7(D) of the District Code or the district's exercise of the powers of a county under Division 11 (commencing with Section 21000) of the Vehicle Code pursuant to Government Code section 61103(a)(3). The application of the California Vehicle Code to district roads is for the protection of persons and property within the district and does not constitute, and shall not be

construed as, a dedication of any district road to public use or a holding open of any district road for use by the public for the purpose of vehicular travel.

SECTION 11. NO FEE IMPOSED.

This ordinance imposes no fee, charge, or assessment. Any charge for road service shall be imposed only by separate action of the Board taken in compliance with section 4-1-16 of the District Code.

SECTION 12. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The Board finds that this ordinance is not a project subject to the California Environmental Quality Act ("CEQA") because it is an organizational and administrative activity of government that will not result in direct or reasonably foreseeable indirect physical change in the environment (Pub. Resources Code, § 21065; CEQA Guidelines, § 15378(b)(5)), and because it concerns the creation of a government funding mechanism that does not involve any commitment to a specific project (CEQA Guidelines, § 15378(b)(4)). The Board further finds that it can be seen with certainty that there is no possibility this ordinance may have a significant effect on the environment (CEQA Guidelines, § 15061(b)(3)). Staff is directed to file a notice of exemption.

SECTION 13. SEVERABILITY.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance and the application of its provisions to other persons or circumstances shall not be affected. The Board declares that it would have adopted each section, subsection, sentence, clause, and phrase of this ordinance irrespective of the invalidity of any other portion.

SECTION 14. CONSISTENCY; REPEAL OF CONFLICTING PROVISIONS.

To the extent any provision of the District Code conflicts with this ordinance, this ordinance controls. All other provisions of Title 4, Chapter 1 not amended by this ordinance remain in full force and effect. The table of sections for Title 4, Chapter 1 is amended to reflect the sections added by this ordinance.

SECTION 15. EFFECTIVE DATE; PUBLICATION.

This ordinance takes effect thirty (30) days after its adoption. The Secretary of the Board shall certify to the adoption of this ordinance and shall cause it to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Bear Valley Community Services District at a regular meeting held on November 12, 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Paul Paparella, Board President

ATTEST:

BY: _____
Denise Jelleschitz, Secretary of the Board of Directors

APPROVED AS TO FORM:

BY: _____
Jason Ewert, District Counsel