

Report from the Bed Bug Subcommittee to the Contra Costa County IPM Committee.

Prepared by Tanya Drlik, IPM Coordinator, September 2015

Members

Luis/Carlos Agurto

Susan Heckly

Marj Leeds

Patti TenBrook—Chair

The Bed Bug subcommittee met three times in 2015: April 13, June 10, and August 12.

The Board of Supervisors had requested that the IPM Advisory Committee produce more recommendation for their consideration. As a consequence, the subcommittee chose to focus on developing a bed bug ordinance for the Supervisors to consider. The subcommittee also reviewed the County's bed bug website and made suggestions for improvement.

Bed Bug Ordinance

The committee reviewed legislation from around the country and made a list of the most important provisions. The committee then became aware of AB 551 introduced by Assemblyman Adrin Nazarian, which is currently making its way through the California Legislature. This bill includes almost all of the salient points that the Bed Bug subcommittee gathered from other legislation, and according to Assemblyman Nazarian's aid, there is a good chance it will pass and go to the governor later this year.

The Bed Bug subcommittee has drafted an ordinance for Contra Costa County that is based directly on AB 551. This draft can either be used as the basis for a County ordinance or as the basis for implementing AB 551 if and when it becomes law.

The IPM Coordinator will take the draft ordinance to the Transportation, Water and Infrastructure Committee on September 8, 2015 to receive direction from Supervisors Andersen and Piepho on whether to continue working on the ordinance. The IPM Coordinator will also ask for advice on where to house enforcement for the ordinance and how to apportion costs for bed bug treatments between landlords and tenants.

Bed Bug Website

The committee reviewed the County's bed bug web pages at cchealth.org/bedbugs and suggested the following:

- Add information on the front page about bed bugs being a community problem that must be solved by the community
- Add a separate tab for pest control professionals that includes a link to the National Pest Management Association's bed bug guidelines, a template for a bed bug IPM plan, and County social service resources that they could call to help customers
- Add a tab for travelers with information on how to not bring bed bugs home
- Add a tab for homeowners, for businesses, and for schools
- Add the EPA bed bug website under Resources

TO: Transportation, Water and Infrastructure Committee
Supervisor Andersen, Chair
Supervisor Piepho, Vice Chair

FROM: Tanya Drlik, IPM Coordinator
SUBJECT: Draft Bed Bug Ordinance
DATE: August 18, 2015

BACKGROUND

Bed bugs are a continuing problem in Contra Costa County, and they disproportionately affect low income people, the elderly and the disabled. We encounter numerous situations where the property owner refuses to control the bed bug infestation or out of ignorance implements measures that make the problem worse. Tenants lack information on their responsibilities in preventing infestations and cooperating in control, and pest control companies need guidelines for treating bed bug infestations using the best available practices. This information exists but is not collected in one document for Contra Costa County.

The IPM Advisory Committee's Bed Bug subcommittee has been discussing bed bug ordinances for several meetings and has reviewed legislation from around the U.S. with an eye to drafting an ordinance for Contra Costa that would address the issues mentioned above. The subcommittee became aware of AB 551 introduced by Assemblyman Adrin Nazarian, which is currently making its way through the California Legislature. This bill includes almost all of the salient points that the Bed Bug subcommittee gathered from other legislation, and according to Assemblyman Nazarian's aid, there is a good chance it will pass and go to the governor later this year.

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RECOMMENDATIONS/NEXT STEPS

The Bed Bug subcommittee would like direction from the TWI Committee about whether to continue work on an ordinance for the County. It should be noted that in AB 551, the Legislature declares its intention to occupy the field with regard to this subject.

The subcommittee also requests direction on how to apportion the costs of bed bug treatment between landlord and tenant and where to house enforcement of this ordinance.

DRAFT CONTRA COSTA BED BUG ORDINANCE

[NOTE: This draft is based directly on AB 551. For clarity, responsibilities listed in AB 551 have been grouped under Landlord, Tenant, and Pest Control Operator.]

The IPM Advisory Committee's Bed Bug subcommittee finds that

- Controlling bed bugs is uniquely challenging, as bed bug resistance to existing insecticidal control measures is significant. Cooperation among landlords, tenants, and pest control operators is required for successful control.
- Tenants, property owners, and pest control operators have distinct rights and responsibilities regarding bed bug infestations.
- Effective control is more likely to occur when landlords and tenants are informed of the best practices for bed bug control.
- Early detection and reporting of bed bugs is an important component required for preventing bed bug infestations. Tenants should not face retaliation for reporting a problem.
- Lack of cooperation by landlords and tenants can undermine pest control operator efforts to identify the presence of bed bugs and control an infestation. Depending on the treatment strategy, it is often critical that tenants cooperate with pest control operators by reducing clutter, washing clothes, or performing other activities. Likewise, inadequate or untimely response or planning by landlords may exacerbate an infestation.
- Specific, enforceable duties of tenants and landlords are necessary so that the failure of a tenant or landlord to cooperate fully does not prevent effective investigation, treatment, and monitoring of all infested and surrounding units.

For the purposes of this ordinance:

1. "Bed bug management plan" means a written plan prepared by a pest control operator and the landlord for a property. The plan will outline the responsibilities of the landlord and tenants and shall be consistent with the National Pest Management Association's (NPMA) best practices and tailored to the conditions at the property. The plan shall include, but is not limited to, the following:
 - a. Education of tenants to reduce the risk of introduction of bed bugs to the property and to encourage reporting. Education methods and frequency shall be based on resources of the landlord.
 - b. Housekeeping and building maintenance procedures to help prevent bed bug harborage, including recommendations from a pest control operator about correcting bed bug hiding places and entry points, for example by sealing cracks and crevices in walls, ceilings, and floors, and fixing loose moldings and peeling wallpaper.
 - c. The landlord's process for responding to complaints and a brief statement of the requirements of this ordinance.
 - d. Written documentation of any bed bug treatment program.
 - e. Use of monitoring devices on a proactive basis, routine monitoring inspections by trained employees or licensed pest control operators, if appropriate, as agreed by the pest control operator and the landlord.
 - f. A complaint log that documents compliance with this ordinance.
2. "Bed bug treatment program" means a program, based on the NPMA's best practices, for treating an infestation to remove or kill visible and accessible bed bugs and their eggs, either immediately or through residual effects. The program shall be structured to continue until the infestation is controlled.
3. "Complaint log" means part of a bed bug management plan that tracks a landlord's ongoing responses to each bed bug report over the preceding two years. The complaint log shall

- include, but is not limited to, records pertaining to verification inspections and inspections of adjacent units, results of inspections, records of notices provided to tenants, unit preparation inspections, treatment type, locations and dates, and followup inspections.
4. "Inspection" means an investigation of the premises, using NPMA's best practices to confirm or rule out a bed bug infestation, to identify all infested areas, to determine treatment tactics, or to verify that an infestation has been eliminated.
 5. "NPMA best practices" means best management practices for bed bugs issued by the National Pest Management Association. "NPMA best practices" does not include practices or actions that conflict with federal or state law.
 6. "Pest control operator" means an individual with a Branch 2 license from the Structural Pest Control Board.
 7. "Pretreatment checklist" means unit preparation requirements tailored to the treatment method, consistent with NPMA best practices, including, but not limited to, easy-to-understand instructions, pictures, and diagrams, prepared by the pest control operator and provided to tenants by the landlord or pest control operator. The checklist shall include instructions for how to treat tenant clothing, personal furnishings, and other belongings, if treatment is required, and shall provide contact information for the pest control operator to answer questions prior to treatment.

General Information Notice to Be Provided to Each Tenant

A landlord shall provide a written notice to tenants that shall include, but is not limited to the following:

- General information about bed bug identification, behavior and biology,
- The importance of cooperation for prevention and treatment
- The importance of prompt written reporting of suspected infestations to the landlord.

The County IPM Coordinator shall create a written notice, translated into several languages, that will be available on the County's bed bug website: cchealth.org/bedbugs

This notice shall be provided to all current tenants by January 1, 2016 and to each prospective tenant thereafter.

If the landlord wishes to create his or her own notice, the information shall be substantially the same as the notice on the County's bed bug website: cchealth.org/bedbugs

Landlord Responsibilities

1. Within five business days after a tenant or a public agency notifies a landlord of a suspected infestation, the landlord shall retain the services of a pest control operator to verify the suspected infestation and to conduct a further inspection, if determined to be necessary by the pest control operator.
2. Entry to inspect a tenant's dwelling unit shall comply with Section 1954 of the California Civil Code. Entry to inspect any unit selected by the pest control operator and to conduct followup inspections of surrounding units until bed bugs have been eliminated is a necessary service for the purpose of Section 1954.
3. If a pest control operator's inspection confirms that a bed bug infestation exists:
 - a. The landlord shall notify all tenants of units identified for treatment by the pest control operator of the findings of infestation. The notification shall be in writing and made within two business days of receipt of the pest control operator's findings. For confirmed infestations in common areas, all tenants shall be provided notice of the pest control operator's findings.

- b. If further inspections of the affected units or surrounding units are necessary as determined by the pest control operator, based on the NPMA best practices, subsequent notices shall include information about future inspections, unless that information was disclosed in a prior notice. Each entry shall require a notice conforming to Section 1954.
- 4. After an infestation is confirmed by a pest control operator, the landlord shall contract with a pest control operator to prepare and implement a bed bug treatment program to begin within a reasonable time. Beginning the treatment program within 10 calendar days after the infestation is confirmed shall be presumed as to be a reasonable time.
- 5. At least seven calendar days prior to treatment, the landlord shall provide to the affected tenants with the following:
 - a. A cover sheet from the landlord, in at least 10-point type, disclosing:
 - i. The date or dates of treatment, the deadline for tenant preparation of the unit, and the date, approximate hour, and length of time, if any, the tenant shall be required to be absent from the unit.
 - ii. A statement that the tenant may request assistance or an extension of time to prepare the unit, to the extent required by law, to reasonably accommodate a disability.
 - iii. A statement that a tenant not entitled to a reasonable accommodation under law may also request an extension of three business days to prepare the unit.
 - iv. A statement that if the pest control operator recommends disposal of items, the tenant will follow the directions of the pest control operator to ensure that disposal does not spread bed bugs and that infested items are not re-used by others. These directions shall be in accordance with NPMA best practices.
 - b. A pretreatment checklist with information provided by the pest control operator, which shall be in accordance with NPMA best practices.
 - c. A written notice of entry pursuant to California Civil Code Section 1954 to affected tenants for all treatments and inspections.
- 6. If an extension of time is provided in order to reasonably accommodate a tenant required under law to receive a reasonable accommodation, or for other tenants who have requested a three business day accommodation, the landlord shall provide all affected tenants with a notice of the revised dates and times as specified in 5.a.i. above under Landlord Responsibilities, as necessary.
- 7. Inspection of unit preparation and bed bug treatment and post treatment inspection and monitoring of all affected and surrounding units as recommended by the pest control operator are a necessary service for the purpose of California Civil Code Section 1954.
- 8. No later than 30 calendar days after a bed bug infestation is confirmed by a pest control operator, or by a code enforcement officer or a health officer under paragraph (12) of subdivision (a) of Section 17920.3 of the California Health and Safety Code, a pest control operator and the landlord shall prepare a written bed bug management plan for the property. This plan shall be made available to tenants upon request.
- 9. It is unlawful for a landlord to rent or lease, or offer to rent or lease, any vacant dwelling unit that the landlord knows or should reasonably know has a current bed bug infestation.
- 10. Service of a three-day notice and filing of an unlawful detainer action to enforce tenant responsibilities under this ordinance shall not be considered unlawful retaliation under Section 1942.5 of the California Civil Code.
- 11. If a landlord has received notice of an infestation and is in compliance with the requirements of this ordinance, the property shall not, with respect to bed bugs, be considered to be substandard as defined in Section 17920.3 of the California Health and Safety Code, to be

untenantable as defined in Section 1941.1 of the California Code of Regulations, or to be in breach of the implied warranty of habitability.

12. A landlord shall not be liable for any damages due to delays in bed bug treatment and control that are outside the landlord's control.

Tenant Responsibilities

1. A tenant shall not bring onto a property personal furnishings or belongings that the tenant knows or reasonably should know are infested with bed bugs.
2. Within seven calendar days after a tenant finds or reasonably suspects a bed bug infestation at a property, the tenant shall notify the landlord in writing of that fact and the evidence of infestation. Evidence of infestation includes, but is not limited to, live bed bug; staining on bedding, furniture or walls; or any recurring or unexplained bites, that the tenant knows or reasonably suspects are caused by bed bugs.
3. Tenants shall cooperate with the inspection to facilitate the detection and treatment of bed bugs, including providing requested information that is necessary to facilitate the detection and treatment of bed bugs to the pest control operator.
4. The tenant shall fulfill his or her responsibilities for unit preparation before the scheduled treatment, as described in the pest control operator's pretreatment checklist. Tenants shall be responsible for the management of their belongings, including, but not limited to, clothing and personal furnishings.
5. Tenants who are not able to fulfill their unit preparation responsibilities shall promptly notify the landlord. For a tenant not entitled to a reasonable accommodation under law who requests an extension of time to prepare the unit, the landlord shall extend the preparation time by three days.
6. A tenant shall cooperate in vacating his or her unit as notified for treatment purposes and shall not reenter the unit until directed by the pest control operator to do so.

Pest Control Operator Responsibilities

1. A pest control operator shall base his or her recommendations for inspections and treatments on the NPMA best practices (available at <http://www.pestworld.org/all-things-bed-bugs/>)
2. When a pest control operator is hired by a landlord to control a bed bug infestation, the pest control operator shall prepare and implement a bed bug treatment program based on NPMA best practices to begin within a reasonable time. Beginning the treatment program within 10 calendar days after the infestation is confirmed shall be presumed as to be a reasonable time. The pest control operator must immediately provide the landlord with the dates of treatment, the deadline for tenant preparation of the unit, and the date, approximate hour, and length of time, if any, the tenant shall be required to be absent from the unit in order for the landlord to alert affected tenants at least seven calendar days prior to treatment.
3. The pest control operator shall provide the landlord with a pre-treatment checklist for tenants following NPMA best practices.
4. The pest control operator shall use NPMA best practices in determining if it is necessary to dispose of a tenant's property and shall provide directions for proper disposal according to NPMA best practices.
5. No later than 30 calendar days after a bed bug infestation is confirmed by a pest control operator, or by a code enforcement officer or a health officer under paragraph (12) of subdivision (a) of Section 17920.3 of the California Health and Safety Code, a pest control operator and the landlord shall prepare a written bed bug management plan for the property.

Disposal of Bed Bug Infested Property

A landlord or tenant, when disposing of personal property that they own or control, that is infested with bed bugs, including, but not limited to, bedding, furniture, clothing, draperies, carpeting, or padding, shall follow NPMA best practices to prevent the spread of bed bugs and prevent the re-use of personal property by others. Materials needed to safely dispose of property shall be furnished as needed to the tenant by the landowner or pest control operator.

Injunctive and Declaratory Relief

In addition to any other remedies provided by law, a landlord or tenant may sue for injunctive or declaratory relief for violations of this chapter.

Failure to comply with NPMA best practices shall not constitute a violation of this ordinance if copies of the NPMA best practices are not available to the public free of charge

For Reference:

[From AB 551, Section 1954.24]

“(a) Except as provided in subdivision (b), to the end of providing a single, uniform approach to the treatment of bed bug infestations in residential tenancies in California, it is the intent of the Legislature to occupy the field with regard to this subject. Cities, counties, and other local entities are prohibited from enacting a local law on this subject.

“(b) The comprehensive ordinances and regulations of the City and County of San Francisco regarding the treatment and control of bed bug infestations are deemed to satisfy this chapter and are not preempted.”