

ARTICLE 5

Noxious Weed Management

Sec. 7-5-10. Definitions.

For the purposes of this Article, the following words, terms and phrases shall have the meaning ascribed to them:

Alien plant means a plant species that is not indigenous to the State.

Brush means woody shrubs, whether growing, dormant or dead, that are not part of a planned and maintained landscape of either a manicured type or a natural appearance.

Local Noxious weed means AN alien plant or parts of an alien plant that meet one (1) or more of the criteria identified in Section 35-5.5-103(16), C.R.S. In addition, for purposes of this Article, the following are each designated and defined as local noxious weeds in the Town:

- a. Russian Knapweed.
- b. Spotted Knapweed/
- c. Diffuse Knapweed.
- d. Leafy Spurge.
- e. Myrtle Spurge.
- f. Purple Loosestrife.
- g. Dalmatian Toadflax.
- h. Yellow Toadflax.
- i. Mediterranean Sage.
- j. Musk Thistle.
- k. Canada Thistle.

Management objective means the specific, desired result of integrated management efforts and includes:

- a. Eradication, which means reducing the reproductive success of a noxious weed species

or specified noxious weed population in largely uninfested regions to zero (0) and permanently eliminating the species or population within a specified period of time. Once all specified weed populations are eliminated or prevented from reproducing, intensive efforts continue until the existing seed bank is exhausted.7-27

b. Containment, which means maintaining an intensively managed buffer zone that separates infested regions, where suppression activities prevail, from largely uninfested regions, where eradication activities prevail.

c. Suppression, which means reducing the vigor of noxious weed populations within an infested region, decreasing the propensity of noxious weed species to spread to surrounding lands, and mitigating the negative effects of noxious weed populations on infested lands. Suppression efforts may employ a wide variety of integrated management techniques.

d. Restoration, which means the removal of noxious weed species and reestablishment of desirable plant communities on lands of significant environmental or agricultural value in order to help restore or maintain said value.

Native rangeland means uncultivated land zoned within an agricultural or municipal zone district upon which vegetation native to Boulder and Larimer Counties is found, other than state noxious weeds or local noxious weeds.

State noxious weed means any noxious weed identified by the Commissioner of the Colorado Department of Agriculture or his or her designee by rule as provided by the Colorado Noxious Weed Act and classified into a minimum of the following three (3) categories: List A; List B; and List C. List A means rare noxious weed species that are subject to eradication wherever detected statewide in order to protect neighboring lands and the State as a whole; List B means noxious weed species with discrete statewide distributions that are subject to eradication, containment or suppression in portions of the State designated by the Commissioner in order to stop the continued spread of these species; and List C means widespread and well-established noxious weed species

for which control is not required by the State, but may be required by the Town.

Weeds means noxious weeds, weeds, grasses or other rank, offending or undesired vegetation regarded as a common nuisance or posing a public health or safety hazard which has grown to a height in excess of six (6) inches above ground level. This definition shall not include cultivated plants found in flower and vegetable gardens. (Prior code 4-3-1; Ord. 956 §1, 2014)

Sec. 7-5-20. Weed Advisory Board created.

(a) There is hereby created a Lyons Weed Advisory Board. The Weed Advisory Board shall consist of all members of the Board of Trustees. The Weed Advisory Board shall possess and exercise the duties and authority of a local advisory board as provided by Section 35-5.5-107, C.R.S.

(b) The Weed Advisory Board may cause to be prepared a noxious weed management plan which may include approved and recommended measures and practices for the management, control, elimination and disposal of local and state noxious weeds. Such management plan may be adopted by the Board of Trustees and, once adopted, shall govern the management, control, elimination and disposal of local and state noxious weeds by landowners within the Town. (Prior code 4-3-2; Ord. 956 §1, 2014) 7-28

Sec. 7-5-30. Weed and brush control.

(a) Growth Prohibited: It shall be unlawful for any owner, lessee, agent, occupant or person in possession or control of all or any portion of an occupied or unoccupied lot or tract of land to permit, allow, maintain on such lot or tract of land or fail to eliminate and remove from such lot or tract of land, any brush, weeds, local noxious weed or state noxious weed.

(b) Cutting and Removal of Weeds, Noxious Weeds and Brush: It shall be the duty of every owner, lessee, agent, occupant or person in possession or control of all or any portion of an occupied or unoccupied lot or tract of land to cut all weeds, local noxious weeds and state noxious weeds on such lot or tract of land to a height of less than six (6) inches above ground level, to remove the same to an authorized disposal site, to cut all brush growing thereon and remove the same to an authorized

disposal site.

(c) Exemption: Public or privately owned native rangeland within the Town shall be exempt from the provisions of this Section, provided that the owner, lessee, agent, occupant or person in possession or control exercises reasonable and routine practices to maintain and control local noxious weeds and state noxious weeds on such property. To the extent permitted by law, property owned by the Town and held or used for municipal purposes shall be exempt from the provisions of this Article.

(Prior code 4-3-3; Ord. 956 §1, 2014)

Sec. 7-5-40. Local and state noxious weeds deemed nuisances.

Local and state noxious weeds are hereby declared to be nuisances within the Town and, notwithstanding anything in this Article to the contrary, the removal and elimination of such nuisances may be enforced in accordance with local and state laws governing nuisances. (Prior code 4-3-4; Ord. 956 §1, 2014)

Sec. 7-5-50. Enforcement of noxious weed removal.

(a) The Town, through its employees and authorized agents, shall have the right to enter upon any premises, lands or places, whether public or private, during reasonable business hours for the purpose of inspecting for the existence of noxious weed infestations, when at least one (1) of the following circumstances has occurred:

(1) The landowner or occupant has requested an inspection:

(2) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection; or

(3) A Town employee or authorized agent has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.

(b) If verbal permission to inspect the land by the landowner is not obtained, no entry upon any premises, lands or places shall be permitted until the landowner or occupant has been notified by certified mail that such inspection is pending. Where possible, inspections shall be scheduled and

conducted with the concurrence of the landowner or occupant. The Town may notify a landowner in an electronic format, in addition to notice by certified mail. 7-29

(c) If, after ten (10) days with no response from the landowner or upon denial of access by the landowner before the expiration of ten (10) days, the Town may seek an inspection warrant issued by municipal, county or district court having jurisdiction over the property. The court shall issue an inspection warrant upon presentation by the Town of an affidavit stating: The information which gives the Town reasonable cause to believe that any provision of this Article is being or has been violated; that the occupant or landowner has failed to respond or denied access to the Town; and a general description of the location of the affected land. No landowner or occupant shall deny access to such land when presented with an inspection warrant. Where the noxious weeds include List A species or populations of List B species designated for eradication, a landowner shall notify a lessee or occupant of affected lands of all notices of inspection and eradication efforts on such lands as soon as practicable.

(d) The Town shall have the authority, acting directly or indirectly through its employees or authorized agents, to notify the landowner or occupant of such lands, advising the landowner or occupant of the presence of noxious weeds. Said notice shall name the noxious weeds, advise the landowner or occupant to manage the noxious weeds and specify the best available control methods of integrated management. If the noxious weeds include List A species or populations of List B species designated for eradication, the notice shall also identify eradication as the required management objective, advise the landowner or occupant to commence eradication efforts within a specified period or condition and state the integrated weed management techniques prescribed by the Commissioner of the Colorado Department of Agriculture for eradication. Where possible, the Town shall consult with the landowner or occupant in the development of a plan for the management of noxious weeds on the premises or land.

(e) Within a reasonable time after receipt of notification, which at no time shall exceed ten (10)

days, or five (5) days in the case of List A species or populations of List B species designated for eradication, the landowner or occupant shall either:

(1) Comply with terms of notification;

(2) Acknowledge the terms of the notification and submit an acceptable plan and schedule for the completion of the plan for compliance; or

(3) Request an arbitration panel to determine the final management plan. Arbitration, however, shall not be available to landowners or occupants of land affected by List A species or populations of List B species designated for eradication.

(f) The arbitration panel selected by the Town shall be comprised of a weed management specialist or weed scientist, a landowner of similar land in the same county and a third panel member chosen by agreement of the first two (2) panel members. The landowner or occupant shall be entitled to challenge any one (1) member of the panel, and the Town shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

(g) In the event the landowner or occupant fails to comply with the notice to manage or eradicate the identified noxious weeds or implement the plan developed by the arbitration panel, as applicable, the Town has the authority to:7-30

(1) Provide for and compel the management or eradication of such noxious weeds at such time, upon such notice, and in such manner as the Town shall prescribe by ordinance or resolution; and

(2) Assess the whole cost thereof upon the lot or tract of land where the noxious weeds are located. Said costs of noxious weed management or eradication shall include up to:

a. One hundred percent (100%) of inspection, eradication and other incidental costs in connection with eradication of List A species or populations of List B species designated for eradication; or

b. Twenty percent (20%) of inspection and other incidental costs with respect to all other

state or local noxious weed management efforts. The Town shall not levy a tax lien against land it administers as part of a public right-of-way. Such assessment shall be a lien against each lot or tract of land until paid and shall have the priority over all other liens except general taxes and prior special assessments. Such assessments may be certified to the County Treasurer and collected and paid over in the same manner as provided for the collection of taxes.

In the event a board, department or agency of the State fails to comply with the notice to eradicate the identified noxious weeds on public land, the Town may enter upon such lands and undertake the management of such noxious weeds or cause the same to be done. The expenses associated with inspection and eradication shall be paid by the state board, department or agency that has jurisdiction over the lands. An agreement for reimbursement shall be reached within two (2) weeks after the date such statement of expense for eradication is submitted by the Town. Such reimbursement agreement shall be in writing. If no reimbursement agreement has been reached or the amount reflected in the agreement is not paid upon presentation, the amount in the agreement shall be submitted to the State Controller, who shall treat such amount as an encumbrance on the budget of the state board, department or agency involved, or such charge may be recovered in any court with jurisdiction over such lands. The expense associated with eradication may be recovered by the Town in any court with jurisdiction over such infested land.

(h) The Town shall not assess the cost of providing for or compelling the management of noxious weeds on private property until the level of management called for in the notice to manage or the management plan developed by the arbitration panel has been successfully achieved,

(i) No Town employee, agent or delegate of a local governing body shall have a civil cause of action against a landowner or occupant for personal injury or property damage incurred while on public or private land for purposes consistent with this Article except when such damages were the result of gross negligence, recklessness or intentional action by the landowner.

(j) The Town shall not provide for or compel the eradication of List A species and populations of List B species designated for eradication or List B noxious weeds on private or public property without first applying the same measures to any land or rights-of-way owned or administered by the Town that are adjacent to the property. 7-31

(k) A landowner may apply to the Commissioner of the Department of Agriculture for a waiver of compliance with an eradication designation in accordance with Section 35-5.5-108(2.7), C.R.S.

(Prior code 4-3-5; Ord. 956 §1, 2014)

Sec. 7-5-60. Provisions not exclusive.

The provisions of this Article are not exclusive, and nothing in this Article shall be construed to preclude or limit the availability or applicability of any other provision of state or local law governing brush, weed and noxious weed management, control and enforcement, including but not limited to provisions governing nuisances. (Prior code 4-3-6; Ord. 956 §1, 2014)