

**TITLE VIII**

**HEALTH, SAFETY AND WELFARE**

CHAPTER 2

**WEEDS AND BRUSH**

**8-2-1: Removal of Weeds and Brush**

- A. It shall be unlawful for any person to fail to remove or cut commonly known weeds or brush located upon his property or property in his control or possession from time to time so that the stubble is no higher than 6 inches above the ground.
- B. Weeds or brush higher than 6 inches high are hereby declared to be a nuisance and may be abated in accordance with law.

**8-2-2: Noxious Weeds**

- A. General Provisions
  - 1. Purpose. To cease the establishment of new weeds in the Town of Olathe and to limit the spread of existing weeds and restore land to exceptional agricultural and recreational value.
  - 2. Eradication. Eradication is the removal of weeds from an area so they will not recur unless reintroduced. Eradication is mandatory for **all** weeds on the Colorado Department of Agriculture's List A Species. All weeds on the Town's Watch List must also be eradicated if found inside the Town municipal boundary. All noxious weeds on the Town's Weed List, occurring in patches of 100 square feet or less must be eradicated. If the weed patch is over 100 square feet, the weeds must be maintained and prevented from spreading.
  - 3. Types of Control
    - a. Cultural control methods promote growth of desirable plants. Seeding is the most commonly used cultural control method and must be combined with control methods that decrease the target weed population and gives the seeded species an opening in the environment to

successfully germinate and establish (colonize). The USDA-Natural Resource Conservation Service is an outstanding source of information as to what species to plant in a particular area and at what rate. Fertilization increases yields in grass hay meadows and also fosters weed establishment and growth. Fertilize cautiously, especially with nitrogen, and only when necessary as determined by soil testing.

- b. Mechanical control methods physically disrupt weed growth. This is the oldest control method and is used most often worldwide. Tillage, hoeing, hand-pulling, mowing and burning are examples. To mulch or smother weeds often is considered mechanical, even though it simply excludes light rather than physically disrupting weed growth.
- c. Biological control methods use an organism to disrupt weed growth. Often the organism is an insect or disease and a natural enemy of the weed. This is called classical biological control. Classical is not the only form of biological control. Livestock can be an effective weed-management tools if used correctly. However, improper livestock management (overgrazing) can be extremely damaging to the environments and exacerbate weed problems.
- d. Chemical control methods use herbicides to disrupt weed growth.

#### 4. TOWN OF OLATHE WATCH LIST

Spotted Knapweed  
Diffuse Knapweed  
Yellow Starthistle  
Purple Loosestrife  
Yellow Toadflax  
Leafy Spurge

#### 5. TOWN OF OLATHE WEED LIST

Hoary Cress (Whitetop)  
Russian Knapweed  
Salt Cedar (Tamarisk)  
Canada Thistle  
Redstem Filaree

Musk Thistle  
Downy Bromegrass  
Field Bindweed  
Halogeton  
Puncturevine  
Jointed Goatgrass  
Russian Olive  
Foxtail Barley

B. Undesirable Plant Management and Enforcement

1. Definitions

The following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alien plant* means a plant species which is not indigenous to the State of Colorado.

*Board of Trustees* means the Board of Trustees of the Town of Olathe, Colorado.

*Colorado Noxious Weed Act* means the provisions contained in C. R. S. §35-5.5-101 et seq.

*Commissioner* means the commissioner of the Colorado Department of Agriculture or his or her designee.

*Department* means the Colorado Department of Agriculture.

*Federal agency* means each agency, bureau or department of the federal government responsible for administering or managing federal land.

*Integrated management* means the planning and implementation of a coordinated program utilizing a variety of methods for management of noxious weeds, the purpose of which is to achieve specified management objectives and promote desirable plant communities. Such methods may include, but are not limited to education, preventive measures, good stewardship, and following integrated management techniques:

*Biological management* means the use of an organism to disrupt the growth of noxious weeds.

*Chemical management* means the use of herbicides or plant growth regulators to disrupt the growth of noxious weeds.

*Cultural management* means methodologies or management practices that favor the growth of desirable plants over noxious weeds, including maintaining an optimum fertility and plant moisture status in an area, planting at optimum density and spatial arrangement in an area, and planting species most suited to an area.

*Mechanical management* means methodologies or management practices that physically disrupt plant growth, including tilling, mowing, burning, flooding, mulching, hand-pulling, hoeing and grazing.

*Landowner* means any owner of record of state, county, municipal, or private land and includes an owner of any easement, right-of-way or estate in the land.

*List A Weed Species* mean all populations of Noxious Weeds in the Town of Olathe that are designated for eradication by the Commissioner pursuant to the terms of C.R.S. § 35-5.5-108.

*List B Weed Species* means all populations of Noxious Weeds in the Town of Olathe that are designated for required management by the Commissioner pursuant to the terms of C.R.S § 35-5.5-108.

*List C Weed Species* means all populations of Noxious Weeds in the Town of Olathe that are designated for recommended management by the Commissioner pursuant to the terms of C.R.S. § 35-5.5-108.

*Local Noxious Weed* means any alien plant of local importance that has been declared a noxious weed by the Weed Advisory Board.

*Management* means any activity that prevents a plant from establishing, reproducing, or dispersing itself.

*Management Plan* means the Town of Olathe Weed Management and Enforcement Plan as developed by the Weed Advisory Board and adopted by the Board of Trustees.

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

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

*Eradication* means reducing the reproductive success of a noxious weed species or specified noxious weed population in largely uninfested regions to zero 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.

*Suppression* 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.

*Native plant* means a plant species which is indigenous to the State of Colorado.

*Noxious weed* means an alien plant or parts of an alien plant that have been designated by rule by the Commissioner or the Department as being noxious or any plant that has been declared a Local Noxious Weed by the Weed Advisory Board, and which meets one or more of the following criteria:

- a. It aggressively invades or is detrimental to economic crops or native plant communities;
- b. It is poisonous to livestock;
- c. It is a carrier of detrimental insects, diseases or parasites;  
or
- d. The direct or indirect effect of the presence of this plant is detrimental to the environmentally sound management of natural or agricultural ecosystems.

*Person or occupant* means an individual, partnership, corporation, association or federal, state or local government or agency thereof owning, occupying or controlling any land, easement or right-of-

way, including any city, county, state or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, borrow pit, gas and oil pipeline, high voltage electrical transmission line, or right-of-way for a canal or lateral.

*Plant growth regulator* means a substance used for controlling or modifying plant growth processes without appreciable phototoxic effect at the dosage applied.

*Restoration* 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.

*State Noxious Weed* means any noxious weed identified by the Commissioner or the Department by rule pursuant to the terms and provisions of the Colorado Noxious Weed Act. Such weeds may be referred to herein as List A Weed Species, List B Weed Species, List C Weed Species depending upon their designation as such by the Commissioner pursuant to the terms of C.R.S. § 35-5.5-108.

*Undesirable plant* means a noxious plant species that is designated as undesirable by this Section, the Commissioner or by the Weed Advisory Board.

*Undesirable plant management* means the planning and implementation of an integrated program to manage undesirable plant species.

*Weed* means any undesirable plant.

*Weed Advisory Board* means the individuals appointed by the Board of Trustees.

*Weed Office* means the Town of Olathe's Weed Office.

C. Duty to manage undesirable plants, Landowner's responsibility

It is the duty of all persons to use integrated methods to manage and prevent the spread of all Noxious Weeds.

D. Local Priority Weed List

1. The Board of Trustees, after consultation with the Weed Advisory

Board, may elevate the status of any List B Weed Species or List C Weed Species that is located within the Town of Olathe to the Town's Watch List.

2. The Board of Trustees, after consultation with the Weed Advisory Board, may also at any time apply to the Commissioner for a waiver of compliance with an eradication designation set forth by the Commissioner for any particular List A Weed Species or List B Weed Species designated for eradication pursuant to the terms of C.R.S. § 35-5.5-108.5(3)(c). If such a waiver is approved, the Noxious Weed in question shall be reclassified.

E. Designation of Additional Undesirable Plants

The Board of Trustees may designate additional undesirable plants or weeds not otherwise designated as State Noxious Weeds for eradication or management within the Town of Olathe pursuant to the terms of C.R.S. §35-5.5-108(3), after a public hearing with thirty (30) days prior notice to the public.

F. Review of the Annual Town of Olathe Weed Management Plan

The Weed Advisory Board has, pursuant to the direction of the Board of Trustees, originally developed the Management Plan, and will review such Management Plan on an annual basis for any desirable changes or adjustments to such plan and shall report to the Board of Trustees on such basis with any recommended changes or adjustments. As part of such review, the Weed Advisory Board will review the list of noxious weeds to consider additional weeds and to prioritize control efforts. The Management Plan must be renewed and approved by the Board of Trustees not less than once every three years, but nothing shall prevent the Board of Trustees from approving any interim changes or adjustments to the Management Plan in any interim years. The Weed Office shall maintain the Management Plan and the priority weed list and make them available to the general public.

G. Importation and Cultivation

Persons are prohibited from importing seeds, propagative plant parts or live plants and cultivating any Noxious Weed within the Town of Olathe, subject to the exceptions in C.R.S. § 35-5.5-104.5.

H. Administering agency

The Board of Trustees shall provide for the administration and

enforcement of the Management Plan authorized by this Section through the use of agents, delegates or employees, and may hire additional staff or provide for the performance of all or part of the Management Plan through outside contract. The primary duty and responsibility of administering the Management Plan is hereby delegated to the Weed Office, and the Weed Office shall be the Board of Trustees' primary agent in enforcement and administration thereof. Any agent, delegate, employee, staff or contractor applying or recommending the use of chemical control methods shall be licensed by the Department for such application or recommendation. Costs associated with administering or enforcing the Management Plan shall be paid from the general fund of the Town.

I. Weed Advisory Board

The Board of Trustees has appointed the Weed Advisory Board from landowners, other interested individuals living in the vicinity of the Town, and the Weed Advisory Board shall have all of the authority and powers set forth herein as well as all of the authority and powers set forth in C.R.S. § 35-5.5-107. The Board of Trustees shall be entitled to appoint ex-officio members, as in their sole discretion they shall determine.

J. Identification and Inspection of Noxious Weeds

1. Private and Public Lands

a. The Weed Office, acting as agent, delegate, or staff of the Board of Trustees, 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, subject to the limitations of Section 8-2-2-J-1-b and when at least one of the following has occurred:

- i. The landowner or occupant has requested an inspection;
- ii. A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested and inspection;
- iii. An authorized agent of the Weed Office has made a visual inspection from a public right-of-way or area and has reason to believe that a noxious weed infestation exists;  
or

- iv. A Weed Office agent has inspected a current aerial satellite map of the property and determined there is reason to believe that a noxious weed infestation exists.
  
- b. Where entry onto private premises is required to investigate the existence of noxious weeds, on-site inspections may be scheduled at any reasonable time upon the landowner or occupant's consent. No entry onto such lands shall be permitted unless one of the following occurs: (a) verbal permission to inspect the property is granted by the landowner or occupant of said property, or (b) such landowner or occupant is notified of such pending inspection by certified mail at least 10 days prior to such inspection. If after notification landowner or occupant fails to respond within ten (10) days to the request to inspect the premises or otherwise denies access to the inspector, the inspector may seek an inspection warrant issued by the Town of Olathe municipal court pursuant to the provisions of C.R.S. § 35-5.5-109(2)(b) or 35-5.5-108.5(5)(b)(I).

### **8-2-3: Notice of Presence of Noxious Weeds**

#### **A. Private Lands**

- 1. Upon a discovery of the presence of Noxious Weeds on private property, the Weed Office, acting as agent, delegate, or staff of the Board of Trustees has the authority to notify the landowner or occupant of the presence of Noxious Weeds. The notice from the Weed Office includes the following:
  - a. The property inspection date;
  - b. The landowner and, or, occupant of record;
  - c. The property tax ID number or legal description of the property, and, or, aerial map;
  - d. The Noxious Weed(s) to be managed;
  - e. If the Noxious Weeds are weeds designated for eradication pursuant to designation as List A Weed Species or on the Town's Watch List, identification of eradication as the required management objective;
  - f. Advisement to the landowner or occupant to commence

either eradication of the Noxious Weeds within thirty (30) days or management of the Noxious Weeds within forty-five (45) days after receipt of notice or submit an acceptable plan and schedule for the completion of the plan for compliance;

- g. Identification of the integrated weed management techniques for eradication or the best available control methods of integrated management;
- h. The remedies for non-compliance with the notice, an offer of Weed Office consultation in management plan development, and notice of landowner and, or, occupant's right to request a hearing before Weed Advisory Board; and
- i. Statement that Weed Office will seek and inspection warrant from the Town of Olathe municipal court, to enter property and manage identified noxious weeds unless landowner and, or, occupant complies with notice, submits an acceptable plan and schedule for completion of the plan or submits a written request for a hearing before the Weed Board within ten (10) days.

#### B. Public Lands

1. The Weed Office, acting as agent, delegate, or staff of the Board of Trustees, may give notice to any state board, department, or agency that administers or supervises state lands within Town of Olathe, to manage noxious weeds on its land and naming them.
2. Such notice shall specify the best available methods of integrated management and will include the same information as itemized in Section 8-2-3-A-1 of this Chapter.

#### C. Duty to Consult

Where possible, the Weed Office shall consult with the affected landowner, occupant, state board, department or agency in the development of a plan for the management of Noxious Weeds on the premises or lands.

#### D. Restrictions

No eradication or management of Noxious Weeds on private property

shall occur without applying the same or greater management measures to any land or rights-of-way owned or administered by the Town that are adjacent to the private property.

**8-2-4: Enforcement of Noxious Weeds**

- A. In the event that the landowner, occupant or state board, department or agency fails to comply with any notice to eradicate or manage the identified weeds or implement the plan developed by the arbitration panel, the Weed Office shall provide for and compel the eradication or management of such weeds in any manner deemed necessary by the Weed Office and in compliance with the provisions of C.R.S. §§ 35-5-108.5, 35-5.5-109(5) or 35-5-110(3).
- B. If the Town, or its agents and employees, provide for and, or, compel the Management or eradication of Noxious Weeds on private lands, the Town is entitled to recover certain costs.
- C. If the Town compels and provides for the management of Noxious Weeds pursuant to the provisions of C.R.S. § 35-5-109, the Town is entitled to recover the whole cost thereof, including up to twenty percent (20%) for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located.
- D. If the Board of Trustees compels and provides for the eradication of noxious weeds pursuant to their classification as List A Weeds Species, the Board of Trustees is entitled to recover the whole cost of eradicating such weeds, including up to one hundred percent (100%) of inspection, eradication and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located.
- E. If the costs are not paid, in addition to any other remedies the Town may have, the Town may take the following actions upon failure to pay by the date specified as due upon the bill, or when they are otherwise due:
  - 1. The Town may foreclose the lien imposed by this Chapter in accordance with law.
  - 2. The Town may maintain an action for the amount of charges due in a court of competent jurisdiction including interest as allowed by law.
  - 3. The Town may certify the amount of any charge due to the County Treasurer to become an assessment upon the property served to collect as other taxes upon such property are collected.

4. It shall be unlawful to fail to pay the charges imposed by this Chapter.

F. Landowner or Occupant Protest

1. The Weed Office shall send a Payment Notice/Potential Lien Assessment letter by certified and regular mail to the landowner or occupant prior to any assessment on landowner or occupant's property.
2. Landowner or occupant shall be given thirty (30) days from the date on the Payment Notice/Potential Lien Assessment Letter to respond.
3. In the event landowner or occupant fails to respond to the letter within the prescribed thirty (30) days, the Weed Office shall assess a lien on landowner or occupant's property and may certify such lien to the Montrose County Treasurer.
4. If the landowner or occupant responds within the prescribed thirty (30) days and disputes the amount of the assessment, he or she is entitled to be heard before the Weed Advisory Board as to his or her concerns.