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PARK COUNTY, COLORADO

Ordinance No. 60-Z

AN ORDINANCE IMPLEMENTING THE COLORADO NOXIOUS WEED ACT AND PROVIDING FOR THE ABATEMENT AND MANAGEMENT OF NOXIOUS WEEDS WITHIN PARK COUNTY, COLORADO

WHEREAS, Park County, Colorado, possesses the authority pursuant to C.R.S. § 30-15-401 to enact laws necessary for the control and regulation of weeds; and

WHEREAS, the County is obligated to regulate noxious weeds in accordance with C.R.S. § 35-5.5-101 et seq. ("Colorado Noxious Weed Act") and to appoint a local advisory board for the purpose of assisting in the classification of noxious weeds and the regulation of such weeds; and

WHEREAS, C.R.S. § 35-5.5-113 authorizes counties to declare noxious weeds as a nuisance and to enforce all nuisance laws of the county in the elimination of such nuisance; and

WHEREAS, The Board of County Commissioners of Park County, Colorado ("Board of County Commissioners") intends that this ordinance shall serve as a noxious weed management plan as required by C.R.S. § 35-5.5-105 until such time that a management plan is prepared by the local advisory board and such plan is adopted by the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners recognize that noxious weeds are dangerous to the health, safety and welfare of the public and can impact the public in an economic, physiological, or ecological manner; and

WHEREAS, the Board of County Commissioners desires to enact an ordinance to provide for the regulation and management of noxious weeds within Park County, Colorado.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR PARK COUNTY:

Section 1. Purpose, Intent, and Authority. This Ordinance:

(A) Protects and advances the public health, safety, and welfare by effectively managing noxious weed infestations that do or may impact the public in an economic, physiological, or ecological manner.



- (B) Implements the Colorado Noxious Weed Act, C.R.S. §§ 35-5.5-101 et seq., pursuant to the authority granted to the County by the Colorado Noxious Weed Act.
- Section 2. Weed Management Board and Weed Management Fund.
 - 2.1 The Board of County Commissioners hereby creates and establishes a local advisory board called the Park County Weed Management Board (the "Weed Management Board"). The Weed Management Board shall have such powers and duties as may be conferred by this Ordinance and the Colorado Noxious Weed Act.
 - 2.2 The Weed Management Board shall consist of not less than three (3) members who shall be appointed by the Board of County Commissioners. Members shall serve indefinite terms and may be removed by the Board at any time for no reason. Members shall serve without compensation, salary, or pay. The Board may authorize and approve expenditures and reimbursement of actual and reasonable expenses of the Weed Management Board. The Weed Management Board shall appoint a chairperson and other officers deemed necessary for the efficient conduct of the Weed Management Board. The Weed Management Board may prepare and adopt bylaws governing the procedures of the Weed Management Board which are not inconsistent with this Ordinance and the Colorado Noxious Weed Act. Any bylaws shall be subject to the approval and ratification of the Board of County Commissioners.
 - 2.3 The activities and programs of the Weed Management Board shall be funded from a Weed Management Fund established or maintained as a part of the Park County budget. The Board of County Commissioners shall maintain the exclusive discretion to appropriate and manage the Weed Management Fund. The Board of County Commissioners shall retain the discretion to supplement and allocate additional funding from other revenue and budget sources to support the purposes of this Ordinance.

Section 3. Definitions.

3.1 Words and terms contained in this Ordinance are defined and construed according to the definitions set forth in this Ordinance or the Colorado Noxious Weed Act, as amended from time to time, or according to their ordinary meanings if not defined therein.

- 3.2 "Colorado Noxious Weed Act" shall mean C.R.S. §§ 35-5.5-101 et seq., as it may be amended from time-to-time.
- "Local noxious weed" shall mean any weed declared a noxious weed by resolution of the Board of County Commissioners following recommendation of the Weed Management Board. No weed shall be declared a local noxious weed unless and until a public hearing for such purpose has first been held by the Board of County Commissioners. Notice of the time, date, place, and purpose of the public hearing shall be published thirty days' prior to the date of the public hearing in a newspaper of general circulation within Park County, Colorado.
- 3.4 "Noxious weed" shall mean and include both local noxious weeds and state noxious weeds.
- 3.5 "State noxious weed" shall mean any weed declared to be a noxious weed pursuant to C.R.S. § 35-5.5-108.
- 3.6 "Weed Management Board" shall mean and include the Weed Management Board appointed in accordance with this Ordinance and any agent, representative, or staff person instructed to act in furtherance of this Ordinance by the Weed Management Board.

Section 4. Applicability - Effective Date.

- 4.1 This Ordinance shall apply to all premises, lands, or places in the unincorporated areas of Park County, Colorado; except that this Ordinance shall not apply within the boundaries of any incorporated municipality or to any municipal service, function, facility, or property whether owned or leased to an incorporated municipality outside of the municipal boundaries unless the County and the municipality otherwise agree pursuant to part 2 of article 1, Title 29, C.R.S., or article 20, Title 29, C.R.S.
- 4.2 This Ordinance shall be effective upon the date of final approval by the Board of County Commissioners. The efforts of the Weed Management Board shall be phased in over a two (2) year period beginning on the effective.
- 4.3 During the first year after adoption of this Ordinance, the Weed Management Board shall institute a weed education program which may include but not limited to workshops, weed identification brochures, personal visits to property owners, directed mailings and other

techniques designed to educate the public and landowners as to the extent of weed infestations. The Management Board shall also work with County Departments and realtors to advise prospective landowners of the Ordinance. Following the one-year weed education program, the Weed Management Board shall commence enforcement and full implementation of this Ordinance. Failure of any landowner or occupant of property to receive information or educational materials during the one-year weed education program shall not prevent, preclude, or bar the enforcement of this Ordinance against such landowner or occupant.

Section 5.

Noxious Weeds Deemed Nuisances. Local and state noxious weeds are hereby declared to be nuisances within Park County, Colorado and, notwithstanding any provision in this Ordinance to the contrary, the removal and elimination of such nuisances may also be enforced in accordance with local and state laws governing similar nuisances.

Section 6. Unlawful Acts

- 6.1 It shall be unlawful for any person to maintain, permit, or allow any state noxious weed or any local noxious weed upon any property subject to this Ordinance which is owned, leased, rented, or occupied by such person or to fail to eliminate and remove state and local noxious weeds from such property.
- 6.2 It shall be unlawful for any person to fail or refuse to comply with any order, rule, or regulation adopted for the purpose of enforcing this Ordinance.
- 6.3 It shall be unlawful for any person to interfere with or hinder the Weed Management Board, or its authorized agents, representatives, or staff persons, in the discharge of their duties as prescribed in this Ordinance. Any such interference or hindrance shall constitute a violation of the Ordinance.

Section 7. Notice and Order for Eradication of Management of Noxious Weeds

- 7.1 The Weed Management Board or its duly appointed agent shall have the right to enter upon any premises, lands or places subject to this Ordinance during reasonable business hours for the purpose of inspecting for the existence of noxious weed infestations, when at least one of the following circumstances has occurred:
 - (a) The landowner or occupant has requested an inspection;

- (b) A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection;
- (c) An authorized agent of Park County has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.
- 7.2 Before entering upon the private property for such inspection the Weed Management Board or its authorized agent shall send a notice via certified U.S. Mail, return receipt requested, to: (1) the property owner at the owner's last known address as indicated on the County's property tax assessment roll; or (2) the occupant. The Weed Management Board may, as an alternative to the mailing of notice, cause notice to be personally served upon the owner or occupant. The notice shall include a statement that an inspection of the property by the Weed Management Board is pending and shall demand that access to the property for purpose of inspection be provided upon request of the Weed Management Board or its agent. The notice shall be deemed properly delivered to and received by the addressee upon deposit in or with the U.S. Mail. Failure of the owner or occupant to accept receipt of a properly mailed notice shall not preclude or prevent enforcement of this Ordinance. Where possible, the inspection shall be scheduled and conducted with the concurrence of the landowner and occupant.
- 7.4 If, after receiving notice that an inspection is pending, the landowner or occupant denies access to the inspector appointed by the Management Board, the inspector may seek an inspection warrant issued by a judge of the Park County Court or another court of competent jurisdiction. In doing so, the inspector or other agent or employee of Park County must file with the court an affidavit stating:
 - (a) The information giving the affiant reasonable cause to believe that any provision of this Ordinance is being or has been violated;
 - (b) That the landowner or occupant has denied access to the inspector; and
 - (c) 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.

7.5 If the presence of a noxious weed infestation on the land is confirmed by the inspector, the County shall issue and mail a Notice and Order via

certified U.S. Mail, return receipt requested, to: (1) the property owner at the owner's last known address as indicated on the County's property tax assessment roll; and (2) the occupant. The Weed Management Board may, as an alternative to the mailing of notice, cause the Notice and Order to be personally served upon the owner or occupant. The Notice and Order shall be deemed properly delivered to and received by the addressee upon deposit in or with the U.S. Mail. Failure of the owner or occupant to accept receipt of a properly mailed Notice and Order shall not preclude or prevent enforcement of this Ordinance. The Notice and Order shall:

- (a) name the noxious weed(s) found to be present upon the property;
- (b) advise the landowner and occupant to manage the noxious weed(s);
- (c) specify the best available control methods of integrated management. Where possible, the County shall consult with the affected landowner and occupant in the development of a management plan.
- 7.7 Not longer than ten (10) days following the receipt of said Notice and Order, the landowner or occupant shall either:
 - (a) Comply with the terms of the notice;
 - (b) Acknowledge the terms of the notice and submit an acceptable plan and schedule for completion of the plan for compliance; or
 - (c) Request in writing delivered to the County Administrator that an arbitration panel be instituted to determine the final management plan, under procedures prescribed by Section 7 of this Ordinance.
- 7.8 In order to develop an acceptable plan, the landowner or occupant may consult with the Management Board, CSU Cooperative Extension and other entities listed under the Technical Assistance section of the Park County Weed Management Plan. Acceptance of a proposed management plan remains at all times in the sole discretion of the Weed Management Board.
- 7.9 No such management plan shall be compelled until the County has first applied the same or greater management measures to any land or rights of way owned or administered by the State, Federal, County or Water enterprises that are adjacent to the private property in issue.

Section 8. Arbitration

- 8.1 If the landowner or occupant requests an arbitration panel, the Weed Management Board shall select a panel comprised of the following:
 - (a) a weed management specialist or weed scientist;
 - (b) a landowner of similar land located in Park County; and
 - (c) a third panel member chosen by agreement of the first two members.
- 8.2 The landowner or occupant shall be entitled to challenge any one member of the panel, and the Weed Management Board shall name a new panel member from the same category. When the challenged member is the third member, chosen by the other two, the two members shall again name a third by mutual agreement of such other two members.
- No less than ten (10) days prior to the date of the arbitration hearing, the Weed Management Board shall mail notice of the date and place of the hearing via certified U.S. mail, return receipt requested, to the landowner and occupant. The landowner and/or occupant shall have a full and fair opportunity to present any relevant evidence, including the testimony of witnesses, to the arbitration panel in order to establish why the Notice and Order should not be enforced or should be delayed in its enforcement. Interested County staff, including the members of the Management Board or any other County agency, shall have the same opportunity to present evidence, including the testimony of witnesses. The arbitration panel shall consider such evidence and testimony in reaching its decision in accordance with this Ordinance and the Colorado Noxious Weed Act.
- 8.4 The decision of the arbitration panel shall be final.
- Section 9. Eradication or Management of Noxious Weeds by County; Assessment of Costs; Collection
 - 9.1 If any landowner or occupant fails or refuses to comply with the Notice and Order issued in accordance with Section 6 above, or with the plan approved by the arbitration panel, within ten (10) days from the date of the Notice and Order issued in accordance with Section 6 above or within ten (10) days of the effective date of the arbitration panel's final

decision resulting from a hearing in accordance with Section 7 above, the Board of County Commissioners of Park County shall have the authority to order the Management Board to eradicate or manage such noxious weeds, either by and through County forces, contract or otherwise.

- 9.2 The County may assess the costs of providing for or compelling the management of noxious weeds on private property to the landowner. Such assessment, however, shall not be made until the level of noxious weed management called for in the Notice and Order or Plan has been successfully achieved.
- 9.3 If the landowner fails to pay the costs of such eradication or management within thirty (30) days of the date such notice of assessment against the landowner, the whole costs thereof, including five (5) percent for inspection and incidental cots in connection therewith, shall be assessed upon the property from which such noxious weeds have been eradicated or on which such noxious weeds are being managed. Any assessment of costs pursuant to paragraph 8.2 and this paragraph shall be a lien against such property until paid and shall have priority over all other liens except general taxes and prior special assessments.
- 9.4 If the assessments prescribed above in paragraphs 8.2 and 8.3 are not paid within ninety (90) days from the date of billing for such eradication or management of noxious weeds, such assessments may be certified to the Clerk and Recorder to the Treasurer, who shall collect such assessment, together with a ten (10) percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of the state of Colorado for assessment and collection of general taxes, including the laws of the sale and redemption of property for taxes, shall govern and apply to the collection of assessment pursuant to this paragraph.

Section 10. Administrative Entry and Seizure Warrants

- 10.1 No entry upon private property pursuant to Section 8 of this Ordinance for the purpose of eradication or management of the noxious weeds shall be made until an administrative entry and seizure warrant has been obtained from the Park County Court or another court of competent jurisdiction.
- 10.2 A sworn or affirmed affidavit shall be prepared and submitted, along with photographs and/or supporting document, to the court. Said documents shall include a copy of the Notice and Order issued to the owner, a copy of the signed return receipt on the certified mail or other

proof of service, and a copy of the arbitration panel's decision directing the eradication or management of the noxious weeds, if applicable. Said affidavit shall establish the factual information necessary for the issuance of a warrant, including a reasonably specific description of the location of the property, a description or depiction of the noxious weed infestation, and the method to be employed for accomplishing eradication or management of the noxious weeds.

- 10.3 Notice of the warrant shall be served in accordance with the directions of the issuing court and shall be served within ten (10) days following the court's issuance of the warrant. A copy of the issued warrant shall be personally served or mailed via certified U.S. mail, return receipt requested, to the landowner and occupant. Proof of service of the warrant or a copy of the signed receipt on the certified mail shall be submitted to the issuing court.
- 10.4 In the event that the landowner or occupant fails to comply with the terms of the original Notice and Order, issued pursuant to Section 6 of this Ordinance, or with the plan developed by the arbitration panel with in ten (10) days of service or mailing of the warrant, then such warrant may be executed in accordance with the directions of the issuing court. Proof of the execution of the warrant shall be submitted to the issuing court and copy thereof served or mailed to the landowner and occupant, in the same manner as provided for in paragraph 9.3 above.
- 10.5 If the County, rather than the landowner or occupant, has eradicated or managed the weeds pursuant to paragraphs 8 and 9 of this Ordinance, the Management Board shall inspect the property upon completion of the Notice and Order or other applicable Management Plan in the same manner provided for in Sections 6.2 6.4 above and provide a comprehensive written report to the Board of County Commissioners on its finding, no later than thirty (30) days following the completion of the work to eradicate or manage the noxious weed infestation. This report shall include a detailed itemization of all costs incurred in relation to carrying out the provisions of this Ordinance.

Section 11. Funds Collected

11.1 All assessments, fees, penalties, fines, and other monies collected by or on behalf of Park County pursuant to this Ordinance shall be paid over to the Park County Treasurer immediately upon receipt thereof by the individual or entity receiving such monies. Upon receipt of such monies, the Treasurer shall deposit the same into the Park County Weed Management Fund.

Section 12. Enforcement

- 12.1 This Ordinance shall be administered and enforced by the Management Board. The decisions and actions of the Management Board remain, at all times, subject to approval by the Board of County Commissioners.
- 12.2 The Board of County Commissioners hereby designates the County Attorney, or his/her designee, as the County's legal representative in the enforcement of the provisions of this Ordinance in any court of applicable jurisdiction. In the event the County Attorney or his/her designee cannot represent Park County or the Board of County Commissioners deems it otherwise appropriate, the Board of County Commissioners may appoint the District Attorney of the 9th Judicial District or his/her designee to perform such legal enforcement duties in lieu of the County Attorney.

Section 13. Additional Remedies

- 13.1 The remedies provided in this Ordinance shall be cumulative and in addition to any other remedies which may be available to the County and the Board of County Commissioners under state or local law, including but not limited to laws governing nuisances. Nothing in this Ordinance shall be construed to preclude the Board of County Commissioners from seeking such other remedies in addition to, or in lieu of, the remedies granted herein.
- 13.2 No county or agent, employee, or delegate of the Board of County Commissioners or of the Management Board 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 Ordinance except when such damages were willfully or deliberately caused by the landowner.
- Safety Clause: The Board of County Commissioners hereby finds, determines, and declares that this Ordinance is necessary for the health, safety and welfare of the citizens of Park County, Colorado. The Board of County Commissioners further determines that this Ordinance bears a rational relationship to the proper legislative objective sought to be attained.

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Section 15. Severability Clause: If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 16. Publication and Effective Date

INTRODUCED AND READ AT A REGULAR OR SPECIAL MEETING OF THE BOARD OF COUNTY COMMISSIONERS ON THE 20th DAY OF APRIL, 2000.

PUBLISHED IN FULL IN THE OFFICIAL NEWSPAPER OF GENERAL CIRCULATION FOLLOWING INTRODUCTION AND AT LEAST TEN (10) DAYS BEFORE THE DATE OF FINAL ADOPTION.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS ON THE /8 DAY OF // , 2000, AND ORDERED PUBLISHED BY TITLE ONLY IN THE OFFICIAL NEWSPAPER OF GENERAL CIRCULATION.

PARK COUNTY BOARD OF COMMISSIONERS

C. I DeLange, Chairperson

ATTEST:

County-Elerk or Deputy County Clerk

CERTIFICATION OF PUBLICATION:

05/26/2000 10:08A 12 R 0.00 D 0.00 BARBARA J PASCO PARK CO