ORDINANCE NO. 10
SERIES 2016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, AMENDING TITLE 5. GENERAL OFFENSES, BY ADDING CHAPTER 5.50 UNDESIRABLE PLANT MANAGEMENT, AND ADOPTING AN UNDESIRABLE PLANT MANAGEMENT PLAN IN ACCORDANCE WITH THE COLORADO NOXIOUS WEED ACT

WHEREAS, the City of Gunnison, Colorado is a Colorado home-rule municipality; and

WHEREAS, Section 35.5.5-101, et seq., of the Colorado Revised Statutes, contains the Colorado Noxious Weed Act; and

WHEREAS, pursuant to such Act, the governing body of each municipality in the state shall adopt a noxious weed management plan for all lands within the territorial limits of the municipality; and

WHEREAS, the City currently is a party to an intergovernmental agreement with the Board of County Commissioners of Gunnison County regarding undesirable plant management; and

WHEREAS, adoption by the City of a noxious weed management plan will both comply with statutory requirements and aid in management and enforcement of noxious weed management; and

WHEREAS, the plan to be adopted will benefit the health, safety, and welfare of the City and its inhabitants.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS AS FOLLOWS:

Section 1. Title 5 General Offenses is hereby amended by the addition of Chapter 5.50 – Undesirable Plant Management, to read as follows:

Chapter 5.50 – Undesirable Plant Management

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

A. "City council" means the city council of the City of Gunnison, Colorado.

B. "Alien plant" means a plant species which is not indigenous to the state of Colorado.

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

D. "Commissioner" means the commissioner of the Colorado Department of Agriculture or designee.

E. "Department" means the Colorado Department of Agriculture.

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

G. "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 the following integrated management techniques:

1. Biological management, which means the use of an organism to disrupt the growth of noxious weeds.
2. Chemical management, which means the use of herbicides or plant growth regulators to disrupt the growth of noxious weeds.
3. Cultural management, which 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.
4. Mechanical management, which means methodologies or management practices that physically disrupt plant growth, including tilling, mowing, burning, flooding, mulching, hand-pulling, hoeing, and grazing.

H. "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.

I. "Local noxious weed" means any alien plant of local importance that has been declared a noxious weed by the weed advisory board.

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

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

(1) Eradication, which 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.

(2) 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.

(3) 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.

(4) 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.

L. "Management plan" means the City of Gunnison weed management and enforcement plan as developed by the weed advisory board and adopted by the city council.

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

N. "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:

(1) It aggressively invades or is detrimental to economic crops or native plant communities;
(2) It is poisonous to livestock;
(3) It is a carrier of detrimental insects, diseases or parasites; or
(4) The direct or indirect effect of the presence of this plant is detrimental to the environmentally sound management of natural or agricultural ecosystems.

O. "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.

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

Q. "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 "State A List," "State B List" or "State C List" weeds depending upon their designation as such by the commissioner pursuant to the terms of C.R.S. section 35-5.5-108.

A. List weeds shall mean all populations of noxious weeds in the City of Gunnison that are designated for eradication, either by the commissioner pursuant to the terms of C.R.S. section 35-5.5-108 or by local designation by the weed advisory board.

B. B List weeds shall mean all populations of noxious weeds in the City of Gunnison that are designated for required management, either by the commissioner pursuant to the terms of C.R.S. section 35-5.5-108 or by local designation by the weed advisory board.

C. C List weeds shall mean all populations of noxious weeds in the City of Gunnison that are designated for recommended management, either by the commissioner pursuant to the terms of C.R.S. section 35-5.5-108 or by local designation by the weed advisory board.

R. "Undesirable plant" means a noxious plant species that is designated as undesirable by this chapter, the commissioner or by the weed advisory board.

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

T. "Weed" means any undesirable plant.

U. "Weed advisory board" means the individuals appointed by the city council of the City of Gunnison to advise on matters of noxious weed program direction.

V. "Weed office" means the City of Gunnison weed office. The Gunnison Police Department shall serve as the weed office.

5.50.020 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 if the plants are likely to be ecologically destructive or aesthetically or materially damaging to neighboring lands.

5.50.030 Local priority weed list.
The city council, after consultation with the weed advisory board, may elevate the status of any State B List noxious weed or State C List noxious weed that is located within the City of Gunnison from the State B or C lists to that of an A or B List weed as deemed necessary. The city council, 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 State A list noxious weed or State B List noxious weed designated for eradication in the City of Gunnison, pursuant to the terms of C.R.S. section 35-5.5-108.5(3)(c). If such a waiver is approved, the noxious weed in question shall be reclassified as either a B or C List weed as may be determined by the city council.

5.50.040 Designation of additional undesirable plants.
The city council may designate additional undesirable plants or weeds not otherwise designated as state noxious weeds for eradication or management within the City of Gunnison pursuant to the

terms of C.R.S. section 35-5.5-108(3), after a public hearing with thirty (30) days prior notice to the public.

5.50.050 Review of the annual City of Gunnison weed management plan.
The weed advisory board has, pursuant to the direction of the city council, 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 city council 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 city council not less than once every three (3) years, but nothing shall prevent the city council 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.

5.50.060 Importation and cultivation.
Persons are prohibited from importing seeds, propagative plant parts or live plants and cultivating any noxious weed within the City of Gunnison, and any such person doing so shall be fully prosecutable pursuant to the terms of C.R.S. section 35-5.5-104.5.

5.50.070 Administering agency.
The city council shall provide for the administration and enforcement of the management plan authorized by this article 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 city council's 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 City.

5.50.080 Weed advisory board.
The city council has appointed the weed advisory board from landowners, other interested individuals living in the vicinity of the city, 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. section 35-5.5-107. The city council shall be entitled to appoint ex-officio members, as in their sole discretion they shall determine.

5.50.090 Identification and inspection of noxious weeds—Methods of identification.

(a) Private and Public Lands.

(1) The weed office, acting as agent, delegate, or staff of the city council, 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 of the following 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 the city council 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

d. 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: (1) verbal permission to inspect the property is granted by the landowner or occupant of said property, or (2) such landowner or occupant is notified of such pending inspection by certified mail at least ten (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 City of Gunnison municipal court having jurisdiction over the land pursuant to the provisions of C.R.S. section 35-5.5-109(2)(b) or 35-5.5-108.5(5)(b)(I).

5.50.100 Notice of presence of noxious weeds—Notice letter.

(a) Private Lands.

(1) Upon a discovery of the presence of noxious weeds on private premises, the weed office, acting as agent, delegate, or staff of the city council 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 weeds to be managed;

e. If the noxious weeds are weeds designated for eradication pursuant to designation as List A weeds, identification of eradication as the required management objective;

f. Advisement to the landowner or occupant to commence either eradication of the noxious weeds within five (5) days or management of the noxious weeds within ten (10) 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 presented by the commissioner for eradication or the best available control methods of integrated management;

h. The options of notice compliance;

i. The consequences 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 the arbitration panel;

j. Statement that weed office will seek an inspection warrant (right of entry) from the City of Gunnison municipal court having jurisdiction over the land, 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 arbitration panel within ten (10) days.

(b) Public Lands.

(1) The weed office, acting as agent, delegate, or staff of the city council, may give notice to any state board, department, or agency that administers or supervises state lands within the City of Gunnison, to manage noxious weeds on its land and naming them.

(2) Such notice shall specify the best available method(s) of integrated management and will include the same information as itemized in 5.50.100(a).

5.50.110 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.

5.50.120 Eradication and management of weeds—Landowner, occupant or public agency response.

(a) A landowner, occupant or state board, department or agency receiving notification of the presence of noxious weeds pursuant to section 5.50.100 above shall respond within a reasonable time after receipt thereof, but in no event to exceed five (5) days if eradication is ordered and ten (10) days if management is ordered, by any of the following:

(1) Complying with the terms of the notification.

(2) Acknowledging the terms of the notification and submitting an acceptable plan and schedule for the completion of the plan for compliance.

(3) If only management is ordered, requesting an arbitration panel to determine the final management plan. The panel shall be selected by the city council, through its delegates, agents, and employees, and shall include:

a. A weed management specialist or weed scientist;
b. A landowner of similar land in City of Gunnison; and
c. A third member chosen by agreement of the first two panel members;
d. The landowner or occupant is entitled to challenge any one member of the panel, and the city council, through its delegates, agents and employees shall name a new panel member from the same category.

Costs for the arbitration panel shall be paid by the requesting landowner or occupant. The decision of the arbitration panel shall be final.

5.50.130 Enforcement—Direct action by City to manage weeds.
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. section 35-5-108.5, 35-5.5-109(5) or 35-5-110(3).

5.50.140 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 by the City or administered by the city council that are adjacent to the private property.

5.50.150 Assessment of costs for treatment and eradication of noxious weeds—Private lands.
If the city council, or its agents and employees, provide for and/or compel the management or eradication of noxious weeds on private lands, the city council is entitled to recover certain costs.

5.50.160 Recoverable costs/method of collection—Management.
(a) If the city council compels and provides for the management of noxious weeds pursuant to the provisions of C.R.S. section 35-5-109, the city council is entitled to assess the whole cost thereof, including up to twenty (20) percent for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located.
(b) Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.
(c) Such assessment may be certified to the Gunnison County treasurer for the collection of taxes.
(d) Any funds collected shall be deposited in the city's weed fund or any similar fund.

5.50.170 Recoverable costs/method of collection—Eradication of List A species.
(a) If the city council compels and provides for the eradication of noxious weeds pursuant to their classification as List A weeds, the city council is entitled to assess the whole cost of eradicating such weeds, including up to one hundred (100) percent of inspection, eradication and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located.
(b) Such assessment shall be a lien against each lot or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.
(c) Such assessment may be certified to the Gunnison County treasurer for the collection of taxes.
(d) Any funds collected shall be deposited in the city's weed fund or any similar fund.

5.50.180 Landowner or occupant protest.
(a) 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.

(b) Landowner or occupant shall be given thirty (30) days from the date on the payment notice/potential lien assessment letter to respond.

(1) 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 Gunnison County treasurer.

(2) 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 City of Gunnison weed advisory board as to his or her concerns.

5.50.190 Assessment of costs—Hearing.

(a) The landowner or occupant, or an attorney on his or her behalf, will be allowed to present testimony to the weed advisory board as to why they should not assess a lien on landowner or occupant's property for the costs outlined in the payment notice/potential lien assessment letter.

(b) A member of the weed office will need to be present at the hearing to provide evidence favoring the imposition of a lien on landowner or occupant's property.

(c) The weed office must show that prior to compelling the management of noxious weeds on landowner and/or occupant's property the weed office applied the same or greater management measures to any land or rights-of-way owned by the City or administered by the city council that are adjacent to the private property pursuant to section 5.50.140 of this Code.

(d) The weed office must show that the level of management called for in the notice or the management plan developed by the arbitration panel has been successfully achieved pursuant to section 14-34 of this Code.

(e) The weed advisory board may either grant or deny the lien assessment or continue the matter to a subsequent date certain.

(f) If the weed advisory board grants the lien assessment, the resolution for certification of assessed costs as granted by the city council is filed with the county treasurer's office.

5.50.200 Limitations.

The weed advisory board 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 or the management plan developed by the arbitration panel has been completed.

5.50.210 Recoverable costs/method of collection—Public lands.

(a) Any expenses incurred by the city council in the undertaking of the eradication or management of noxious weeds on public lands shall be a proper charge against such state board, department, or agency that has jurisdiction over the lands.

(b) An agreement for the reimbursement of such expenses shall be reached within two (2) weeks after the date such an expense is submitted to such state board, department or agency, such agreement to be set forth in writing.

(c) If an agreement is not reached or the charge is not immediately paid, such charge shall be submitted to the 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.

5.50.220 Scheduling and hearing.

The state board, department, or agency owning or occupying said public lands is afforded the same scheduling and hearing protections as provided to landowners or occupants of private lands under sections 5.50.180 and 5.50.190 of this Code.

5.50.230 Miscellaneous—Additional provisions.

(a) The city council, through its delegates, agents, and employees, shall have the right to enter upon any premises, lands or places, whether public or private, during reasonable business hours for the purposes of ensuring compliance with any of the above requirements concerning noxious weed management and any other local requirements.

(b) No agent, employee, or delegate of the city council 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 the above requirements except when the landowner or occupant willfully or deliberately caused such damages.

(c) It shall be the duty of the city council to confirm that all public roads, public highways, public rights-of-way, and any easements appurtenant thereto, under its jurisdiction, are in compliance with C.R.S. section 35-5.5-101, et seq., and any violations thereof shall be the financial responsibility of the appropriate local governing body or state board, department, or agency.

5.50.240 Cooperation with federal and state agencies.
The city council may enter into cooperative agreements with federal, county and state agencies for the integrated management of undesirable plants within their respective territorial jurisdictions.

5.50.250 Public nuisance—Abatement.
All undesirable plants at any and all stages thereof, their carriers, and any and all premises, plants and things infested or exposed to infestation may be declared to be a public nuisance by the city council. Once declared, such nuisances shall be subject to all laws and remedies relating to the prevention and abatement of nuisances. The city council, in a summary manner or otherwise, may take such action, including removal and destruction, with reference to such nuisance as in its discretion appears necessary. The remedies of this section shall be in addition to all other remedies provided by law.

Section 2. If any section of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or the constitutionality of the remaining portions of the ordinance. The County Council of the City of Gunnison hereby declares that it would have passed this ordinance, and each section thereof, irrespective of the fact that any one or more sections be declared unconstitutional.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 12th day of July, 2016, on first reading, and introduced, read, passed and adopted on second and final reading this 26th day of July, 2016.

Richard Hayan
Mayor

(SEAL)

ATTEST:

Gail A Davidson
City Clerk

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