

ORDINANCE NO. 11

SERIES 2016

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AMENDING CHAPTER 7, ARTICLE 3 OF THE CRESTED BUTTE MUNICIPAL CODE TO INCLUDE NEW REGULATIONS FOR THE MANAGEMENT OF UNDESIRABLE PLANTS AND THE ENFORCEMENT THEREOF

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the constitution and laws of the State of Colorado;

WHEREAS, the Town Council has the authority pursuant to Article XX of the Colorado Constitution, the Town of Crested Butte Home Rule Charter and applicable State statute, including C.R.S. §31-15-401, to adopt ordinances, rules and regulations in furtherance of public health, safety and welfare, including the authority to declare nuisances and abate the same;

WHEREAS, pursuant to Chapter 7, Article 3 of the Crested Butte Municipal Code (the "**Code**") and C.R.S. §35-5.5-106, the Town Council possesses the authority to provide for and compel the removal of noxious weeds and brush from lots and tracts of land within Crested Butte;

WHEREAS, the Colorado General Assembly enacted the Colorado Noxious Weed Act (§35-5.5-101 et seq.) (the "**Weed Act**") in recognition of the need to ensure that all lands in the State of Colorado, whether in public or private ownership, are subject to the jurisdiction of a local government empowered to manage undesirable plants designated by State and local governing bodies;

WHEREAS, in adopting such legislation, the General Assembly determined that certain undesirable plants constitute a present threat to the continued economic and environmental value of the lands of the State, and if present in any area must be appropriately managed;

WHEREAS, the General Assembly's intent in adopting the Weed Act was to cause local governing bodies to adopt and implement undesirable plant management plans with methods for appropriate and available management and control that are the least environmentally damaging as possible, practical and economically feasible;

WHEREAS, in 2009, by Resolution No. 11, Series 2009, the Town Council adopted the Weed Management Plan for the Town of Crested Butte (the "**Weed Plan**") with the goal of managing undesirable plants in Crested Butte;

WHEREAS, the Town Staff has recommended to the Town Council that to further implement the Weed Plan, the Town Council adopt regulations to be included in the Code further addressing the management of undesirable plants;

WHEREAS, the Town Council finds that in order to mitigate the existence, and prevent the proliferation of undesirable plants that constitute a present threat to the continued economic and environmental value of the lands of the Town, and so that the Town is in the best position to cause the management of such undesirable plants as contemplated in the Weed Plan, the Town Council should amend the Code to include regulations addressing the management of undesirable plants; and

WHEREAS, the Town Council supports adoption of regulations addressing the management of undesirable plants as contemplated in the Weed Plan, such regulations being in the best interest of the health, safety and welfare of the residents and visitors of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. **Amending Chapter 7, Article 3.** Chapter 7, Article 3 of the Code is hereby deleted in its entirety and replaced with the following new Article 3 that shall read as follows:

“ARTICLE 3

Undesirable Plant Management and Enforcement

Division 1 – General

Sec. 7-3-110. Definitions.

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

Colorado Noxious Weed Act or the *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 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 lands.

Integrated management means the planning and implementation of a coordinated program utilizing a variety of methods for the 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 as further described in the Management Plan.

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 land.

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 objective means the specific, desired result of integrated management efforts as described in the Management Plan.

Management plan means the Weed Management Plan for the Town of Crested Butte as developed by the Weed Advisory Board and adopted by resolutions of the Town Council.

Native plant means a plant species that 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 described in the Management Plan.

Property owner means any 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 State, County, municipal or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, borrow pit, gas or oil pipeline, high voltage electrical transmission line or right-of-way for a canal or lateral.

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 A List Weeds, B List Weeds or C List Weeds 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 article, the Commissioner or by the Weed Advisory Board.

A List Weeds shall mean all Noxious Weeds in Crested Butte that are designated for eradication, either by the Commissioner pursuant to the terms of C.R.S. §35-5.5-108 or by local designation by the Weed Advisory Board.

B List Weeds shall mean all Noxious Weeds in Crested Butte that are designated for required management, either by the Commissioner pursuant to the terms of C.R.S. §35-5.5-108 or by local designation by the Weed Advisory Board.

C List Weeds shall mean all Noxious Weeds in Crested Butte that are designated for recommended management, either by the Commissioner pursuant to the terms of C.R.S. §35-5.5-108 or by local designation by the Weed Advisory Board.

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

Town Council means the Town Council of the Town of Crested Butte, Colorado.

Town Manager means the Town Manager of the Town in title, as well as any designee, including any Town staff member or other employee of the Town, or any agent, delegate or contractor of the Town.

Weed means any undesirable plant.

Weed Advisory Board means the persons appointed by the Town Council to advise on matters of noxious weed program direction.

Sec. 7-3-120. Duty to Manage Undesirable Plants; Landowner Responsibility.

It is the duty of all property owners to use integrated management pursuant to the Management Plan to manage and prevent the spread of all Noxious Weeds and Undesirable Plants on the Town of Crested Butte Noxious Weed List.

Sec. 7-3-130. Local Priority Weed List.

The Town Council, after consultation with the Weed Advisory Board, may elevate the status of any B List Weed or C List Weed that is located within Crested Butte from the B List Weed or C List Weed to that of an A List Weed or B List Weed, as applicable, if deemed necessary and appropriate. The Town 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 A List Weed or B List Weed designated for eradication in Crested Butte, pursuant to C.R.S. §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 List Weed or C List Weed, as may be determined by the Town Council.

Sec. 7-3-140. Designation of Additional Undesirable Plants.

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

Sec. 7-3-150. Weed Management Plan; Adoption and Updates.

The Weed Advisory Board has, pursuant to the direction of the Town Council, developed the Management Plan, and will review such Management Plan on an annual basis for any desired changes or adjustments to such plan and shall report to the Town 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 and Undesirable Plants to consider additional weeds and to prioritize control efforts. The Management Plan must be renewed and adopted by the Town Council not less than once every three years, but nothing shall prevent the Town Council from approving any changes or adjustments to the Management Plan more frequently. The Town Manager shall maintain the Management Plan and the priority weed list and make them available to the general public.

Sec. 7-3-160. Importation and Cultivation.

Persons are prohibited from importing seeds, propagative plant parts or live plants and cultivating any Noxious Weed within the Town of Crested Butte, and any such Person doing so shall be fully prosecutable pursuant to the terms of C.R.S. §35-5.5-104.5.

Division 2 – Administration and Enforcement

Sec. 7-3-170. Administering Agency.

The Town 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 by contract. The primary duty and responsibility of administering the Management Plan is hereby delegated to the Town Manager, and the Town Manager shall be the Town Council's primary officer in enforcement and administration thereof. Any agent, delegate, employee, Town staff or contractor applying or recommending the use of regulated chemical control methods shall be licensed by the Department for such application or recommendation.

Sec. 7-3-180 Weed Advisory Board.

The Town Council shall appoint a Weed Advisory Board consisting of Town staff, local land management partners, weed experts, general community members and other interested community members. 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 Town Council shall be entitled to appoint ex-officio members, as they may determine in their sole discretion.

Sec. 7-3-190. Identification and Inspection of Noxious Weeds - Methods of Identification.

(1) The Town Manager 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) The Town Manager has made a visual inspection from a public right-of-way or other area and has reason to believe that a noxious weed infestation exists; or
- (d) The Town Manager has inspected a current aerial satellite map of the property and determined there is reason to believe that a noxious weed infestation exists.

(2) 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 10 days to the request to inspect the premises or otherwise denies access to the Town Manager, the Town Manager may seek an inspection warrant issued by the Town of Crested Butte Municipal Court having jurisdiction over the land pursuant to the provisions of C.R.S. §35-5.5-109(2)(b) or 35-5.5-108.5(5)(b)(I).

Sec. 7-3-200. Notice of Presence of Noxious Weeds - Notice Letter.

(1) Private Lands. Upon a discovery of the presence of noxious weeds on private premises, the Town Manager has the authority to notify the landowner or

occupant of the presence of noxious weeds. If a second notice from the town Manager is necessary, such notice shall include 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 A List 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 days or management of the noxious weeds within 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 Town consultation in management plan development, and notice of landowner and/or occupant's right to request a hearing before an arbitration panel.
 - (j) Statement that the Town Manager will seek an inspection warrant (right of entry) from the Town of Crested Butte Municipal Court, to enter property and manage identified noxious weeds unless the 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 10 days.
- (2) Public Lands.
- (a) The Town Manager may give notice to any State or federal department, or agency that administers or supervises lands under

such governmental control within Crested Butte, to manage noxious weeds on its land.

- (b) Such notice shall specify the best available methods of integrated management.

Sec. 7-3-210. Duty to Consult.

Where possible the Town Manager shall consult with the affected landowner, occupant, State or federal department, or agency that administers or supervises lands under such governmental control within Crested Butte in the development of a plan for the management of noxious weeds on the premises or lands.

Sec. 7-3-220. Eradication and Management of Weeds - Landowner; Occupant or Public Agency Response.

(1) A Landowner, occupant, State or federal department, or agency that administers or supervises lands under such government's control within Crested Butte receiving notification of the presence of noxious weeds pursuant to Section 7-3-220 above shall respond within a reasonable time after receipt thereof, but in no event to exceed five days if eradication is ordered and 10 days if management is ordered, by any of the following:

- (a) Complying with the terms of the notification.
- (b) Acknowledging the terms of the notification and submitting an acceptable plan and schedule for the completion of the plan for compliance.
- (c) If only management is ordered, requesting an arbitration panel to determine the final management plan. The panel shall be selected by the Town Manager, and shall include:
 - (i) A weed management specialist or weed scientist;
 - (ii) A landowner owning similar lands in Crested Butte; and
 - (iii) 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 Town Manager shall name a new panel member from the same category.

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

Sec. 7-3-230. Enforcement - Direct Action by Town to Manage Weeds.

In the event that the landowner, occupant, State or federal department, or agency that administers or supervises lands under such government's control within Crested Butte fails to comply with any notice to eradicate or manage the identified weeds or implement the plan developed by the arbitration panel, the Town Manager shall provide for and compel the eradication or management of such weeds in any manner deemed necessary by the Town Manager and in compliance with the provisions of C.R.S. §35-5-108.5, 35-5.5-109(5) or 35-5-110(3).

Sec. 7-3-240. Equal Application.

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, administered or controlled by the Town that are adjacent to the private property.

Sec. 7-3-250 Assessment of Costs for Treatment and Eradication of Noxious Weeds - Private Lands.

If the Town Manager provides for and/or compels the management or eradication of noxious weeds on private lands, the Town shall be entitled to recover certain costs.

Sec. 7-3-260. Recoverable Costs/Method of Collection - Management.

(1) If the Town Manager 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 assess the whole cost thereof, including up to 20% for inspection and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located.

(2) 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.

(3) Such assessment may be certified to the Gunnison County Treasurer for the collection of taxes.

(4) Any funds collected shall be deposited in the Town Council's weed fund or any similar fund.

Sec. 7-3-270. Recoverable Costs/Method of Collection - Eradication of A List Weeds.

(1) If the Town Manager compels and provides for the eradication of noxious weeds pursuant to their classification as A List Weeds, the Town Council is entitled to assess the whole cost of eradicating such weeds, including up to 100% of inspection, eradication and other incidental costs in connection therewith, upon the lot or tract of land where the noxious weeds are located.

(2) 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.

(3) Such assessment may be certified to the Gunnison County Treasurer for the collection of taxes.

(4) Any funds collected shall be deposited in the Town Council's weed fund or any similar fund.

Sec. 7-3-280. Landowner or Occupant Protest.

(1) The Town Manager 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 30 days from the date on the Payment Notice/Potential Lien Assessment Letter to respond.

(a) In the event landowner or occupant fails to respond to the letter within the prescribed 30 days, the Town Manager shall assess a lien on landowner or occupant's property and may certify such lien to the Gunnison County Treasurer.

(b) If the landowner or occupant responds within the prescribed 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.

Sec. 7-3-290. Assessment of Costs - Hearing.

(1) 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.

(2) The Town Manager will need to be present at the hearing to provide evidence favoring the imposition of a lien on landowner or occupant's property.

(3) The Town Manager must show that prior to compelling the management of noxious weeds on landowner and/or occupant's property the Town Manager applied 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.

(4) The Town Manager 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 7-3-300 hereof.

(5) The Weed Advisory Board may either grant or deny the lien assessment or continue the matter to a subsequent date certain.

(6) If the Weed Advisory Board grants the lien assessment, the Certification of Assessed Costs shall be filed with the County Treasurer's Office.

Sec. 7-3-300. 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.

Sec. 7-3-310. Recoverable Costs/Method of Collection - Public Lands.

(1) Any expenses incurred by the Town 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.

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

(3) 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.

Sec. 7-3-320. Scheduling and Hearing.

The State or federal department, or agency that administers or supervises lands under such government's control within Crested Butte is afforded the same scheduling and hearing protections as provided to landowners or occupants of private lands hereunder.

Sec. 7-3-330. Miscellaneous - Additional provisions.

(1) The Town Manager, 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.

(2) No agent, employee, or delegate of the Town 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.

(3) It shall be the duty of the Town 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. § 35-5.5-101, *et seq.*, and any violations thereof shall be the financial responsibility of the appropriate the landowner, occupant, State or federal department, or agency that administers or supervises lands under such government's control within Crested Butte.

Sec. 7-3-340. Cooperation with Federal and State Agencies.

The Town Council may enter into cooperative agreements with State, federal, and County departments and agencies for the integrated management of undesirable plants within their respective territorial jurisdictions.

Sec. 7-3-350. 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 Town Manager. Once declared, such nuisances shall be subject to all laws and remedies relating to the prevention and abatement of nuisances. The Town Manager, 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. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of the Code that is in conflict with this ordinance is hereby repealed as of the effective date hereof.

INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 15th DAY OF August, 2016.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 19th DAY OF September, 2016.

TOWN OF CRESTED BUTTE, COLORADO

By: Glenn Michel
Glenn Michel, Mayor

ATTEST:
Lynelle Stanford
Lynelle Stanford, Town Clerk

[SEAL]

