

ORDINANCE NO. 15

Series 2007

AN ORDINANCE AMENDING TITLE 5 OF THE BRECKENRIDGE TOWN CODE BY  
ADOPTING A NEW CHAPTER 10 CONCERNING NOXIOUS WEEDS

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,  
COLORADO:

Section 1. Title 5 of the Breckenridge Town Code is amended by the addition of a new Chapter 10, to be entitled "Noxious Weeds", which shall read in its entirety as follows:

CHAPTER 10

NOXIOUS WEEDS

Section:

- 5-10-1: Legislative Findings
- 5-10-2: Definitions
- 5-10-3: Adoption of Town Noxious Weed Management Plan
- 5-10-4: Unlawful Acts
- 5-10-5: Duties of Landowners and Occupants
- 5-10-6: Inspection For Noxious Weeds
- 5-10-7: Town Authority To Compel Eradication of Certain Noxious Weeds
- 5-10-8: Noxious Weed Management Plan For Individual Property
- 5-10-9: Management of Noxious Weeds on Public Lands
- 5-10-10: Applicability

5-10-1: LEGISLATIVE FINDINGS: The Town Council hereby finds, determines and declares as follows:

A. Noxious weeds have become a threat to the natural resources of the Town, as acres of public and private lands, wildlife habitat and native plant communities are being destroyed by noxious weeds each year.

B. An organized and coordinated effort involving the Town and public and private landowners must be undertaken to stop the spread of noxious weeds within the Town without unnecessarily disrupting the development of such lands.

C. The designation and classification of noxious weeds into categories for immediate eradication, containment, and suppression will assist the Town in coordinating efforts to stop the spread of noxious weeds.

D. Section 35-5.5-106(1), C.R.S., which is part of the "Colorado Noxious Weed Act", requires the Town Council to adopt a noxious weed management plan for all lands within the territorial limits of the Town.

E. The Summit County Weed Advisory Board, which is the local noxious weed advisory board for the Town, acting pursuant to Section 35-5.5-107(4)(a), C.R.S., has developed a recommended noxious weed management plan for the Town, and has recommended to the Town Council that the proposed plan be adopted as the Town's noxious weed management plan.

F. Section 35-5.5-107(4)(a), C.R.S., provides that the Town Council is to approve, modify or reject the noxious weed management plan which has been transmitted to it by the Summit County Weed Advisory Board.

G. The Town Council has reviewed and considered the weed management plan which has been recommended by the Summit County Weed Advisory Board, and finds and determines that such plan should be adopted as the noxious weed management plan for the Town.

H. Pursuant to Section 35-5.5-106(1), C.R.S., the Town Council hereby finds, determines and declares that the adoption of this chapter is necessary and proper in order to enforce the Town's noxious weed management plan, and to otherwise provide for the management of noxious weeds within the Town.

5-10-2: DEFINITIONS: In this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Alien Plant"	means a plant species that is not indigenous to the State of Colorado.
"Commissioner"	means the commissioner of the Colorado Department of Agriculture or his or her designee.
"Director"	has the meaning provided in section 9-1-5 of this code.
"Integrated management"	<p>means the planning and implementation of a coordinated program utilizing a variety of methods for managing 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 techniques:</p> <p>(a) "biological management", which means the use of an organism to disrupt the growth of noxious weeds.</p> <p>(b) "chemical management", which means the use of herbicides or plant growth regulators to disrupt the growth of noxious weeds.</p> <p>(c) "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.</p> <p>(d) "mechanical management", which means methodologies or management practices that physically disrupt plant growth, including tilling, mowing, burning, flooding, mulching, hand-pulling, hoeing, and grazing.</p>
"Landowner"	means the owner of record of any public or private real property that is subject to this chapter.
"Management"	means any activity that prevents a plant from establishing, reproducing, or dispersing itself.
"Management objective"	<p>means the specific, desired result of integrated management efforts and includes:</p> <p>(a) "eradication" which means reducing the reproductive success of a noxious weed species or specified noxious weed population in largely uninfected 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.</p>

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

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

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

"Management plan" or "noxious weed management plan"

means the noxious weed management plan development by any person or the Town using integrated management.

"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 are designated as noxious weed by the Town's noxious weed management plan, and which meet one or more of the following criteria:

(a) aggressively invades or is detrimental to economic crops or native plant communities;

(b) is poisonous to livestock;

(c) is a carrier of detrimental insects, diseases, or parasites; or

(d) the direct or indirect of the presence of this plant is detrimental to the environmental sound management of natural or agricultural ecosystems.

"Occupant"

means any person in physical possession of property who is not the owner of such property. For the purposes of this chapter, "occupant" does not include the owner of an easement or right-of-way across property.

"Property"

means any lot, tract or parcel of real property located within the corporate limits of the Town.

"Person"

has the meaning provided in section 1-3-2 of this code.

"Town's Noxious Weed Management Plan"

means the noxious weed management plan adopted by the Town Council pursuant to Section 35-5.5-106(1), C.R.S., as amended from time to time.

"Weed"

means any undesirable plant.

5-10-3: ADOPTION OF TOWN NOXIOUS WEED MANAGEMENT PLAN: The Town's Noxious Weed Management Plan, dated March, 2007, is adopted as the noxious weed management plan of the Town, and is incorporated into this chapter. The noxious weed management plan may be amended from time to time by ordinance duly adopted by the Town Council.

5-10-4: UNLAWFUL ACTS:

A. Except as provided in paragraph C of this section, it shall be unlawful for any person to intentionally introduce, cultivate, sell, or offer for sale any noxious weed designated in the Town's noxious weed management plan.

B. Except as provided in Paragraph C of this section, it shall be unlawful for any person to knowingly allow to grow any noxious weed designated in the Town's noxious weed management plan.

C. The provisions of Paragraphs A and B of this section shall not apply to:

1. research sanctioned by a state or federal agency or an accredited university or college;
2. activities specifically permitted by the commissioner;
3. noxious weed management plans that are part of an approved reclamation plan pursuant to section 34-32-116(7) or 34-32.5-116(4), C.R.S.;
4. noxious weed management activities that are conducted on disturbed lands as part of an approved reclamation plan pursuant to section 34-33-111(1), C.R.S.;
5. noxious weed management activities that are part of activities conducted on disturbed lands pursuant to section 34-60-106(12), C.R.S.; or
6. noxious weeds that are being properly managed in accordance with the rules promulgated by the commissioner.

D. Any person who violates the provisions of this section shall be responsible for the costs associated with remediation of the noxious weeds. In assessing the cost of remediation, the court may include both actual immediate and estimated future costs to achieve specified management objectives. If the Town prevails in any action to enforce this section, the court shall award to the Town its reasonable attorneys' fees and costs incurred in such action.

5-10-5: DUTIES OF LANDOWNERS AND OCCUPANTS:

An affected landowner or occupant whose property may be affected by noxious weeds shall allow the Director to enter such property for the purpose of immediate inspection and eradication of the noxious weeds when at least one of the following events has occurred:

- A. The affected landowner or occupant has requested the inspection;
- B. A neighboring landowner or occupant has reported a suspected noxious weed infestation and requested an inspection; or
- C. The Director has made a visual observation from a public right-of-way or area and has reason to believe that a noxious weed infestation exists.

5-10-6: INSPECTION FOR NOXIOUS WEEDS:

A. Subject to the requirements and limitations of this section, the Director shall have the right to enter upon any premises, lands or places, whether public or private, during reasonable hours for the purpose of inspecting for the existence of noxious weed infestations when at least one of the three circumstances described in section 5-10-5 are present.

B. No agent or employee of the Town shall enter upon any property to inspect for noxious weeds without the permission of the landowner or occupant, or without an inspection warrant issued pursuant to this section.

C. If verbal permission to inspect the property from the affected landowner or occupant is not obtained, the Town shall send written notice to the landowner and any occupant of the property advising that the Director desires to inspect the property for noxious weeds. The notice may be sent to the landowner at the address to which tax notices are sent according to the records of the Summit County treasurer, and to the occupant at the property address. Where possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.

D. If permission to enter upon and inspect the property is not obtained within 10 days after the notice described in Paragraph C of this section has been mailed, the Director may request that an inspection warrant be issued by the municipal court. The municipal court shall issue an inspection warrant upon presentation by the Director of an affidavit satisfying the requirements of Rule 241(b)(2) of the Colorado Municipal Court Rules of Procedure. The municipal court may issue an area-wide inspection warrant pursuant to this section unless otherwise prohibited by law.

E. It shall be unlawful for a landowner or occupant to deny the Director access to the property owned by the landowner or occupied by the occupant if the Director presents an inspection warrant issued pursuant to this section.

#### 5-10-7: TOWN AUTHORITY TO COMPEL ERADICATION OF CERTAIN NOXIOUS WEEDS:

A. The Town may require that any A species noxious weed or B species noxious weed as described in the Town's noxious weed management plan be eradicated by the landowner of the property upon which such weeds are found.

B. The Town shall notify the landowner or occupant of lands upon which A species or B species of noxious weeds as described in the Town's noxious weeds management plan are to be eradicated. Such notice shall be sent to the landowner by certified mail to the address to which tax notices are mailed as shown in the records of the Summit County treasurer, and to the occupant at the property address. The notice shall: (i) name the noxious weeds which are located on the property; (ii) identify eradication as the required management objective; (iii) advise the affected landowner or occupant to commence eradication efforts within a specified period or condition; and (iv) state the integrated weed management techniques prescribed for eradication. Where possible, the Town shall consult with the affected landowner or occupant in the development of a plan for the eradication of noxious weeds on the property.

C. A landowner shall comply with the terms of the notification, or submit to the Director an acceptable plan and schedule for the completion of the management objective within 10 days after the Director mails the notice described in paragraph B of this section.

D. In the event the affected landowner or occupant fails to comply with the notice to eradicate the identified noxious weeds and implement an appropriate eradication program within 10 days after the notice is mailed as described in paragraph B of this section, the Town shall:

1. provide for and complete the eradication of such noxious weeds at such time, upon such reasonable notice, and in such reasonable manner consistent with achieving the management objective as the Director deems appropriate; and
2. assess the whole cost of the eradication, including up to one hundred percent of inspection, eradication, and other incidental costs in connection with eradication, upon the property where the noxious weeds are located. Such assessment shall be a lien against the property until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified by the Town Council to the Summit county treasurer and collected and paid over in the same manner as provided for the collection of taxes. All laws of the State of Colorado relating to the assessment and collection of general taxes shall apply, including the laws for the sale of property for taxes and redemption of property. Any funds collected pursuant to this section shall be utilized in furtherance of the Town's weed management efforts, or for such other purpose as the Town Council shall determine.

E. The Town shall not compel the eradication of the noxious weeds on public or private property pursuant to this section without first applying the same measures to any property or rights-of-way owned or administered by the Town that are adjacent to the property on which the eradication is to be compelled.

F. The Director shall have the right to enter upon any property during reasonable

business hours for the purpose of ensuring compliance with the requirements of this section concerning noxious weed eradication.

**5-10-8: NOXIOUS WEED MANAGEMENT PLAN FOR INDIVIDUAL PROPERTY:**

A. The Director may notify a landowner or occupant of such lands of the presence of noxious weeds on such lands. Said notice shall name the noxious weeds, advise the landowner or occupant to manage the noxious weeds, and specify the best available control methods of integrated management. Where possible, the Town shall consult with the affected landowner or occupant in the development of a plan for the management of noxious weeds on the property.

B. Within a reasonable time after receipt of notification, which at no time shall exceed 10 days, the landowner or occupant shall either:

1. comply with the terms of the notification;
2. acknowledge the terms of the notification and submit to the Director an acceptable plan and schedule for the completion of the plan for compliance; or
3. request an arbitration panel to determine the final management plan.

C. If the landowner or occupant requests an arbitration panel, the panel shall be selected by the Town and shall be comprised of: (i) a weed management specialist or weed scientist; (ii) a landowner of similar property in the Town; and (iii) a third panel member chosen by agreement of the first two panel members. The landowner or occupant shall be entitled to challenge any one member of the panel, and the Town shall name a new panel member from the same category. The decision of the arbitration panel shall be final.

D. In the event the landowner or occupant fails to comply with the notice to manage the identified noxious weeds or implement the plan developed by the arbitration panel, the Town has the authority to:

1. provide for and compel the management of such noxious weeds at such time, upon such reasonable notice, and in such reasonable manner as the Town shall prescribe by ordinance or resolution; and
2. assess the whole cost thereof, including up to twenty percent for inspection and other incidental costs in connection therewith, upon the property where the noxious weeds are located. Such assessment shall be a lien against such property until paid and shall have priority over all other liens except general taxes and prior special assessments. Such assessment may be certified by the Town Council to the Summit county treasurer and collected and paid over in the same manner as provided for the collection of taxes. All laws of the State of Colorado relating to the assessment and collection of general taxes shall apply, including the laws for the sale of property for taxes and redemption of property. Any funds collected pursuant to this section shall be utilized in furtherance of the Town's weed management efforts, or for such other purpose as the Town Council shall determine.

E. The Town shall not provide for or compel the management of noxious weeds on any property pursuant to this section without first applying the same or greater management measures to any property or rights-of-way owned or administered by the Town that are adjacent to the property on which the management is to be compelled.

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

G. The Director shall have the right to enter upon any public or private property during reasonable business hours for the purpose of ensuring compliance with the requirements of this chapter concerning noxious weed management and any other Town requirements.

**5-10-9: MANAGEMENT OF NOXIOUS WEEDS ON PUBLIC LANDS:** Noxious weeds located on lands owned by any state board, department, or agency that administers or supervises state lands shall be subject to the provisions of section 35-5.5-110, C.R.S.

Section 2. Section 1-1-2 of the Breckenridge Town Code is hereby amended by the addition of the following definitions:

"Town" means the Town of Breckenridge, Colorado.  
"Town Council" means the Town Council of the Town of Breckenridge.

Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 5. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to the provisions of Section 35-5.5-106(1), C.R.S (regarding noxious weeds); Section 31-15-401(1)(c), C.R.S. (regarding nuisances); and the powers possessed by home rule municipalities in Colorado.


Section 6. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 27<sup>th</sup> day of March, 2007. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the 10<sup>th</sup> day of April, 2007, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC,  
Town Clerk

  
Ernie Blake, Mayor

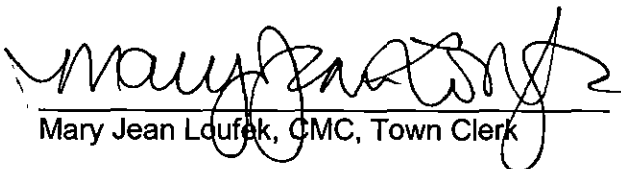
This Ordinance was published in full in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on April 6, 2007.


The public hearing on this ordinance was held on April 10, 2007.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED BY TITLE WITH AMENDMENTS, this 10<sup>th</sup> day of April, 2007. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE

  
Mary Jean Loufek, CMC, Town Clerk

  
Ernie Blake, Mayor

APPROVED IN FORM

  
Town Attorney

4/10/07  
Date

This ordinance was published by title with amendments in the Summit County Journal, a newspaper of general circulation within the Town of Breckenridge on April 20, 2007.