

GILPIN COUNTY ORDINANCE NO. 06-02

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GILPIN
STATE OF COLORADO**

**AN ORDINANCE REPEALING ORDINANCE NUMBER 99-1 AND
ADOPTING THE GILPIN COUNTY WEED MANAGEMENT PLAN 2006**

WHEREAS, pursuant to § C.R.S 35-5.5-101 (known as the Colorado Noxious Weed Management Act) the Board of County Commissioners of the County of Gilpin by Ordinance 99-1, adopted March 9, 1999, adopted a Noxious Weed Management Plan for all of the unincorporated lands with the County of Gilpin; and

WHEREAS, an updated Gilpin County Weed Management Plan 2006 is herein incorporated into this ordinance as attachment A; and

WHEREAS, in order to enforce the provisions of said weed management plan, pursuant to the statutory authority vested in the County under § C.R.S. 35-5.5-101, the Board of County Commissioners has enacted by Ordinance 99-1, procedures for enforcement of the County Weed Management Plan, including, but not limited to, entry upon private lands for the purpose of inspecting for and securing the removal of noxious weeds; and

WHEREAS, pursuant to § C.R.S. 30-15-401(1.5) (A), the Board of County Commissioners has the authority to enact ordinances for the purpose of compelling the removal of weeds from properties within the County, which authority is supplemental to the grant of authority under § C.R.S. 35-5.5-101; and

WHEREAS, it is found that the 2006 Weed Management Plan is in the best interest of the public health, safety, and welfare of the community; and

WHEREAS, the 2006 Weed Management Plan is recommended for adoption by the Weed Advisory Board; and

WHEREAS, nothing set forth in this ordinance shall be construed to be derogation of the powers vested in the Board of County Commissioners under § C.R.S. 30-15-401(1.5) (A) and, the enforcement procedure set forth in the ordinance shall be in addition to authority vested in the County under said statute;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GILPIN, STATE OF COLORADO AS FOLLOWS:

Section 1. Ordinance No. 99-1 is hereby repealed immediately upon final adoption of this Ordinance.

Section 2. The Gilpin County Weed Management Plan, as set forth in Exhibit “A” attached hereto and incorporated herein by this reference, is hereby approved and adopted by the Board of County Commissioners, pursuant to § C.R.S. 35-5.5-105.

Section 3. ENTRY UPON PRIVATE LAND. The County of Gilpin, acting through its delegates, agents, and employees, shall have the right to enter upon any premises, lands or places, public or private, within the unincorporated portions of the County of Gilpin, during reasonable business hours, between 8:00 a.m and 6:00 p.m. for the purpose of inspecting for the existence of noxious weed infestations, when at least one of the following circumstances has occurred:

- a. A landowner or occupant has requested such inspection;
- b. A neighboring landowner or occupant has reported suspected noxious weed infestation and requested such inspection and infestation is visible from the property line; or;
- c. An authorized agent of the County of Gilpin has made visual observation from a generally utilized public right-of-way, easement (whether platted or prescribed) or area, and has reason to believe that a noxious weed infestation exists.

Section 4. NOTIFICATION OF PRIVATE LANDOWNERS.

- a. Notice of inspection: No entry upon any premises, land or places shall be permitted until the landowner or occupant has been notified by certified mail that such an inspection is pending. Whenever possible, inspections shall be scheduled and conducted with the concurrence of the landowner or occupant.
- b. Notice of management requirements and controls: The County of Gilpin shall have the authority, acting directly or indirectly through agents or staff, to notify the landowner or occupant of such lands, advising the landowner or occupant of the presence of noxious weeds. The notice shall specify the noxious weeds, advising the landowner or occupant to manage the noxious weeds, and shall specify the best available control methods of integrated management. Whenever possible, the County, through its designated agent, shall consult with the affected landowner or its occupant in the development of a plan for the management of noxious weeds on the premises or lands.

Section 5. LANDOWNER/OCCUPANT COMPLIANCE. Within a reasonable time after receipt of notification of management requirement and controls which shall not exceed 10 days, a landowner or occupant shall either:

- a. comply with the terms of the notification,
- b. acknowledge terms of the notification and submit an acceptable plan and schedule for completion of the plan for compliance, or
- c. request an arbitration panel established pursuant to section 5 below, to determine the final management plan.

Section 6. ARBITRATION PANEL. Any arbitration panel selected by the County shall be comprised of one weed management specialist, one landowner of similar land in the County of Gilpin, and a third member chosen by agreement of the first two panel members. The landowner shall be entitled to challenge any one member of the panel and the County shall name a new panel member from the same category. The decision of the arbitration panel shall be final and binding.

Section 7. LANDOWNER/OCCUPANT NON-COMPLIANCE. In the event the landowner or occupant fails to comply with the notice of management requirements and controls or to otherwise implement the plan developed by the arbitration panel, the County shall have the following authority:

- a. To provide for and compel the integrated management of such noxious weeds by use of County forces or contractors employed by the County, upon the giving of ten days' written notice by certified mail to the landowner/occupant. Such notice shall be given no less than 10 days prior to the date upon which County shall undertake the action described in this subparagraph (a). The management work can be performed after the 10-day notice has passed, beginning no sooner than ½ hour after sunrise and concluded ½ hour before sunset, for each day of management required.
- b. To commence an action for mandatory injunctive relief in the Gilpin County District Court to enforce the provisions of the ordinance and to compel management of noxious weeds by the landowner/occupant
- c. To declare the noxious weeds a public nuisance, subject to all laws and remedies relating to the prevention and abatement of nuisances. The County may in summary manner or otherwise, take such action including removal or destruction with reference to such nuisance as the Board of County Commissioners in their discretion deem necessary and appropriate.

Section 8. LIEN FOR UNPAID WEED REMOVAL COSTS AND EXPENSES. In the event the County shall compel removal of noxious weeds in accordance with section 6 & 7 above, the whole cost of such enforcement, including 20% for inspection and other incidental costs in connection therewith, shall be assessed to the lot or tract of the land where the noxious weeds are located, provided however, that the County shall not levy any tax lien against land administered by the County as a part of any public right-of-way. The assessment so made shall constitute 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. The assessment may be certified to the Gilpin County Treasurer, and collected and paid over in the same manner as provided for the collection of general property taxes. Any funds collected pursuant to this section shall be deposited in the County's general fund.

Section 9. CONDITIONS PRECEDENT TO ENFORCEMENT OF MANAGEMENT AND CONTROL.

- a. The County shall make no effort to provide for or compel the management of noxious weeds in accordance with section 6 or 7 hereof, without first applying the same or greater management measures to any land or rights-of-way owned or administered by the County, which are adjacent to the private property.
- b. The County 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 described in section 3 hereof, or the management plan developed by the arbitration panel for the specific property, has been achieved.

Section 10. RIGHT OF ENTRY. The County, through its delegates, agents, and employees, upon compliance with applicable notice requirements of this ordinance, shall have the right to enter upon any premises, lands, or places, public or private, within the unincorporated portions of the County of Gilpin, during reasonable business hours, between 8:00 a.m. & 6:00 p.m. for the purposes of ensuring compliance with the requirements of this article concerning noxious weed management and other local requirements.

Section 11. SEVERABILITY. In the event any portion of this Ordinance shall be declared null and void or unenforceable by any court of competent jurisdiction, such offending provision(s) shall be deemed to be deleted from this ordinance provided, however, that the remaining provisions of this Ordinance shall remain in full force and effect and fully enforceable as written.

Section 12. All such noxious weeds, at any stages, their carriers, and any and all premises, plants and things infested are hereby declared to be a public nuisance.

Section 13. In accordance with § C.R.S 35-5.5-107(4)a, the Gilpin County Weed Advisory Board shall review the Plan no less often than once every three years, and shall make recommendations to the Board concerning the continued appropriateness of the Plan.

Section 14. EMERGENCY CLAUSE. The Board hereby finds, determines, and declares that this Ordinance is necessary for the immediate preservation of the health, safety, and welfare of the citizens of Gilpin County, and is hereby declared an emergency ordinance and shall take effect immediately after adoption.

ADOPTED THIS _____ day of _____, 2006 by a vote of _____ to_____.

Forrest Whitman, Chair

Attest:

Deputy County Clerk

Approved as to Form:

James Petrock, County Attorney

CERTIFICATION OF THE COUNTY CLERK

Jessica Lovingier, Gilpin County Clerk, hereby certifies that the foregoing ordinance was adopted by the Board of County Commissioners on the _____ day of _____, 2006 at a regularly scheduled meeting of the Board of the County Commissioners, after a first reading on the _____ day of _____, 2006, at _____ a.m., at a regularly scheduled meeting of the Board of County Commissioners at the Gilpin County Courthouse, Central City, Colorado and that said ordinance was published in full in the *Weekly Register Call* at least ten (10) days prior to final adoption.

Sharon Cate, Gilpin County Deputy Clerk