

ORDINANCE NO. 3864

AN ORDINANCE AMENDING CHAPTER 16, ARTICLE II, JUNK, RUBBISH AND WEEDS, OF THE CODE OF ORDINANCES, CITY OF GRAND JUNCTION, SPECIFICALLY SECTION 16-26, DEFINITIONS; SECTION 16-27, DUTIES OF PROPERTY OWNER AND LESSEE, UNLAWFUL ACCUMULATIONS, INSPECTIONS; SECTION 16-30, NOTICE TO ABATE; CUTTING, REMOVAL BY CITY; SECTION 16-31, ASSESSING COSTS; AND SECTION 16-33, COLLECTION OF ASSESSMENTS

RECITALS:

The existing Section 16-26 (Definitions) includes the definition of a "Weed" and specifically includes "five designated undesirable plants known commonly as leafy spurge, purple loosestrife and diffuse, russian and spotted knapweed." Because of the growing number of infestations of plants considered noxious and invasive by the State of Colorado, it is recommended that we discontinue use of a specific name list of weeds and reference the species list updated and maintained by the Colorado Department of Agriculture.

The existing Section 16-27 (Duties of Property Owner and Lessee; unlawful accumulations; inspections,) currently exempts owners of agricultural lands from the requirement of maintaining a weed-free perimeter between the property line of such land and the center of any adjacent right-of-way, with the exception of keeping weeds down or cut within twenty (20') feet of any adjacent tract, parcel or area on which weeds are being kept down or cut. It is recommended that the ordinance include such owners of agricultural lands in the requirements of Section 16-27(a)(1) and (2).

The existing Section 16-30 (Notice to abate; cutting; removal by City), the City is authorized to give notice to any owner or lessee of any lot, tract or parcel who has failed to remove weeds, brush, junk or rubbish, that they are not in compliance with this article. Such notice shall request the owner or lessee to become compliant with the terms of the notification, and either acknowledge the notification and submit a management plan or request an administrative hearing with the City no later than ten (10) days after they have received such notice. It is recommended that this time period for requesting an administrative hearing be shortened to seven (7) days.

The existing Section 16-31 (Assessing costs) currently allows a 25% administrative charge to be made by the City against the non-compliant owner or lessee for administrative, supervision and inspection costs. It is recommended that additional penalty fines, for repeated or subsequent offenses, be authorized in the ordinance.

Other minor grammatical and formatting changes are also recommended to these sections to accommodate the more substantive proposed changes, and to improve the content and clarity of the article.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

1. That Section 16-26 of the Code of Ordinances is amended so that the definition of "Weed" shall now read:

Weed means an unsightly, useless, troublesome or injurious herbaceous plant and such plant as is out of place at the location where growing, and includes all rank vegetable growth which exudes unpleasant or noxious odors, and also high and rank vegetable growth that may conceal filthy deposits. This includes, but is not limited to, any plant species designated in the categories described in Section 35-5.5-108 (2)(a) C.R.S. Plant species described in Section 35-5.5-108 C.R.S. are maintained by the Colorado Department of Agriculture.

2. Section 16-27 (Duties of property owner and lessee; unlawful accumulations; inspections) of the Code of Ordinances is amended to read:

(a) (1) It shall be the duty of each and every owner and each and every lessee of any tract or parcel of real property in the City, including such owners or lessees of agricultural lands (as defined in Section 39-1-102 (1.6)(a) C.R.S. to keep the property free of junk and rubbish, to cut to within three (3) inches of the ground all weeds and brush exceeding six (6") inches in height, including puncture vine regardless of height, and to keep such growth down on each lot or tract of ground on or along any street or avenue adjoining such lot or tract between the property line and the curb line thereof, and on or along any alley adjoining such lot or tract between the property line and the center of such alley;

(2) The requirements of (1), above, shall not apply to undeveloped lands over one acre in size, instead, such owners or lessees of such lands shall be required to keep weeds down or cut between the property line of such land and the center of any adjacent right-of-way and shall be required to keep the weeds down or cut within twenty feet (20') feet of any adjacent tract, parcel or area on which the weeds are kept down or cut, and within forty (40") feet of any adjacent right-of-way(s), as provided or required in (1) above or as otherwise set forth in this chapter.

(3) Notwithstanding any language to the contrary in (1) and (2), above, every owner and every lessee of any tract or parcel, whether or not agricultural or undeveloped, shall remove and cut designated undesirable plants from such property.

3. Section 16-30 (Notice to abate; cutting, removal by City) of the Code of Ordinances is amended to read:

(a) In case of the failure of any owner or lessee of any lot, tract or parcel of land to cut and remove weeds, brush, junk or rubbish, as provided in this article, and upon the election of the City to remove such weeds, brush, junk or rubbish, the City Manager is authorized to give notice by certified mail addressed to the last-known post office address of the owner of such land as that address appears in the records of the county recorder. Such notice shall require:

- (1) Compliance with the terms of the notification;

- (2) Acknowledgment by the addressee of the notification and submission to the City Manager of an acceptable plan and schedule for the completion of a management plan; or
- (3) A request from the addressee for an administrative hearing of which the City must receive on or before the close of business of seven (7) calendar days from the date of the notice.

If such election is not made within seven (7) calendar days from the date of the notice, or the land owner or occupant otherwise fails to comply with the notice, the City may then proceed to enforce a management plan, which may include, but not be limited to, cutting of such weeds and brush or removal of junk and/or rubbish.

(b) A management plan shall be prepared by the City and shall include, but not be limited to, a document containing the signatures of the owner and the lessee, if the owner is not in actual possession of the property, a mutually agreed upon date for elimination or removal of weeds, brush, junk and/or rubbish, and a bond, cash deposit or other acceptable form of security payable to the City in an amount reasonably calculated to approximate the cost of cleanup, and/or to secure performance of the management plan.

(c) An administrative hearing, if requested by the party in interest, shall be specific as to the condition of weeds, brush, accumulated junk and/or rubbish, and evidence shall be heard by the duly appointed board as to these matters only. Statements and evidence, if offered, shall be taken from all parties in interest, which evidence must be relevant to the existence of and/or the removal or elimination of the infestation of weeds, brush and/or the accumulation of junk and/or rubbish. The board shall make findings of fact from the evidence presented at the hearing as to whether the conditions complained of exist and should be eliminated. If the board determines that weed or brush infestation exists or if an accumulation of junk and/or rubbish exists and should be cut or removed, the City Manager may issue an order based on the findings of the board, directing that the infestation or accumulation be removed or eliminated. The order of the City Manager shall be a final decision and may only be appealed to the district court, pursuant to Colorado rule of civil procedure 106(a)(4). Failure of a party in interest to timely file an appeal constitutes a bar and a waiver of any right to contest the City's right to eliminate or remove the weeds, brush, junk and/or rubbish from the property and charge the resulting costs against the person and/or the property. The City, through its agents or employees, shall have the right to enter upon any premises, lands or places, whether public or private, during reasonable business hours for the purpose of ensuring compliance with the requirements of this article. If an order of the City Manager has not been complied with within 30 days after its issuance, the City, at the discretion of the City Manager or his designee, may cause the elimination or removal of the infestation of weeds or brush and/or the removal or elimination of accumulated junk and/or rubbish. Any owner, lessee or other party in interest who fails to comply with an order issued by the City Manager or his designee is hereby obligated to pay administrative costs and expenses incurred in the elimination or removal of the conditions complained of. Such administrative costs shall include the cost of removal or elimination, legal costs and fees, and administrative fees which are occasioned by enforcement of this article. All costs are independent of any other penalties or powers of enforcement of the City.

(d) No agent or employee of the City 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 section except when such damages were willfully or deliberately caused by the landowner or occupant.

4. Section 16-31 (Assessing costs) of the Code of Ordinances is amended to read:

Upon completion of the cutting work done by City forces and/or the City's designee under this article, charges shall be made against the owner of the property on which weeds were cut. The charges shall be the City's actual costs for labor, equipment and materials plus an administrative penalty of fifty dollars (\$50) for the first cutting, one hundred dollars (\$100) for the second cutting and one hundred fifty dollars (\$150) for the third and subsequent cutting(s) within five years, plus a 25 percent (25%) surcharge for supervision and inspection.-The City Manager may set a minimum labor, equipment and material charge for cutting operations of less than one hour.

INTRODUCED for FIRST READING and PUBLICATION this 18th day of January, 2006.

PASSED and ADOPTED on SECOND READING this 1st day of February, 2006.

President of the Council

/s/: Bruce Hill
Bruce Hill, Mayor

Attest:

/s/: Stephanie Tuin
Stephanie Tuin, City Clerk