

**ORDINANCE NO. 10
SERIES 2017**

**AN ORDINANCE REPEALING AND REENACTING SECTION 5-1-6 OF
THE VAIL TOWN CODE, CONCERNING NOXIOUS WEED
MANAGEMENT AND ENFORCEMENT**

WHEREAS, pursuant to C.R.S. §§ 35-5.5-106 and 31-15-401, and its home rule authority, the Town is empowered to regulate the presence, management and control of noxious weeds on any lands under its jurisdiction, to declare the existence of any such noxious weeds as a public nuisance, and to provide for and compel the removal of such noxious weeds;

WHEREAS, the Town Council hereby finds and declares that noxious weeds are a present threat to the economic and environmental value of the lands within the Town's jurisdiction;

WHEREAS, the Town Council desires to manage and control the spread and proliferation of noxious weeds through implementation of a coordinated program utilizing a variety of methods for the eventual removal of noxious weeds through their eradication and to promote desirable plant communities; and

WHEREAS, the Town Council finds that the public health, safety and welfare will be served by requiring the removal of noxious weeds from property within the Town and by the adoption of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

Section 1. Section 5-1-6 of the Vail Town Code is hereby repealed in its entirety and reenacted to read as follows:

5-1-6: NOXIOUS WEED MANAGEMENT AND ENFORCEMENT.

A. Definitions. For purposes of this Section, the definitions set forth in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103, are hereby adopted to the extent they do not conflict with the following definitions, and the following terms shall have the following meanings:

Management Plan means the Noxious Weed Management Plan adopted by the Local Advisory Board.

Noxious weed means an alien plant or parts of an alien plant that have been designated by rule by the Commissioner of the Colorado Department of Agriculture or the Colorado Department of Agriculture as being noxious and plants declared to be noxious weeds by the Local Advisory Board.

Property means any real property located within the Town.

Public Works Director means the Public Works Director or designee.

B. Local Advisory Board. The Town Council shall be the Local Advisory Board for noxious weed control. A majority of the members of the Board shall constitute a quorum. The voting rules for the Local Advisory Board shall be the same as for the Town Council. The Local Advisory Board may adopt, amend and update the Management Plan by resolution.

C. Management Plan. The Local Advisory Board has adopted the Management Plan. The Public Works Director shall maintain the Management Plan and make it available for public inspection.

D. Plants declared noxious weeds: All plants which are declared noxious weeds are named and described in the Management Plan. The Local Advisory Board may designate additional plants not otherwise named and described in the Management Plan that aggressively invade or are detrimental to economic crops, livestock, wildlife or native plant communities or are carriers of detrimental insects, diseases, allergens or parasites for eradication and management within the Town.

E. Declaration of nuisance: All plants declared noxious weeds by the Town are declared to be a public nuisance.

F. Duty to manage. 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 through elimination of such noxious weeds from such property. Elimination and removal of noxious weeds shall be in accordance with the Management Plan and C.R.S. § 35-5.5-108.5.

G. Violation and penalty.

1. It is unlawful for any person to violate any provision of this Section or the Colorado Noxious Weed Act.

2. A violation of this Section shall be subject to the penalty set forth in Section 1-4-1, in addition to any other remedies provided herein or allowed by ordinance, law, rule or regulation. Each day of violation shall be a separate offense.

H. Abatement.

1. Identification and inspection.

a. The Town may enter any property to inspect for the existence of noxious weeds when at least one (1) of the following has occurred:

(1) The property owner or occupant has requested an inspection;

(2) A neighboring resident has reported a suspected noxious weed infestation and requested an inspection;

(3) The Public Works Director 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

(4) The Public Works Director 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 property is required to investigate the existence of noxious weeds, the inspection may be scheduled at any reasonable time upon the consent of the property owner or occupant. A property owner shall be notified of a pending inspection by certified mail at the address of record with the County Assessor's Office at least ten (10) days prior to such inspection. If, within ten (10) days of the notice, the property owner or occupant fails to respond or otherwise denies access, the Town may seek an inspection warrant issued from the Municipal Court pursuant to C.R.S. §§ 35-5.5-108.5(5)(b)(I) or 35-5.5-109(2)(b).

2. Notice of eradication. If the Public Works Director finds noxious weeds upon inspection, the Public Works Director shall issue a notice of eradication to the property owner, which shall be sent by certified mail to the address of record with the County Assessor. The notice of eradication shall name the noxious weeds, shall identify eradication as the required management objective, shall advise the property owner to commence eradication efforts with a specified time, shall state the integrated noxious weed management techniques prescribed in the Management Plan and shall advise the property owner that, within five (5) days from the date of the notice of eradication, the property owner must submit a plan and schedule acceptable to the Public Works Director.

3. Eradication. Within five (5) days after the date of the notice of eradication, the property owner shall comply with the terms of the notification of eradication or shall submit a plan and schedule which is acceptable to the Town for the completion of the management objective. An essential component of the plan shall be to eradicate noxious weeds prior to the seasonal time in which such noxious weeds create and disburse seeds or otherwise spread or propagate.

6. Abatement action. If no voluntary abatement is achieved, the Town Attorney may file a nuisance abatement action pursuant to Section 5-1-14, in any court of record, including the Municipal Court.

7. Recovery of abatement costs. Pursuant to C.R.S. § 35-5.5-109, the Town may assess one hundred percent (100%) of the cost of eradication and abatement, including up to twenty percent (20%) of inspection and other incidental costs, including without limitation administrative and legal costs. In addition, the Town may assess an additional five percent (5%) of the whole costs of eradication and abatement as an administrative fee. Any such assessment shall be a first and prior lien on the property and may be certified to the County Treasurer, who shall collect the assessment in the same manner as other taxes.

Section 2. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3. The Town Council hereby finds, determines, and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town and the inhabitants thereof.

Section 4. The amendment of any provision of the Vail Town Code in this ordinance shall not affect any right which has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision amended. The amendment of any provision hereby shall not revive any provision or ordinance previously repealed or superseded unless expressly stated herein.

Section 5. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING this 1st day of August, 2017, and a public hearing for second reading of this Ordinance is set for the 15th day of August, 2017, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk

READ AND APPROVED ON SECOND READING AND ORDERED PUBLISHED
this ____ day of _____, 2017.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk