



## **BOARD SUMMARY REPORT**

**Date:** November 23, 2020

**To:** Board of County Commissioners

**Through:** Jan Yeckes, Planning Division Manager

**Through:** Caitlyn Cahill, Zoning & Animal Services Manager

**From:** Russell Johnson, Weed Control Specialist

**Subject:** Weed Control Ordinance – First Reading and Set Hearing Date

### **Request and Recommendation**

The purpose of this General Business Item is to introduce and conduct the first reading of proposed Ordinance No. 2021-01 and to request the Board to approve a resolution to set a public hearing for January 12, 2021, at 9:30 a.m., to consider the adoption of the proposed Ordinance.

The proposed Ordinance, if approved, would amend and restate the existing County Weed Control Ordinance No. 2001-02 to allow for regulation of weeds on lots up to two acres in size zoned for residential, commercial and industrial purposes, including those zoned by Planned Unit Development (PUD).

In accordance with CRS 30-15-406, staff requests that the Board set this proposed Weed Control Ordinance for consideration and possible adoption at a public hearing on January 12, 2021, and recommends that the Board approve a resolution in the form attached to this Board Summary Report to set said public hearing, with direction to publish the full text of the proposed Ordinance and notice of the hearing date no less than ten days prior to the established hearing date.

### **Background**

In July of 2019, during a study session to discuss various property maintenance challenges, staff was provided guidance to pursue an update to the County's existing Weed Control Ordinance, County Ordinance 2001-02, which applies only to lots up to one acre in size and zoned for residential purposes. Since its adoption in 2001, numerous limitations have been identified that the proposed ordinance seeks to address.

Staff prepared a proposal to expand the provisions of the weed control ordinance to include lots up to two acres in size and to add properties zoned for commercial and industrial uses, in addition to lots zoned for residential uses, including those zoned by PUD. On November 17, 2020, the BOCC held a study session and provided direction to staff to schedule the first reading of the ordinance for December 8, 2020, at which time a future public hearing date would also be set.

**Links to Align Arapahoe**

Quality of Life - Fostering a safe and vibrant County for residents, businesses and employees to live happy, healthy lives and to protect property values by providing a mechanism for ensuring that properties are well maintained.

Service First - Delivering reliable, timely and accessible county services that ensure a positive customer experience.

**Discussion**

Since the inception of Ordinance 2001-02, numerous parcels have come to the attention of staff and the BoCC as being a nuisance or public health hazard to the residents of Arapahoe County. These parcels were either zoned commercial or in excess of one acre in size and therefore were exempt from regulation by the existing ordinance. While these parcels were not in violation of the ordinance at the time, they could be classified as a public health hazard or nuisance to the residents of Arapahoe County.

Staff began to look at changes that could be made to the ordinance that would regulate these parcels while still maintaining the existing exemptions to agricultural and rural residential (large lot) properties, as well as exemptions for open spaces and floodplains. After much discussion, staff is comfortable that these changes will address the complaints on previously exempt parcels that are received on an annual basis. While there are properties within the urban/suburban areas that exceed two acres in size, larger commercial and multi-family developments, parcels assembled into larger tracts for redevelopment, and the occasional single-family residential lots that exceed a two-acre lot size within the urbanized areas do not seem to be the generators of complaints.

**Alternatives**

1. Following the first reading of the draft ordinance, schedule a public hearing for consideration and possible adoption of the on the proposed Ordinance in accordance with statutory procedures for adoption of an ordinance. *Staff recommends a hearing date of January 12, 2021.*
2. Deny the request to schedule a public hearing and direct staff to continue operating under the 2001-02 ordinance of record. The ordinance would continue to apply only to residentially zoned properties up to one acre in size and would not apply to commercial or industrial lots.
3. Continue the request to set a public hearing date on the proposed Ordinance to a future date and time.

**Fiscal Impact**

Staff estimates that the change to the ordinance would result in increase of 10-20 weed ordinance violations on annual basis. Currently, staff handles 200-300 weed violations, so the impact to existing workloads would be minimal. It is further estimated that 1-5 of these additional weed

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violations would result in enforcement action where those expenditures would then be recouped through the established assessment process.

**Actions Requested:**

That the Board of County Commissioners facilitate the first reading of the proposed Weed Control Ordinance and set a public hearing date of January 12, 2021.

**Concurrence**

The Planning Division is in favor of these changes to the ordinance.

**Reviewed By**

Russell Johnson, Weed Control Specialist

Caitlyn Cahill, Zoning and Animal Services Manager

Jan Yeckes, Planning Division Manager

Robert Hill, Senior Assistant County Attorney

Bryan Weimer, Director of Public Works and Development

Todd Weaver, Director, Finance Department

**FIRST READING OF A PROPOSED ORDINANCE**

**ARAPAHOE COUNTY, COLORADO**

**ORDINANCE NO. 2021-01**

**AN ORDINANCE SETTING FORTH ARAPAHOE COUNTY POLICIES AND PROCEDURES REGULATING THE ACCUMULATION OF WEEDS AND BRUSH ON COMMERCIAL AND RESIDENTIAL LOTS OF TWO ACRES OR LESS, PROVIDING FOR THE REMOVAL THEREOF; AND PROVIDING PENALTY PROVISIONS FOR VIOLATIONS AND ENFORCEMENT PERTAINING THERETO.**

WHEREAS, pursuant to Section 30-15-401(1)(I.5), COLO. REV. STAT., the Board of County Commissioners of Arapahoe County ("Board") has the power to adopt ordinances to provide for and compel the removal of weeds and brush from lots and tracts of property and from alleys behind and sidewalk areas in front of such properties within the unincorporated territory of the County, including the authority to provide for and compel the removal of weeds and brush from residentially and commercially zoned lots of two acres or less; and

WHEREAS, the Board finds the accumulation of weeds on residential property and commercial lots of two acres or less is a public health hazard and/or a public nuisance; and

WHEREAS, the Board also finds that in order to preserve the public peace, health, safety, and welfare of the citizens of Arapahoe County, the following Ordinance should be adopted.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Arapahoe County as follows:

**SECTION I. INTENT**

The Board finds, determines, and declares that the accumulation of weeds on property is a public health hazard and a public nuisance in that such accumulations depreciate property values in the neighborhood, create a health and fire hazard, and encourage the proliferation of pests and rodents and that the regulation of weeds is necessary to protect the health, safety, and welfare of the residents of Arapahoe County.

**SECTION II. DEFINITIONS**

As used in this Ordinance, the following words are defined as follows:

- A. "Board" means the Board of County Commissioners of Arapahoe County, Colorado.
- B. "Commercial Lot" means any lot zoned for non-residential uses, including those zoned as Planned Unit Developments, regardless of actual land use, which is two acres or less in size and which is not agricultural land as defined in C.R.S. 39-1-102(1.6).

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- C. "Director" means the Director of the Arapahoe County Department of Public Works and Development.
- D. "Lot" means a parcel of land occupied or designed to be occupied by a main building. A lot may or may not be shown as a lot on a duly recorded plat. A lot includes a tract or other area of property shown on a recorded plat, such as for drainage facilities or other public use purposes, or otherwise held as common interest property under Colorado law.
- E. "Property Owner" means the owner of records, as shown by the tax rolls of Arapahoe County and/or the records of the County Clerk and Recorder of Arapahoe County, of any real property to which this Ordinance applies.
- F. "Residential Lot" means any lot zoned for residential uses, including PUD zoned lots, regardless of actual land use, which is two acres or less in size.
- G. "Weeds" means any unsightly, useless, troublesome, or injurious plant, including grasses and/or all vegetation which has grown to maturity or to a height in excess of six (6) inches, including but not limited to, Field Bindweed, Leafy Spurge, Canada Thistle, Russian Knapweed, Perennial Sowthistle, Puncturevine, Silver-leaf Povertyweed, Mouseear Povertyweed, Fanweed, Mustards, Purple-flowered Groundcherry, Russian Thistle, Fireweed, Redroot Pigweed, Smooth Pigweed, Prostrate Pigweed, Sandbur, Hairy Stickseed, Buffaloburs, White Horsenettle and Carolina Horsenettle, Common Ragweed, cocklebur, and dandelion. This definition shall not include flower gardens, shrubberies, vegetable gardens, small grain plots, successional grasses utilized for erosion control, and pastures used for feed, fodder, or forage, provided the same are adequately weeded and maintained.
- H. "Zoning Administrator" means the Arapahoe County Zoning and Animal Services Manager or designated agent.

**SECTION III. APPLICABILITY**

This Ordinance shall apply to residential and commercial lots, as defined herein, within the unincorporated areas of Arapahoe County, and within any incorporated municipality in Arapahoe County that consents to the application of this Ordinance within the municipality, and to the alleys behind and the sidewalk areas in front of such properties. This Ordinance shall not apply to any property zoned as:

Obsolete Zoning Districts

RR-C (Rural Residential C)

Current Zoning Districts

A-E (Agricultural)  
A-1 (Agricultural)  
RR-A (Rural Residential A)  
RR-B (Rural Residential B)  
C (Cultural)  
O (Open)  
F (Floodplain)

Nor shall this Ordinance apply to land currently in agricultural use as is defined in Section 39-1-102(1.6), as amended.

**SECTION IV. CUTTING AND REMOVAL OF WEEDS REQUIRED**

Residential and commercial lot property owners shall cut, or cause to be cut, all weeds growing on their lots and remove or cause the removal of the cut weeds to a legal refuse disposal site. It shall be unlawful for any person to violate the provisions of this Section.

**SECTION V. WEED REMOVAL PROCEDURES**

A. Upon information received of a complaint by Arapahoe County staff, the Zoning Administrator shall investigate said complaint to insure compliance with this Ordinance. If the Zoning Administrator determines weeds exist in violation of this Ordinance, prior to initiating the procedures set forth in this Ordinance to bring such property into compliance, the Zoning Administrator shall cause to have posted for a period of ten (10) days upon such property a placard containing a Notice of Violation in substantially the following form:

TO THE OWNERS OF THE FOLLOWING DESCRIBED PROPERTY:  
(Property Description)

NOTICE IS HEREBY GIVEN THAT THERE EXISTS UPON THIS PROPERTY ACCUMULATIONS OF WEEDS WHICH MUST BE REMOVED AND DISPOSED OF IN ACCORDANCE WITH THE PROVISIONS OF ARAPAHOE COUNTY ORDINANCE NO. 2021-01.

NOTICE IS FURTHER GIVEN THAT, UNLESS SUCH WEEDS ARE REMOVED AND DISPOSED OF WITHIN FIFTEEN DAYS FROM \_\_\_\_\_, THE BOARD OF COUNTY COMMISSIONERS SHALL CAUSE THE SAME TO BE REMOVED AND DISPOSED OF, IN WHICH EVENT THE OWNERS OF THIS PROPERTY SHALL BE LIABLE FOR THE COST OF REMOVAL THEREOF AS SET FORTH IN THE ABOVE ORDINANCE.

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By: \_\_\_\_\_  
Zoning Administrator of  
Arapahoe County, Colorado

B. In addition to the posting of the placard on the subject property, the Zoning Administrator shall serve on the property owner, by registered or certified mail, return receipt requested, a copy of the Notice of Violation as set forth on the placard. This Notice shall be mailed to the property owner's address as shown on the tax rolls of Arapahoe County, and at the discretion of the Zoning Administrator, any additional address which the Zoning Administrator deems appropriate.

C. Failure to Receive Notice. A property owner's failure to receive any Notice of Violation provided for in this Ordinance shall not invalidate any proceedings under this Ordinance.

D. Extension of Time. The Zoning Administrator, at his or her discretion, may grant a reasonable extension of time to effect the removal of the weeds if the request for extension is received within the time period for removal set forth in the Notice of Violation. Any extension as may be granted herein shall not exceed an additional fourteen (14) day duration.

**SECTION VI.**

A. Failure to Comply with the Notices - County Action. If the weeds are not removed within the time specified in the aforementioned Notices or upon expiration of any extensions of time granted by the Zoning Administrator, the Zoning Administrator is authorized and empowered to request appropriate County personnel or an approved private contractor to enter upon the subject property and remove the weeds.

B. Administrative Search Warrants. If the Zoning Administrator is denied access to a property which has an accumulation of weeds prohibited under this Ordinance, application for an administrative entry and seizure warrant for the removal of such weeds may be made with the Arapahoe County Court or the Arapahoe County District Court. The Arapahoe County Attorney's Office shall provide representation of the County in such matter. The application for administrative entry and seizure warrant shall include a sworn affidavit stating the factual basis for such warrant, evidence that the property owner has received notice of the weed violation and has failed to remove the weeds within fifteen (15) days of the date of such notice, a general description of the location of the property in question, and the proposed disposal of such weeds. The administrative entry and seizure warrant shall be executed by the Zoning Administrator within ten (10) days of the date of issuance. A copy of such warrant shall be provided or mailed to the property owner, and proof of the execution of such warrant shall be filed with the court.

C. Employment of Private Contractors. The Zoning Administrator is authorized to employ private contractors with the approval of the Director to remove the weeds. The cost of removal by a private contractor shall be paid by the County upon receipt of an invoice approved by the Zoning Administrator and countersigned by the Director.

D. Statement and Notice of Costs. Whenever any costs are incurred by Arapahoe County in causing the removal of any weeds, the Zoning Administrator shall cause a statement to be prepared showing the total costs of the removal, including an additional ten (10) percent for inspection and other incidental costs in connection with their removal. The Zoning Administrator shall serve the statement on the property owner by registered or certified mail, return receipt requested, at the property owner's address as shown by the Arapahoe County tax rolls, and at the discretion of the Zoning Administrator, any additional address which he or she deems appropriate. The statement shall notify the property owner that weed removal work has been performed pursuant to this Ordinance, state the date the work was performed, the nature of the work performed, and instruct the property owner to pay the statement in full within thirty (30) days of the date set forth therein.

E. Appeals from the Zoning Administrator's Actions - Assessment of Costs. The aforementioned statement in subsection D above shall also notify the property owner that any complaints or objections relating to the statement of costs shall be made in writing by the property owners to the Director with a copy submitted to the Zoning Administrator within fifteen (15) days from the date set forth in the statement of costs. Said statement shall reflect that any appeal, if taken, will be heard and determined by the Director at a hearing prior to the adoption of any resolution by the Board assessing the cost of such work. All property owners filing timely written requests for a hearing shall be advised of the time and place of their hearing before the Director at least ten (10) days in advance of said hearing.

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At the hearing, the Director shall consider all complaints and objections relating to the statement of costs, may make such modifications as may be deemed equitable and just, or may confirm the statement of costs. The Director's decision and findings shall be transmitted to the Board of County Commissioners. The Board shall thereupon, by resolution, assess the cost of the work against the real property from which weeds have been removed. The property owner shall be given thirty (30) days to pay the costs after the assessment resolution is adopted. If the assessment is not paid within such time, the Clerk to the Board of County Commissioners shall certify the amount of assessment due to the Arapahoe County Treasurer.

In the event an appeal is not filed by a property owner and payment of the assessment has not been received, the Zoning Administrator shall submit to the Board of County Commissioners the statement of costs after thirty (30) days have elapsed from the initial billing date. The Board shall thereupon by resolution assess the cost of work against the real property from which weeds have been removed.

**SECTION VII. COLLECTION OF THE ASSESSMENT - LIEN ON PROPERTY**

A. Collection of Assessment. Following adoption of the assessment resolution, the Clerk to the Board of County Commissioners shall certify the same to the County Treasurer who shall collect the assessment, together with an additional ten (10) percent penalty for the cost of the collection, in the same manner as other taxes are collected. The laws of this State for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of the assessments.

B. Assessment Deemed Lien - Priority. Any assessment made pursuant to this Ordinance shall constitute, from the effective date of the assessment resolution, a lien in the several amounts assessed against the real property on which the weeds were removed until paid and shall have priority over all other liens except general taxes and prior special assessments.

**SECTION VIII. PENALTY FOR VIOLATIONS**

Any person who violates this Ordinance commits a Class 2 Petty Offense and upon conviction thereof shall be punished by a fine of five hundred dollars (\$500.00) for the first offense, seven hundred and fifty dollars (\$750.00) for the second offense, and one thousand dollars (\$1,000.00) for a third and any subsequent offense. The penalty assessment procedures set out in § 16-2-201, C.R.S., may be followed in enforcing this Ordinance. In addition to the penalties prescribed above, persons convicted of a violation of this Ordinance shall be subject to a surcharge of ten dollars (\$10) that shall be paid to the clerk of the court by the defendant as provided by § 30-15-402(2)(a), C.R.S.

## **DRAFT MOTIONS – PROPOSED WEED CONTROL ORDINANCE**

### **SET PUBLIC HEARING DATE:** *This action is recommended by staff*

Proposed Ordinance No. 2021-01, amending and restating the Arapahoe County policies and procedures regulating the accumulation of weeds and brush on commercial and residential lots of two acres or less, providing for the removal thereof, and providing penalty provisions for violations and enforcement pertaining thereto, being first introduced and read at this regular public meeting of the Arapahoe County Board of County Commissioners, I hereby move to **schedule a public hearing date for January 12, 2021, at 9:30 a.m., in the East Hearing Room of the Arapahoe County Administration Building, 5334 S. Prince St., Littleton, CO 80120 and direct staff to publish the full text of such proposed Ordinance and notice of the hearing in a newspaper of general circulation as provided by law.**

### **Alternate Motions**

**Retain Current Weed Control Ordinance:** *This motion would not be consistent with the staff recommendation*

Proposed Ordinance No. 2021-01, amending and restating the Arapahoe County policies and procedures regulating the accumulation of weeds and brush on commercial and residential lots of two acres or less, providing for the removal thereof, and providing penalty provisions for violations and enforcement pertaining thereto, being first introduced and read at this regular public meeting of the Arapahoe County Board of County Commissioners, I hereby move that the proposed Ordinance not be scheduled for public hearing and the County will retain Ordinance 2001-02 as currently in effect.

**Continue the First Reading and Setting a Public Hearing Date to a Future Date:**

Proposed Ordinance No. 2021-01, amending and restating the Arapahoe County policies and procedures regulating the accumulation of weeds and brush on commercial and residential lots of two acres or less, providing for the removal thereof, and providing penalty provisions for violations and enforcement pertaining thereto, being first introduced and read at this regular public meeting of the Arapahoe County Board of County Commissioners, I hereby move to continue the setting of a date for the public hearing on the proposed Ordinance to January 12, 2021.