CHAPTER 4.1-47
NOXIOUS WEED CONTROL

4.1-47-01. Definitions.

As used in this chapter:

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.
2. "City weed control officer" means an individual designated by a city weed board to be responsible for the operation and enforcement of this chapter within the city.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
4. "Control" means to prevent a noxious weed from spreading by:
   a. Suppressing its seeds or propagating parts; or
   b. Destroying either the entire plant or its propagating parts.
5. "County weed control officer" means an individual designated by the county weed board to be responsible for the operation and enforcement of this chapter within each county.
6. "Noxious weed" means a plant propagated by either seed or vegetative parts and determined to be injurious to public health, crops, livestock, land, or other property by:
   a. The commissioner in accordance with section 4.1-47-05;
   b. A county weed board in accordance with section 4.1-47-10; or
   c. A city weed board in accordance with section 4.1-47-21.
7. "Township road" means an improved public road that is:
   a. Located outside of an incorporated city;
   b. Not designated as part of a county, state, or federal aid road system; and
   c. Constructed, maintained, graded, and drained by the township, or by the county if the township is unorganized.

4.1-47-02. Control of noxious weeds.

1. Each person shall do all things necessary and proper to control the spread of noxious weeds.
2. No person may distribute, sell, or offer for sale within this state a noxious weed.

4.1-47-03. Noxious weed control - Agriculture commissioner - Powers.

The commissioner may enter upon any land in the state to perform duties and to exercise powers under this chapter, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

4.1-47-04. Noxious weed control - Agriculture commissioner - Duties.

The commissioner shall:

1. Maintain a state noxious weed list;
2. Direct the removal of a noxious weed from a county or city noxious weed list if the commissioner, after consultation with the respective weed board and the North Dakota state university extension service, determines there is insufficient justification for the continued inclusion of that particular noxious weed;
3. Except as otherwise provided, forward all complaints to the proper weed control authority; and
4. Call an annual meeting of all weed control officers to review noxious weed control efforts in this state.

4.1-47-05. State noxious weed list - Compilation.

1. Before the commissioner may add a weed to or remove a weed from the state noxious weed list, the commissioner shall consult with the North Dakota state university extension service.

2. Before January 1, 2010, and at least every five years thereafter, the commissioner shall review the state noxious weed list. The commissioner shall provide each county and city weed board with at least fourteen days' notice of the time and place at which the list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide each county and city weed board with written notice of any changes to the state noxious weed list.

4.1-47-06. County weed board - Members - Terms - Compensation.

1. Each board of county commissioners shall:
   a. Establish contiguous county weed board member areas; or
   b. Determine that county weed board members must be appointed at large.
2. The board of county commissioners shall appoint a county weed board consisting of three, five, or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms must be staggered so that no more than two expire each year.
3. If the board of county commissioners has established county weed board member areas as provided for in subsection 1, any qualified elector residing in the county weed board member area is eligible to represent that area on the board. If the board of county commissioners has determined that county weed board members must be appointed at large as provided for in subsection 1, any qualified elector residing in the county is eligible to serve on the county weed board.
4. A board member shall assume office at the first regular meeting of the county weed board following that member's appointment.
5. The board of county commissioners shall remove a member of the county weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a county weed board, the board of county commissioners, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.
6. a. The county weed board shall elect a chairman and a vice chairman from among its members.
   b. The county weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board.
7. The board of county commissioners shall establish the rate of compensation for county weed board members. Actual expenses incurred by board members may be reimbursed at the official reimbursement rates of the appointing authority.

4.1-47-07. County weed board - Jurisdiction.

The jurisdiction of a county weed board extends to all land within the county but does not include any land within the corporate limits of a city if that city has its own noxious weed control program under this chapter.

4.1-47-08. County weed board - Powers.

A county weed board may:

1. Expend funds from all available sources if it determines that the extent of noxious weed infestation on certain land is so severe that control efforts would place an extreme financial burden on the landowner.
2. Employ and compensate additional personnel to assist with noxious weed control efforts.

4.1-47-09. County weed board - Duties.

Each county weed board shall:

1. Implement a program for the control of noxious weeds;
2. Provide for the control of noxious weeds along county and township roads and along county highways;
3. Establish the time and place of regular board meetings;

4. Meet at least once each year;
5. Keep minutes of its board meetings and a complete record of all official acts;
6. Control and disburse all moneys received by the county from any source for noxious weed control;
7. a. Provide for the compensation of its members and its secretary and treasurer;
   b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and
   c. Provide a mileage allowance at the same rate as that established for state employees; and
8. a. Employ and provide for the compensation of a weed control officer;
   b. Reimburse the weed control officer for actual and necessary expenses; and
   c. Provide a mileage allowance at the same rate as that established for state employees.

4.1-47-10. County weed board - Development of county weed list.

1. A county weed board may designate as noxious certain weeds that are not on the state noxious weed list, provided the county weed board consults with the North Dakota state university extension service and that the designation is approved by the commissioner.
2. Before January 1, 2010, and at least every five years thereafter, each county weed board shall review its noxious weed list and, by majority vote, may remove any weed from its list. The county weed board shall provide the commissioner with at least fourteen days' notice of the time and place at which its list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide the commissioner with written notice of any changes to the county list.
3. A county weed board shall immediately remove any noxious weed from its list when directed to do so by the commissioner in accordance with section 4.1-47-04.

4.1-47-11. County weed control officer - Membership on county weed board - Employment.

1. A county weed control officer may serve as a member of the weed control board by which the officer is employed if the officer is otherwise qualified to do so.
2. An individual may be employed as a weed control officer by several weed boards simultaneously.

4.1-47-12. County weed control officer - Powers.

A county weed control officer may enter upon any land within the jurisdiction of the officer to perform duties and to exercise powers under sections 4.1-47-01 through 4.1-47-30, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

4.1-47-13. County weed control officer - Duties.

The county weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of this chapter within the county;
2. Become acquainted with the location of noxious weeds within the county;
3. Meet the pesticide certification requirements set forth in chapter 4.1-33;
4. Encourage noxious weed control by all landowners and land occupants within the county;
5. Investigate all signed complaints received by the officer regarding noxious weeds;
6. Post or publish in the official newspaper of the county any notices the commissioner deems necessary to further noxious weed control under this chapter;
7. Prepare reports as requested by the commissioner; and

8. Attend meetings called by the commissioner to further noxious weed control under this chapter.

4.1-47-14. County noxious weed control program - Payment of expenses - Financial report - Tax levy authorization.

1. The board of county commissioners may pay the expenses of a county noxious weed control program authorized under this chapter from the county general fund, the noxious weed control fund, or both. In addition to the other program expenditures authorized in this chapter, the board of county commissioners may expend funds from the levy authorized under subsection 11 of section 57-15-06.7 to control noxious weeds or undesirable vegetation along county or township roads in the county.
2. a. The county weed board may annually request from the board of county commissioners the levy of a tax, not to exceed the levy limitation in subsection 11 of section 57-15-06.7, but any tax levied under this section does not apply to property that lies within the boundaries of a city having a noxious weed control program under this chapter. In the year for which the levy is sought, a county weed board seeking approval of a property tax levy under this chapter must file with the county auditor, at a time and in a format prescribed by the county auditor, a financial report for the preceding calendar year showing the ending balances of each fund held by the county weed board during that year.
   b. The board of county commissioners may levy the taxes authorized by this subsection and shall place those moneys in a separate fund designated as the weed control fund, which may be used to pay the expenses authorized under this section.
3. For purposes of this section, the expenses of a county noxious weed control program include compensation for and the reimbursement of expenses incurred by the county weed board, the county weed control officer and other employees of the board, and expenses incurred as authorized by this chapter.

4.1-47-15. State appropriations for noxious weed control - Distribution - Determination.

1. The commissioner shall consult with the county and city weed boards and develop a method for the distribution to county and city weed boards of all moneys appropriated by the state for noxious weed control, other than the landowner assistance grants provided for in section 4.1-47-16.
2. The method must:
   a. Limit the amount that any county or city weed board is entitled to receive under this section to seventy-five percent of the board's actual expenditures under this section; and
   b. Allow the commissioner to waive the limit provided for in this subsection if the commissioner determines that a noxious weed is seriously endangering areas of a county, a city, or the state.

4.1-47-16. State appropriations for noxious weed control - Landowner assistance program.

1. The commissioner shall consult with representatives of county and city weed boards and develop a formula for the distribution to eligible county weed boards and eligible city weed boards of all moneys appropriated by the state for the landowner assistance program.
2. a. The formula must require that county officials budget, from revenues derived from county sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control against taxable property in the county which does not lie within the boundaries of a city having a noxious weed control program under this chapter.

b. The formula must require that city officials budget, from city sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control.

3. a. The formula must require that the landowner contribute an amount equal to at least twenty percent of the cost to be expended on behalf of the landowner.
   b. The nature and type of the landowner's contribution must be determined by the weed board having jurisdiction over the area in which the landowner's property is located.

4.1-47-17. Control of noxious weeds within cities.

The governing body of any city having a population of three thousand or more may establish a program for the control of noxious weeds within the jurisdictional limits of the city. If a program is not established, the county weed board shall administer a program for the city.

4.1-47-18. City weed board members - Terms - Compensation.

1. If the governing body of a city elects to establish a noxious weed control program, as authorized by section 4.1-47-17, the governing body shall appoint a weed board consisting of three, five, or seven members.
2. The term of office for a board member is four years or until a successor is appointed and qualified. The terms must be staggered so that no more than two expire each year.
3. Any qualified elector residing within the city is eligible to serve on the board.
4. A board member shall assume office at the first regular meeting of the city weed board following the member's appointment.
5. The governing body of the city shall remove a member of the city weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a city weed board, the governing body of the city, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.
6. The city weed board shall elect a chairman and a vice chairman from among its members.
7. The city weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board.
8. The governing body of the city shall establish the rate of compensation for city weed board members.

4.1-47-19. City weed board - Powers.

A city weed board may:

1. Expend funds from all available sources if it determines that the extent of noxious weed infestation on certain land is so severe that undertaking control efforts would place an extreme financial burden on the landowner.
2. Employ and compensate additional personnel to assist with noxious weed control efforts.

4.1-47-20. City weed board - Duties.

Each city weed board shall:

1. Implement a program for the control of noxious weeds;
2. Establish the time and place of regular board meetings;
3. Meet at least once each year;
4. Keep minutes of its meetings and a complete record of all official acts;
5. Control and disburse all moneys received by the city from any source for noxious weed control;
6. a. Provide for the compensation of its members and its secretary and treasurer;
   b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and

c. Provide a mileage allowance at the same rate as that established for state employees; and

7. a. Employ and provide for the compensation of a weed control officer;
   b. Reimburse the weed control officer for actual and necessary expenses; and
   c. Provide a mileage allowance at the same rate as that established for state employees.

4.1-47-21. City weed board - Development of city weed list - Review - Removal.

1. A city weed board may designate as noxious certain weeds that are not on the state or county noxious weed list, provided the city weed board first consults with the North Dakota state university extension service and that the designation is approved by the commissioner.
2. Before January 1, 2010, and at least every five years thereafter, each city weed board shall review its noxious weed list and, by majority vote, may remove any weed from its list. The city weed board shall provide the commissioner with at least fourteen days' notice of the time and place at which its list will be reviewed and, within fourteen days of the review, shall provide the commissioner with written notice of any changes to the city list.
3. A city weed board immediately shall remove any noxious weed from the board's list when directed to do so by the commissioner in accordance with section 4.1-47-04.

4.1-47-22. City weed control officer - Membership on city weed board - Employment.

1. A city weed control officer may serve as a member of the weed control board by which the officer is employed if the officer is otherwise qualified to do so.
2. An individual may be employed as a weed control officer by several weed boards simultaneously.

4.1-47-23. City weed control officer - Powers.

A city weed control officer may enter upon any land within the jurisdiction of the officer to perform duties and to exercise powers under this chapter, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

4.1-47-24. City weed control officer - Duties.

The city weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of this chapter within the city;
2. Become acquainted with the location of noxious weeds within the city;
3. Meet the pesticide certification requirements set forth in chapter 4.1-33;
4. Encourage noxious weed control by all landowners and land occupants within the city;
5. Investigate all signed complaints received by the officer regarding noxious weeds within the city;
6. Post or publish in the official newspaper of the city any notices the commissioner deems necessary to further noxious weed control under this chapter;
7. Prepare reports as requested by the commissioner; and
8. Attend meetings called by the commissioner to further noxious weed control under this chapter.

4.1-47-25. City noxious weed control program - Payment of expenses - Financial report.

1. The governing body of a city may provide funding for a city noxious weed control program authorized under this chapter from revenues derived from its general fund levy authority.

2. The city weed board may annually request the governing body of a city to provide funds derived from its general fund levy authority in the amount necessary for the city noxious weed control program. In the year for which the levy is sought, a city weed board seeking approval of a property tax levy under this chapter must file with the city auditor, at a time and in a format prescribed by the city auditor, a financial report for the preceding calendar year showing the ending balances of each fund held by the city weed board during that year.
3. For purposes of this section, the expenses of a city noxious weed control program include compensation for and the reimbursement of expenses incurred by the city weed board, the city weed control officer, and other employees of the board, and expenses incurred in the provision of noxious weed control, as authorized by this chapter.

4.1-47-26. Publicly owned land - Noxious weed control.

Each state agency shall provide for the control of noxious weeds on land within its jurisdiction. If a state agency fails to control noxious weeds on land under its jurisdiction, the county weed board, upon approval of the commissioner, may enter upon the land to control the noxious weeds. The state agency shall reimburse the county weed board for expenses incurred in controlling the noxious weeds, within thirty days after the agency receives the bill.

4.1-47-27. Noxious weed control - Enforcement responsibilities of other agencies.

Law enforcement agents shall cooperate with the commissioner, a weed control board, and a weed control officer for the purpose of enforcing this chapter.

4.1-47-28. Entry upon land for noxious weed control purposes - Notices - Landowner rights - Remedial requirements - Liens.

1. a. If a county weed officer determines that any land other than that referenced in subsection 2 contains noxious weeds, the county weed control officer may first contact the occupant and request that the occupant control the noxious weeds within a prescribed time period and in a prescribed manner. If the county weed control officer determines that the occupant has failed to control the noxious weeds, as requested, the county weed officer shall serve upon the landowner written notice, either personally or by certified mail, requiring the landowner to control the noxious weeds within the time period prescribed by the county weed control officer.
   b. The notice must:
      (1) Specify the minimal remedial requirements;
      (2) Specify the time within which the landowner must meet the minimum remedial requirements;
      (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirements;
      (4) Include a statement of costs if the landowner fails to control the noxious weeds and the county weed officer must provide for control of the weeds; and
      (5) Provide that the landowner may stay any efforts by the county weed officer to control noxious weeds on the land by requesting in writing that the county weed board hold a hearing on the matter.
   c. If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the county weed board, the county weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

d. If after holding a hearing on the matter, the county weed board directs that the noxious weeds be controlled by the county weed officer, the landowner may appeal the decision to the board of county commissioners. A decision by the board of county commissioners is final.

e. If the landowner does not appeal the decision to the board of county commissioners, or if the board of county commissioners upholds the decision of the county weed board, the county weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the county weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

2. a. If a city weed control officer determines that land within the officer's jurisdiction contains noxious weeds, the officer may serve upon the landowner written notice either personally or by certified mail, requiring the landowner to control the noxious weeds within the time period prescribed by the city weed control officer.

b. The notice must:
   (1) Specify the minimal remedial requirements;
   (2) Specify the time within which the landowner must meet the minimum remedial requirements;
   (3) Specify that the landowner may be subject to penalties provided under this chapter if the landowner fails to comply with the remedial requirement;
   (4) Include a statement of costs if the landowner fails to control the noxious weeds and the city weed officer must provide for control of the weeds; and
   (5) Provide that the landowner may stay any efforts by the city weed officer to control noxious weeds on the land, by requesting in writing that the city weed board hold a hearing on the matter.

c. The city weed officer shall deliver a copy of the notice personally or forward a copy of the notice by certified mail to any tenant, lessee, or operator of the land on which the noxious weeds are located.

d. If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the city weed board, the city weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

e. If after holding a hearing on the matter the city weed board directs that the noxious weeds be controlled by the city weed officer, the landowner may appeal the decision to the governing body of the city. A decision by the governing body is final.

f. If the landowner does not appeal the decision to the governing body of the city, or if the governing body of the city upholds the decision of the city weed board, the city weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the city weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

4.1-47-29. Quarantine - Declaration - Hearing - Penalty.

1. If the commissioner determines that a quarantine of this state or any portion thereof may be necessary to prevent the spread of noxious weeds, the commissioner shall schedule a public hearing on the matter and provide notice of the hearing by publishing its time, place, and date in the official newspaper of each county having land within the area of the proposed quarantine. If after the hearing the commissioner orders the imposition of a quarantine, the order must include the date by which or the circumstances under which the commissioner shall lift the quarantine order.

2. If the commissioner determines that the imposition of an emergency quarantine is necessary to prevent the spread of noxious weeds, the commissioner may impose such an order for a period not to exceed fourteen days. Within the fourteen-day period, the commissioner shall hold a public hearing as provided for in subsection 1 and determine whether a quarantine order under subsection 1 should be imposed.
3. Following the establishment of a quarantine, the movement of any product or material described in the quarantine order is subject to the order.
4. Any person who violates a quarantine order issued under this section is guilty of a class B misdemeanor.

4.1-47-30. Preventing the dissemination of noxious weeds - Penalty.

1. a. A person may not willfully transport any material that contains noxious weed seeds or propagating parts, on a public road, in a manner that allows for the dissemination of noxious weeds.
   b. A person may not willfully drive or transport any equipment, on a public road, in a manner that allows for the dissemination of noxious weeds.
   c. A person may not willfully dispose of any material that contains noxious weed seeds or propagating parts in a manner that allows for the dissemination of noxious weeds.
2. Any person who violates this section is guilty of a class B misdemeanor.

4.1-47-31. Civil penalty.

1. a. In addition to any other penalties provided for in this chapter, a person who violates this chapter or any rules adopted under this chapter is subject to a civil penalty in an amount not to exceed eighty dollars per day for each day of violation, subject to a maximum penalty of four thousand dollars per year.
   b. Penalties imposed upon a landowner for failing to comply with the remedial requirements, as set forth in section 4.1-47-28, are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 4.1-47-28.
   c. A person who violates subsection 2 of section 4.1-47-02 is subject to a civil penalty not to exceed one hundred dollars for each violation.
2. All penalties collected under this section must be credited to the noxious weed control fund of:
   a. The city in which the violation occurred if the city has a noxious weed control program under this chapter; or
   b. The county in which the violation occurred.
3. Any penalties provided for under this section may be adjudicated by a court, a county weed board, or a city weed board after a hearing.
4. An aggrieved person may appeal the imposition of a penalty by a county weed board to the board of county commissioners. An aggrieved person may appeal the imposition of a penalty by a city weed board to the governing body of the city.

4.1-47-32. Action on complaint - Request for hearing.

1. a. If an individual filed a signed complaint with a county weed board or the county weed control officer and if the individual believes that the complaint has not been addressed satisfactorily within twenty-one days from the date of the complaint, the individual may file a written request for a hearing with the board of county commissioners.
   b. Upon receiving a request for a hearing, the board of county commissioners shall schedule a public hearing within twenty-one days and shall provide notice of the hearing by publishing its time, place, and date in the official newspaper of the county.

c. Within fourteen days after the hearing, the board of county commissioners shall issue a determination regarding the matter and shall issue appropriate directives to the county weed board.
d. A decision by the board of county commissioners under this section is final.

2. a. If an individual filed a signed complaint with a city weed board or the city weed control officer and if the individual believes that the complaint has not been addressed satisfactorily within twenty-one days from the date of the complaint, the individual may file a written request for a hearing with the governing body of the city.
b. Upon receiving a request for a hearing, the governing body of the city shall schedule a public hearing and shall provide notice of the hearing by publishing its time, place, and date in the official newspaper of the county.
c. Within fourteen days after the hearing, the governing body of the city shall issue a determination regarding the matter and shall issue appropriate directives to the city weed board.
d. A decision by the governing body of the city under this section is final.

4.1-47-33. County and city weed boards - Control of invasive species - Acceptance of funds.

1. If a county or a city weed board determines that an invasive species is present within its jurisdiction, the weed board shall notify the commissioner.
2. a. If funds for the control of invasive species are available to the commissioner, the commissioner may forward the funds to a weed board for the purpose of controlling the invasive species on public land and assisting private landowners in their efforts to voluntarily control the invasive species provided:
(1) The commissioner determines that, without intervention, the invasive species is likely to become a noxious weed during the ensuing five-year period; and
(2) The weed board files a plan with the commissioner detailing the manner in which and the time within which the funds are to be expended.
b. Notwithstanding any other law, a county or a city weed board may accept funds under this subsection and implement a plan, approved by the commissioner, for the control of invasive species within its jurisdiction.
3. In addition to any funds available from the commissioner, a county or a city weed board may accept funds from any other source to control invasive species within its jurisdiction.
4. For purposes of this section, an invasive species means a plant species that has been introduced into this state and which the North Dakota state university extension service determines has caused or is likely to cause:
a. Economic harm;
b. Environmental harm; or
c. Harm to human health.

4.1-47-34. Noxious weed certification - Gravel and sand pits.

1. If requested by any person needing certification, a county weed board may certify, based on standards set by the commissioner after consulting with representatives of county or city weed boards, gravel, scoria, topsoil, or sand surface mining operations are not contaminated with noxious weeds.
2. The commissioner may adopt a schedule of fees that county weed boards may charge for inspecting, testing, analyzing, and certifying gravel, scoria, topsoil, or sand surface mining operations.
3. Certification of gravel, scoria, topsoil, or sand surface mining operations as being free from contamination of noxious weeds is not a warranty of any kind as to the quality of the gravel, scoria, topsoil, or sand from an inspected and certified location.