

MUSK THISTLE AND CURLED THISTLE

This ordinance was duly considered following a required public hearing held on October 14, 1980.

Mr. Reardon made a motion that the provisions of Title 3.1, Chapter 13, Article 4, of the Code of Virginia of 1950, as amended, governing the eradication of musk thistle and curled thistle are hereby adopted by reference and made operative in Wythe County as set forth herein in their entirety.

For State law as to control of musk thistle and curled thistle, see Code of Virginia 3.1-177 et seq.

Certified copies of this ordinance and all amendments thereto shall be filed in the office of the Planning Commission and in the office of the Clerk of the Circuit Court of Wythe County, Virginia.

This motion was seconded by Mr. Matney. The roll call vote is as follows:

	YEAS	NAYS	ABSENT
James	X		
Johnstone	X		
Mabe	X		
Matney	X		
Payne		X	
Reardon	X		

This ordinance shall be effective on and after 12:01 a.m. on October 15, 1980.

§ 3.1-173. **Entry upon premises by State Entomologist.** — For the purposes of inspecting, treating, destroying or removing the diseased trees or parts of trees the State Entomologist and his assistants are authorized and empowered to enter upon the lands on which the trees or parts of trees under inspection are found or thought to be located, and if found, to order the owner or owners to treat them in such manner as to eradicate the disease or to destroy them as authorized in § 3.1-171. (Code 1950, § 3-194; 1966, c. 702.)

§ 3.1-174. **Commissioner to act when owner fails to destroy or treat trees.** — If the owner of trees affected with the Dutch elm disease fail or refuse to destroy or to treat such trees as ordered or to file an appeal as provided in § 3.1-172, the Commissioner may proceed to treat or to destroy such trees and shall submit to the owner a bill for the necessary expenses thereof, or such portion of the expenses as he deems proper, as soon as they are ascertained, and if they are not paid within thirty days after bill is submitted he may proceed in the name of the Commonwealth to collect the amount by proceeding before a trial justice or other court of competent jurisdiction, in the same manner in which debts of like amount are now recoverable. Any money so recovered shall be paid into the State treasury. (Code 1950, § 3-195; 1966, c. 702.)

§ 3.1-175. **Penalty for interfering with or hindering officers.** — Any person who interferes with or hinders the Commissioner, the State Entomologist or other person in the discharge of their duties under this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than ten days nor more than thirty days or both, in the discretion of the trial justice or other tribunal in which the case is tried. (Code 1950, § 3-196; 1966, c. 702.)

§ 3.1-176. **Penalty for failing to obey orders of officer.** — Any owner who fails to obey the orders of the officer given under authority of this article within ten days after receipt thereof, unless he appeals from the order, shall be guilty of a misdemeanor, and upon conviction shall be fined five dollars for each day of such failure in excess of twenty-one days after receipt of the order, or legal service thereof on the owner, or his agent in charge of the land, or may be imprisoned not less than ten days nor more than thirty days, or both fined and imprisoned in the discretion of the trial justice or other tribunal in which the case is tried. No fine imposed under this section shall exceed twenty-five dollars for a first offense nor fifty dollars for a second offense. (Code 1950, § 3-197; 1966, c. 702.)

ARTICLE 4.

Musk Thistle and Curled Thistle.

§ 3.1-177. **Definitions.** — The words "*musk thistle*" when used in this article mean the weed designated as *Carduus nutans* L., a biennial weed of the Compositae family.

The words "*curled thistle*" when used in this article mean the weed designated as *Carduus acanthoides* L., an annual and biennial weed of the Compositae family. (Code 1950 (Suppl.), § 3-197.1; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — The above section is § 3-197.1 as amended by Acts 1966, c. 296. Pursuant to Acts 1966, c. 717, the Code Commission has substituted the above text for that of Acts 1966, c. 702, § 3.1-177. See note under § 3.1-1.

The Department, Board and Commissioner of Agriculture and Immigration are now known as the Department, Board and Commissioner of Agriculture and Commerce. See §§ 3.1-1, 3.1-8.

§ 3.1-178. **Declared a nuisance; duty of landowner to destroy.** — It shall be unlawful for any person, firm or corporation or governmental unit to allow within this State the continuing growth of musk thistle or curled thistle upon his or its premises. Any such musk thistle or curled thistle, when growing in this State, is hereby declared a public nuisance and a noxious weed, harmful to plant and grass growth and to pastures, and shall be destroyed as hereinafter provided. It shall be the duty of the owner of any lands upon which there is a growth of musk thistle or curled thistle to destroy the same as soon as he is directed to do so by the Commissioner of Agriculture and Immigration, his assistants or employees, as hereinafter provided. (Code 1950 (Suppl.), § 3-197.2; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — Pursuant to Acts 1966, c. 702, the changes made in § 3-197.2 by Acts 1966, c. 296, which amended the latter section. See note under § 3.1-1.

§ 3.1-179. **Investigations by Commissioner.** — In any county in this State where the above-mentioned weeds grow, or there is reason to believe their growth is spreading, the Commissioner, in person or by his assistants or employees, upon the request in writing of ten or more reputable freeholders of any county or magisterial district, shall make a preliminary investigation of the area from which the request is received, to ascertain if there is growth of such weeds in the pasture lands and cultivated or uncultivated fields in that area. (Code 1950 (Suppl.), § 3-197.3; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — Pursuant to Acts 1966, c. 702, the changes made in § 3-197.3 by Acts 1966, c. 296, which amended the latter section. See note under § 3.1-1.

§ 3.1-180. **Notice to landowner to destroy.** — If upon such preliminary investigation of the area from which the request is received it appears that there is such an infestation of lands in the localities by musk thistle or curled thistle as to constitute a menace to the pasture lands and cultivated or uncultivated fields in the localities, the Commissioner or his assistants or employees shall give notice in writing to the owner or owners of such lands to destroy all musk thistle or curled thistle growing thereon. The notice shall contain a brief statement of the fact found to exist whereby it is deemed necessary or proper to destroy such musk thistle or curled thistle and call attention to this law under which it is proposed to destroy such musk thistle or curled thistle. The owner shall within such time as may be prescribed in such notice by the Commissioner or his assistants or employees destroy all such musk thistle or curled thistle growing on his land. (Code 1950 (Suppl.), § 3-197.4; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — Pursuant to Acts 1966, c. 702, the changes made in § 3-197.4 by Acts 1966, c. 296, which amended the latter section. See note under § 3.1-1.

§ 3.1-181. **Directions for destruction.** — Directions for the recommended method of destruction of musk thistle or curled thistle shall be put in writing by the Commissioner or his assistants or employees and become a part of the notice prescribed under § 3.1-180 and be served as prescribed under § 3.1-182. (Code 1950 (Suppl.), § 3-197.5; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — Pursuant to Acts 1966, c. 702, the changes made in § 3-197.5 by Acts 1966, c. 296, which amended the latter section. See note under § 3.1-1.

§ 3.1-182. **Service of notice; notice by publication.** — The notice required under §§ 3.1-180 and 3.1-183 may be served upon the owner if a resident of the State in the manner prescribed by § 8-51, or by serving a copy of such notice

upon his tenant or other person having charge of the premises. If the owner is a nonresident and does not have a tenant or other person in charge of his land, then notice may be given by publication in a newspaper having general circulation in the county where the land lies, for two times at least one week apart, and a copy mailed to the last known address of such nonresident. Notices may also be served by certified mail. (Code 1950 (Suppl.), § 3-197.6; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — The above section is § 3-197.6 as amended by Acts 1966, c. 296. Pursuant to Acts 1966, c. 717, the Code

Commission has substituted the above text for that of Acts 1966, c. 702, § 3.1-182. See note under § 3.1-1.

§ 3.1-183. Destruction by Commissioner upon owner's refusal; payment of costs. — Whenever the owner refuses or neglects to destroy the musk thistle or curled thistle on his land within the time specified in the notice given by the Commissioner as prescribed by § 3.1-180, or after due publication, the Commissioner shall cause such musk thistle or curled thistle to be at once destroyed and the necessary expense thereof shall be paid by his warrant on the county treasurer to be paid out of the general funds of the county and to be reimbursed as provided in § 3.1-187 or the owner may elect to pay direct to the State Treasurer. The Commissioner may contract with and pay custom applicators to destroy the thistle and issue a warrant to the county treasurer for reimbursement. When small tracts of less than five acres are found infested, the cost of the treatment may be borne by the State when it is determined by the Commissioner that such treatment is in the best interest of the State. The Commissioner shall cause all reimbursements to be promptly credited to the State fund from which expended. (Code 1950 (Suppl.), § 3-197.7; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — Pursuant to Acts 1966, c. 717, the Code Commission has combined, in the above section, § 3.1-183 as enacted by Acts 1966, c. 702, and § 3-197.7 as amended by Acts 1966, c. 296. In order to carry out the intent of Acts 1966, c. 702, the Code

Commission has substituted "Commissioner" for "State Entomologist" in the last three sentences of the section, although those sentences were added to § 3-197.7 by c. 296 and do not appear in § 3.1-183 as enacted by c. 702. See note under § 3.1-1.

§ 3.1-184. Right of entry. — The Commissioner, his assistants or employees are empowered with authority to enter upon any public or private premises for the purpose of carrying out the provisions of this article. (Code 1950 (Suppl.), § 3-197.8; 1958, c. 232; 1966, c. 702.)

§ 3.1-185. Obstructing or hindering Commissioner or employees. — Any person or persons who shall obstruct or hinder the Commissioner, his assistants or employees in the discharge of their duties under this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars nor more than fifty dollars. (Code 1950 (Suppl.), § 3-197.9; 1958, c. 232; 1966, c. 702.)

§ 3.1-186. Appeal from order of Commissioner; notice; damages. — Any owner who has reason to believe that he may be damaged by the requirement of the Commissioner that he destroy all musk thistle or curled thistle on his land may appeal from such order to the county court of the county in which the land is located, but such appeal must be taken within fifteen days from the date upon which the notice to destroy the musk thistle or curled thistle is served upon him. Notice in writing of the appeal must be filed with the clerk of the court who shall forthwith transmit a copy thereof to the Commissioner. The filing of the notice shall act as a stay of the proceedings of the Commissioner until the appeal is heard and decided. The court shall thereupon hear the evidence, and pass upon all questions involved, and determine if the landowner will be damaged in case such musk thistle or curled thistle are

destroyed by him or under the direction of the Commissioner. If the court should find any damages, it shall order the amount so determined to be paid to the owner by the treasurer of the county out of the general fund of the county, less such amount expended by the Commissioner if the owner refused to destroy the musk thistle or curled thistle; and such order shall be entered by the clerk in the law order book of the court. (Code 1950 (Suppl.), § 3-197.10; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — Pursuant to Acts 1966, c. 717, the Code Commission has incorporated in § 3.1-186 as enacted by Acts 1966, c. 702, the changes made in § 3-197.10 by Acts 1966, c. 296, which amended the latter section. See note under § 3.1-1.

§ 3.1-187. Collection from landowner of expenses incurred by Commissioner in destroying or removing; lien. — Whenever any sums are paid out by the county treasurer under the provisions of § 3.1-183, or any other provision of this article, the treasurer shall immediately render unto the owner of such land, his tenant or agent, as the case may be, a statement of the expenses incurred by the Commissioner, and paid by the county for the destroying and removing of musk thistle or curled thistle from such lands; and if the owner fails to pay such statement, the treasurer shall proceed against the owner under the methods allowed by law for the collection of county taxes, and shall reduce such claim to a judgment; and in addition thereto, if collection is not made on the judgment by the time tax statements are made up, such unpaid bill shall be placed upon the tax statement of the owner so delinquent, and collected as taxes are collected. Unpaid sums shall become a lien upon property the same as other taxes upon real estate. (Code 1950 (Suppl.), § 3-197.11; 1958, c. 232; 1966, cc. 296, 702.)

Code Commission note. — Pursuant to Acts 1966, c. 717, the Code Commission has incorporated in § 3.1-187 the change made in § 3-197.11 by Acts 1966, c. 296, which amended the latter section. See note under § 3.1-1.

§ 3.1-188. How article put in force in counties and magisterial districts. — This article shall not be in force in any county or in any magisterial district of any county until the governing body thereof shall by a recorded vote accept and adopt the same for their county or magisterial district in their county.

In the event the governing body of any county neglect or refuse to accept and adopt the same for their county, or for any magisterial district of their county, as the case may be, then the majority of the qualified voters of such county or any magisterial district of such county, may request its adoption by petition addressed to the circuit court of the county, and when it appears from such petition that a majority of the qualified voters of such county or any magisterial district of such county request the adoption of this article, then the court shall declare the same adopted for such county, or for any magisterial district in such county, requesting its adoption. (Code 1950 (Suppl.), § 3-197.12; 1958, c. 232; 1966, c. 702.)

ARTICLE 5.

Pest Control Compact.

§ 3.1-188.1. Compact enacted into law and entered into. — The Pest Control Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein when the form of the compact is substantially the same as the compact entered into by the Commonwealth of Virginia. (1970, c. 174.)

§ 3.1-188.2. Findings. — The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.