

BEFORE THE MALHEUR COUNTY COURT, OREGON

**In the Matter of an Ordinance Amending Title 3, Chapter 3 of)
The Malheur County Code entitled Noxious Weed Control; and) Ordinance No. 231
Declaring an Emergency)**

This matter came before the Malheur County Court on March 29, 2023 and April 12, 2023.

WHEREAS, based on the recommendation of the Malheur County Weed Inspector Title 3, Chapter 3 entitled Noxious Weed Control requires updating and changes, including but not limited to: elimination of weed advisory board, and compliance with Oregon Revised Statutes.

NOW, THEREFORE, the Malheur County Court ordains as follows:

The Noxious Weed Control ordinance shall be amended as set out below:

**CHAPTER 3
NOXIOUS WEED CONTROL**

SECTION:

3-3-1: Title

3-3-2: Purpose

3-3-3: Definitions

3-3-4: Weed Control District

~~3-3-5: Advisory Board~~

3-3-~~6~~5: Weed Inspector

- 3-3-7~~6~~: List Of Noxious Weeds
- 3-3-8~~7~~: Notice
- 3-3-9~~8~~: Duties Of Owner
- 3-3-10~~9~~: Duty To Clean Machinery Before Moving; Weed Infested Residue Not To Be Moved
- 3-3-11~~10~~: Eradication Of Noxious Weeds When Owner Refuses
- 3-3-12~~11~~: Expenses As Lien
- 3-3-13~~12~~: Penalties
- 3-3-14~~13~~: Other Remedies
- 3-3-15~~14~~: Jurisdiction

3-3-1: TITLE:

This chapter shall be known as the MALHEUR COUNTY WEED ORDINANCE. (Ord. 172, 12-5-2007)

3-3-2: PURPOSE:

The purpose of this chapter is to specify the procedures for the control of weeds identified as noxious by the Malheur County Court **and for areas within the Malheur County Weed Control District.** (Ord. 172, 12-5-2007)

3-3-3: DEFINITIONS:

For the purpose of this chapter, the following words shall have the following meanings:

~~—BOARD: The Malheur County weed advisory board.~~

COUNTY COURT: The Malheur County Court.

DISTRICT: The Malheur County Weed Control District, the boundaries of which coincide with the boundaries of Malheur County. **Boundaries of incorporated cities are specifically excluded from the District.**

~~—FARM: The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry, or any combination thereof.~~

LAND: Real property within Malheur County outside the limits of a city upon which a violation of this chapter has occurred or is occurring.

NOXIOUS WEED: Any plant determined by the County Court and recommended by the ~~Weed Inspector board~~ to be injurious to public health, crops, livestock, land, or other property.

OWNER: Any legal owner or any person having charge, care or control of land.

3-3-4: WEED CONTROL DISTRICT:

All of Malheur County outside the limits of any city is the weed control district for the purpose of destroying and preventing the seeding and spread of noxious weeds. The district is known as the Malheur County Weed Control District.

~~3-3-5: ADVISORY BOARD:~~

~~The county court, within its discretion, may appoint an advisory weed board to be known as the Malheur County weed advisory board, to assist the county court in gathering information and making recommendations concerning the operation of the district, including, but not limited to, the following activities:~~

- ~~—A.— Identification of weeds to be listed as noxious by resolution of the county court;~~
- ~~—B.— Development of education, treatment and outreach programs regarding noxious weeds;~~
- ~~—C.— Providing assistance in accessing funding for weed control from grants and other sources;~~
- ~~—D.— Making recommendations to the county court on weed control issues as requested by the county court; and~~
- ~~—E.— Receiving information from and providing direction to staff/weed inspector in order to fulfill the purposes of state noxious weed laws, this chapter, the district and the board.~~

~~The board shall operate in accordance with bylaws adopted by the board and approved by the county court. (Ord. 172, 12-5-2007)~~

3-3-65: WEED INSPECTOR:

The county court shall appoint a weed inspector, whose duties shall include, but not be limited to, the following:

- A. To discover whether any noxious weeds **or plants** are being permitted to grow and produce bloom or seed within the district ~~contrary to this chapter or ORS 569.360 to ORS 569.495;~~

- B. To serve notices; ~~pursuant to this chapter;~~
- C. When necessary, to destroy or cut, or to supervise the destruction or cutting of noxious weeds growing or seeding within the district; and
- D. To conduct investigations, ~~approve plans, make expenditures within the weed department budget~~ and issue citations for violations of this chapter.

The weed inspector shall exercise discretion in fulfilling ~~his/her/~~ duties pursuant to this chapter, consistent with the availability of funds and other resources.

~~3-3-7: 6:~~ LIST OF NOXIOUS WEEDS:

For purposes of this chapter, weeds shall be declared noxious by their inclusion on a list adopted by resolution of the county court, upon the recommendation of the ~~weed inspector. board.~~ A weed may be added to, ~~re-prioritized~~ or deleted from the list of noxious weeds by resolution of the county court. Noxious weeds shall be designated and control prioritized into A, B and C groups. Priorities may be adjusted within the county at the discretion of the ~~board~~ **Weed Inspector** with permission of the county court.

~~3-3-8: 7:~~ NOTICE:

A. When it appears that violation of ORS chapter ~~570 569~~ or this chapter has occurred, the weed inspector shall serve a written notice to the owner of the land. If the weed inspector is unable to serve the notice personally, the weed inspector shall post the notice ~~and two copies thereof~~ in three (3) conspicuous places on the land. If notice is posted, the weed inspector shall also mail a copy of the notice to the owner or occupant of the land by both regular mail and certified mail, return receipt requested.

B. The notice shall contain at least the following:

1. The date of service or posting of the notice;
2. The name of the noxious weed or weeds growing on the land; and
3. A statement setting forth that the noxious weeds must be destroyed or must be prevented from producing seed within a specified period of time, which shall be within the discretion of the weed inspector, but in no event shall ~~the time~~ be less than two (2) days or more than twenty (20) days from the date of service or posting ~~of the notice.~~

~~C. A copy of the notice, together with proof of service or posting endorsed thereon, shall be filed with the County Court.~~

~~D. Notwithstanding the above, with permission of the landowner or occupant, employees of the State Department of Agriculture, or agents of the weed control district or weed inspector, may enter the land to identify noxious weeds and to implement or provide for the implementation of integrated noxious weed control measures, including but not limited to the application of pesticides to the land. The control or eradication of noxious weeds may be conducted with or without charge to the owner or occupant of the land. A notice~~

described in B. above is not required for the conduct of activities described in this subsection.

3-3-~~9~~8: DUTIES OF OWNER:

A. Upon service or posting of the notice provided in section 3-3-~~87~~ of this chapter, any owner or occupant of the land shall destroy the noxious weed or weeds specified in the notice ~~on their land~~ or prevent the noxious weed or weeds from seeding or spreading, during the continuation of ownership of occupancy. ~~This obligation shall be continuing throughout the remainder of the then current growing, seeding or spreading season.~~

B. Every owner shall destroy or prevent the seeding on the owner's land of any weed classified as a noxious weed by the county court using the most efficient and practical means available and within the time declared reasonable by the weed inspector. In no event shall a noxious weed be permitted to produce seed. The means used to destroy or prevent the seeding of noxious weeds shall comply with all applicable laws and label instructions.

3-3-~~10~~9: DUTY TO CLEAN MACHINERY BEFORE MOVING; WEED INFESTED RESIDUE NOT TO BE MOVED:

A. No person operating or having control of any threshing machinery, clover huller, hay baler, seed cleaning or treating machinery or other machinery shall move said machinery over any public road or from one farm to another without first being thoroughly swept and cleaned.

B. All hay, straw or other crop residue infested with noxious weeds having partially or fully formed seeds shall not be moved from the land on which grown to other lands not infested with any of the weeds in the field from which such crop material came.

~~C. No person shall operate any threshing machine, clover huller or hay baler, seed cleaning or treating machinery or any other similar machinery within the Malheur County weed control district without first having posted in a conspicuous place on such machinery a copy of ORS 570.570 or this section. The county clerk is authorized and directed to have printed a sufficient number of copies of ORS 570.570 and 570.575 and shall deliver such copies upon request to owners or operators of such machinery. (Ord. 172, 12-5-2007)~~

3-3-~~11~~10: ERADICATION OF NOXIOUS WEEDS WHEN OWNER REFUSES:

A. In the event that any owner or occupant of land fails or refuses to destroy or cut noxious weeds within the time period specified in the notice provided in section 3-3-~~78~~ of this chapter; or a person fails to comply with section 3-3-9 of this chapter, the weed inspector may issue a citation to the owner, and/or seek injunctive relief in the Malheur County justice court to force compliance with this chapter.

B. In addition, the weed inspector may go upon the land of the owner and destroy or cut the noxious weeds or control them in a manner that will destroy all seeds of such noxious weeds. The weed inspector and persons authorized by the weed inspector may enter upon the property to abate the **weed** violation only upon obtaining consent of the owner, or a court issued warrant **or upon obtaining authority from the county court.**

C. In the event destruction or control of the noxious weeds on any farm is in the judgment of the weed inspector impracticable because the weeds are too far advanced, or if for any other reason the means of control available are unsatisfactory, the weed inspector shall notify the county court, who may request the State Department of Agriculture to immediately quarantine the noxious weed infested farm within the county to prevent the movement of infested crops or livestock from the farm except under conditions prescribed in the quarantine that will prevent the spread of noxious weeds **by such crops or livestock.**

D. In all cases where the weed inspector undertakes to destroy or control noxious weeds, the most effective and practical method that will not cause injury to the land or crops in the judgment of the weed inspector ~~or weed advisory board~~ shall be used.

E. Upon completion of the **weed** abatement process **and such work as specified herein** by the weed inspector **or other person so appointed and authorized by the county court**, the weed inspector **or such other person** shall file with the county court **and county clerk** an itemized statement of the expenses necessarily incurred in the destruction of the noxious weeds, including the wages of the inspector, assistants, if any, **or such other person**, verified by the oath of the weed inspector **or person.** (Ord. 172, 12-5-2007)

3-3- ~~1112~~: EXPENSES AS LIEN:

A. When the statement of expenses is filed with the county court as specified in section 3-3-~~11~~ **10** of this chapter, the county clerk shall cause it to be entered upon a lien docket prepared for that purpose. The amount of the charges and expenses when so docketed shall constitute a first lien upon the owner's land **or premises**, except as to taxes.

B. If the charges and expenses are not paid and the lien discharged by the owner **or occupant of such lands** within ninety (90) days from the date the lien is docketed, the county may recover the expenses in an action at law. (Ord. 172, 12-5-2007)

C. If within 10 days from the date of filing and docketing the lien as provided herein or ORS 569.400 and 569.410, no objections have been filed thereto, the county court shall pay to the person(s) so appointed by the court to perform the work, out of the general funds of the county, the amount of such lien.

3-3-~~12 13~~: PENALTIES:

A. Any person who violates sections 3-3-9 and 3-3-10 of this chapter shall be subject to a fine of not more than seven hundred twenty dollars (\$720.00) for a noncontinuing offense and a fine of not more than one thousand dollars (\$1,000.00) for a continuing offense.

B. Each day that this chapter is violated shall constitute a separate violation.

3-3-~~1314~~: OTHER REMEDIES:

The provisions of this chapter are in addition to and not in lieu of any other procedures and remedies provided by law including equitable relief and damages.

3-3-~~1415~~: JURISDICTION:

Jurisdiction for actions brought under this chapter shall be with the Malheur County justice court for penalties as set out in 3-3-12. All other matters in this chapter shall be heard before the county court.