

ORDINANCE NO.

**An Ordinance Amending Malheur County Code Title 3 Chapter 3 Entitled
Noxious Weed Control, And Declaring An Emergency**

WHEREAS, Malheur County’s code provisions for noxious weed control have not been updated since approximately 1989; and

WHEREAS, Malheur County Code Title 3 Chapter 3 Entitled Noxious Weed Control requires several revisions in order to make this section of the code more effective.

**NOW, THEREFORE, THE MALHEUR COUNTY COURT ORDAINS AS
FOLLOWS:**

A. New Provisions

I. Repeal. Malheur County Code Title 3 Chapter 3 shall be repealed in its entirety and replaced with the following provisions.

II. Title. This ordinance shall be known as the Malheur County Weed Ordinance.

III. Purpose. The purpose of this ordinance is to specify the procedures for the control of weeds identified as noxious by the Malheur County Court.

IV. Definitions. For the purpose of this ordinance, the following words shall have the following meaning:

“Board” means the Malheur County Weed Advisory Board.

“County Court” means the Malheur County Court.

“District” means the Malheur County Weed Control District, the boundaries of which coincide with the boundaries of Malheur County.

“Farm” means 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, fur-bearing 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.

“Noxious Weed” means any plant determined by the County Court and recommended by the Board to be injurious to public health, crops, livestock, land, or other property.

“Land” means real property within Malheur County outside the limits of a city upon which a violation of this ordinance has occurred or is occurring.

“Owner” means any legal owner or any person having charge, care or control of land.

V. 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.

VI. 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. Provide 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. Receive information from and provide direction to staff/weed inspector in order to fulfill the purpose of state noxious weed laws, this ordinance, District and Board.

The Board shall operate in accordance with bylaws adopted the Board and approved by the County Court.

VII. 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 are being permitted to grow and produce bloom or seed within the District;
- b. To serve notices pursuant to this ordinance;
- 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 and issues citations for violations of this ordinance.

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

VIII. List of Noxious Weeds. For purposes of this ordinance, weeds shall be declared noxious by their inclusion on a list adopted by resolution of the County Court, upon the recommendation of the Board. A weed may be added to 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 with permission of the County Court.

IX. Notice.

- (1) When it appears that violation of ORS chapter 570 or this ordinance 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 in three 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.
- (2) The notice shall contain at least the following:
 - a. The date of service or posting of the notice;
 - b. The name of the noxious weed or weeds growing on the land; and
 - c. 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 be less than 2 days or more than 20 days from the date of service or posting.

X. Duties of Owner.

- (1) Upon service or posting of the notice provided in section IX of this ordinance, any owner 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. This obligation shall be continuing throughout the remainder of the then current growing, seeding or spreading season.
- (2) 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.

XI. Duty To Clean Machinery Before Moving; Weed Infested Residue Not To Be Moved.

(1) 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.

(2) 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.

(3) 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.

XII. Eradication of Noxious Weeds When Owner Refuses.

(1) In the event that any owner of land fails or refuses to destroy or cut noxious weeds within the time period specified in the notice provided in section IX of this ordinance, 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 ordinance.

(2) 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 violation only upon obtaining consent of the owner or a court issued warrant.

(3) 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.

(4) 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.

(5) Upon completion of the abatement process by the weed inspector, the weed inspector shall file with the County Court an itemized statement of the expenses necessarily incurred in the destruction of the noxious weeds, including the wages of the inspector, assistants, if any, verified by the oath of the weed inspector.

XIII. Expenses as lien.

(1) When the statement of expenses is filed with the County Court as specified in section XI I above, 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, except as to taxes.

(2) If the charges and expenses are not paid and the lien discharged by the owner within 90 days from the date the lien is docketed, the county may recover the expenses in an action at law.

XIV. Penalties.

(1) Any person who violates section X and XI of this ordinance shall be subject to a fine of not more than \$750.00 for a non-continuing offense and a fine of not more than \$1,000 for a continuing offense.

(2) Each day that this ordinance is violated shall constitute a separate violation.

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

XVI. Jurisdiction. Jurisdiction for actions brought under this ordinance shall be with the Malheur County Justice Court.

XVII. Severability. Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

B. Repeal. It is not necessary to enforce noxious weeds through the public nuisance provisions of the Malheur County Code. The following provisions are repealed:

- 3-4-3 Definition of Noxious Weeds.
- 3-4-4 H.

C. Declaration of Emergency. This ordinance being necessary for the preservation of health, safety and welfare of the community, an emergency is declared to exist and this ordinance takes affect upon its passage.

ADOPTED THIS _____ day of _____, 2007.

Malheur County Court:

Judge Dan P. Joyce

Commissioner Louis M. Wettstein

Commissioner Jim Nakano

ATTEST:

Kim Mason, Recording Secretary