

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL

Date: January 19, 2018
From: Riki Hokama, Chair
Budget and Finance Committee

2018 JAN 19 AM 11: 15

TRANSMITTAL

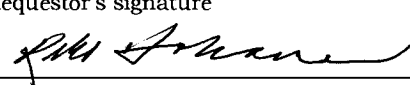
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jerrie Sheppard, Esq.

Subject: LANDSCAPE PLANTING AND BEAUTIFICATION (BF-109)

Background Data: Please review and, if appropriate, approve as to form and legality the attached revised proposed bill. For ease of reference, a track-changes version and a "clean" version are attached. Please provide a hard copy of the approved bill with your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:


RECEIVED
OFFICE OF THE
COUNTY COUNSEL
2018 JAN 23 AM 8: 31

Requestor's signature  Riki Hokama	Contact Person Michele Yoshimura (Telephone Extension: 7663)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): January 23, 2018
REASON: For posting on January 24, 2018 for the January 30, 2018 Committee meeting.

FOR CORPORATION COUNSEL'S RESPONSE

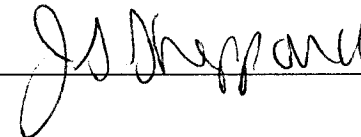
ASSIGNED TO: <u>JLS</u>	ASSIGNMENT NO. <u>2017-0092</u>	BY: 
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date 1/19/2018

By  (Rev. 7/03)

bf:ltr:109acc01:mmy

Attachments

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 12.24A
AND 18.20, MAUI COUNTY CODE, RELATING TO
LANDSCAPE PLANTING AND BEAUTIFICATION

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose of this bill is to ensure that landscape planting and beautification requirements are administered lawfully by the appropriate agency.

SECTION 2. Section 12.24A.020, Maui County Code, is amended to read as follows:

"12.24A.020 Definitions. Wherever used in this chapter, unless the context otherwise requires:

["Arborist" means the Maui County arborist.]

"Committee" means the Maui County arborist committee.

"Exceptional trees" means a tree or stand or grove of trees with historic or cultural value, or which by reason of age, rarity, location, size, aesthetic quality, or endemic status, has been designated by ordinance as worthy of preservation. Exceptional trees may be designated generally by history or individually by location or class or as otherwise provided by law.

"Hazardous tree or shrub" means any tree or shrub which overhangs or encroaches onto any sidewalk, street, or other public place, in such a way as to impede or interfere with pedestrian or vehicular traffic or travel on such public place, or which obstructs any street lamp, traffic-control device, or utility line except for electric power lines.

"Landscape planting" means the establishment of plantings in a comprehensive fashion which is intended to enhance environmental and visual quality.

"Landscape planting plan" means the Maui County landscape planting plan prepared by the committee pursuant to section 12.24A.040 [of this chapter].

"Park trees" means trees in areas, other than street rights-of-way, which are owned, controlled, or regulated by the [county] County and used for public park or recreational purposes.

"Parking area" means parking and loading spaces and any associated drive ways, lanes, and aisles needed to provide access to such spaces as required by chapter 19.36A of this code.

["Plan reviewer" means the Maui County arborist committee plan reviewer.]

"Public area" means all parks, roads, streets, rights-of-way, and other areas owned, leased, maintained, or otherwise under the control and domain of the [county.] County.

"Street trees" means all trees planted or growing within the right-of-way of all streets, avenues, roads, or highways, under the jurisdiction of the [county.] County.

"Tree" means any perennial plant with a woody trunk, branches, and leaves."

SECTION 3. Section 12.24A.030, Maui County Code, is amended to read as follows:

"12.24A.030 Maui County arborist committee. A. Establishment. There is established a Maui County arborist committee which shall consist of nine members appointed and who may be removed by the mayor with notice to, but without approval by, the council. The members shall be residents of the [county] County with professional or other interest in landscape beautification. [There shall be six nonvoting, ex-officio members consisting of: the arborist, the plan reviewer, the director of parks and recreation, the director of public works, the director of planning, and the director of housing and human concerns or their respective designees.]

B. Terms and [Operations.] operations. Section 13-2 of the revised charter of the [county] County of Maui (1983), as amended, shall apply to the committee in the same manner as said provisions apply to boards and commissions recognized by the revised charter of the County of Maui (1983), as amended; provided that any member may be reappointed to a second consecutive term, and provided further, that any vacancy on this committee shall be filled by appointment by the mayor with notice to, and without approval of, the council.

C. Duties and [Responsibilities.] responsibilities.

1. The committee shall have prepared for review by the mayor and council a landscape planting plan which shall serve as a guide for the care, preservation, pruning, planting,

replanting, removal, and disposition of planted material in public areas throughout the [county.] County.

[2. The committee shall serve as a reviewing body for any landscape planting in public parks and street beautification programs.]

[3.]2. The committee shall review and make recommendations to the director of planning for [his] the director's approval or disapproval of proposals that have been reviewed by the [plan reviewer] director of planning and found to be inconsistent with the landscape planting plan.

[4.]3. The committee shall research, prepare, and recommend to the mayor and the council exceptional trees to be protected by ordinance or regulation, in accordance with section 12.24A.055.

[5.]4. The committee shall review and comment on any rules and regulations of executive agencies governing the planting, replanting, removal, and disposition of park and street trees and plantings in the [county.] County.

[6. The committee shall identify to the director of parks and recreation any areas within the county where there are no abutting owners to maintain street trees and where the county should maintain or beautify such trees.

7.]5. The committee, after consultation with the department of public works and the department of parks and recreation, [shall] may [promulgate] establish rules and regulations pursuant to chapter 91, [of the]Hawaii Revised Statutes, for the following:

a. Practice and procedure for the committee[;].

b. Exceptional trees[;].

c. Approval of landscape planting proposals[; and].

d. Planting and care of trees and landscape planting in public parks and streets, including irrigation systems for street trees.

6. The committee shall advise the County on the landscape planting plan and exceptional trees.

[8.]7. When rules or regulations do not cover a particular circumstance, the committee shall recommend appropriate action."

SECTION 4. Section 12.24A.040, Maui County Code, is amended to read as follows:

"12.24A.040 Landscape planting plan. A. Contents.

The landscape planting plan shall be advisory and shall include, but not be limited to, the following:

1. The objectives and policies of the [county] County for the establishment of landscape planting and the preservation and protection of trees in the [county;] County.

2. Guidelines for the establishment of landscape planting on streets, in parking areas, and in parks[;].

3. Guidelines for the maintenance and care of landscape planting and exceptional trees in public areas[;].

4. Contain an official list of street trees[;].

5. Designate the type of trees which are suitable for planting in the various geographical locations of the [county] County as delineated in the general plan[;].

6. Identify the types of street trees for planting within the rights-of-way of streets, avenues, roads, or highways under the jurisdiction of the [county;] County.

7. Identify the types of park trees for planting within public parks and recreational areas under the jurisdiction of the [county;] County.

B. Adoption.

1. The landscape planting plan may consist of separate parts, as determined by the committee, and may be submitted in parts for public hearing, and to the council and mayor as provided for in subsections 12.24A.040(B)(2) and [(3) of this chapter.] 12.24A.040(B)(3).

2. The committee shall hold at least one public hearing on the landscape planting plan prior to its submission to the mayor. Prior to the holding of the public hearing, the landscape planting plan shall be submitted to the council for its review and comment.

3. After holding a public hearing, the landscape planting plan may be amended or approved by the committee and shall take effect upon approval by the mayor.

4. Upon its approval, the landscape planting plan shall serve as an advisory document to all [county] County departments.

5. Any subsequent, substantive change in the landscape planting plan shall be subject to the provisions of subsections 12.24A.040(B)(2) and [(3) of this chapter.] 12.24A.040(B)(3)."

SECTION 5. Section 12.24A.050, Maui County Code, is amended to read as follows:

"12.24A.050 [Plan reviewer.] Parking area trees.

[A. There shall be a Maui County arborist committee reviewer who will act as liaison between the director of planning and the committee.

B.] The planting of trees in parking areas shall be in accordance with chapter 19.36A of this code. The [plan reviewer] director of planning shall review all landscaping proposals for parking areas and [recommend for approval to the director of planning] approve those proposals that are consistent with the landscape planting [plan] plan's recommendations relating to planting methods, irrigation, and types of trees. The [plan reviewer] director of planning shall refer those proposals that are inconsistent with the landscape planting plan to the committee for their review and recommendations, which shall be submitted to the director of planning for approval or disapproval."

SECTION 6. Section 12.24A.070, Maui County Code, is amended to read as follows:

"12.24A.070 [Planting of street] Street trees. A. [The director of parks and recreation shall be responsible for overseeing and coordinating the planting and maintaining of all trees and landscape plantings in public parks and] The director of public works shall be responsible for overseeing and coordinating the planting and maintenance of trees in rights-of-way of streets in the [county.] County.

[1. There shall be a Maui County arborist and staff within the department of parks and recreation to plant and maintain trees in the public parks and rights-of-way of streets.

2. The arborist shall advise the arborist committee on the landscape planting plan and exceptional trees, and shall advise the committee, the public, and all agencies in the planting, care, and preservation of trees and landscape plantings.]

B. The landowner abutting a street, avenue, road, or highway under the jurisdiction of the [county] County may plant a

street tree within the [county] County right-of-way abutting the landowner's property with the [recommendation of the committee and] approval of the director of public works [and director of parks and recreation and] subject to reasonable conditions consistent with the landscape planting [plan] plan's recommendations relating to planting methods, irrigation, and types of trees.

C. Any person may plant street trees within the [county] County right-of-way with the [recommendation of the committee and] approval of the director of public works and [director of parks and recreation and] subject to reasonable conditions consistent with the landscape planting [plan.] plan's recommendations relating to planting methods, irrigation, and types of trees.

D. Subdivisions.

[1. For any subdivision of property into four or more lots, the director of public works shall require from the subdivider, a planting plan which identifies the areas where street trees may be planted, so as not to interfere with the health, safety, and welfare of the public. The director of public works shall require the planting of trees in conformance with the approved planting plans, the landscape planting plan, and applicable law.

2. The number of recommended street trees for a subdivision and provisions for their irrigation shall be provided for in accordance with the landscape planting plan.

3. The director of public works shall require a plan of irrigation in addition to a description of the number of trees, location, type, and sizes and other requirements that are in accordance with the planting plan.

4. Notwithstanding any provision to the contrary, irrigation systems for street trees shall not require easements when such systems are in the county right-of-way; provided, however, that the landowner abutting the county right-of-way shall execute an agreement, running with the land and recorded with the bureau of conveyances, indemnifying the county against any liability, damages, or claims including property damage or personal injury arising from such systems.

5. Notwithstanding any provision to the contrary, the plans proposed for the subdivision shall be reviewed by the plan reviewer for compliance with

the landscape planting plan and approved by the director of planning.]

The requirements for street trees for subdivisions shall be in accordance with title 18 of this code.

E. The department of [parks and recreation] public works shall be responsible for all general maintenance [on] of street trees that are designated to be maintained by the [county] County except that the property owner abutting any planting strip shall be responsible for watering and occasional fertilizing. The property owner abutting any planting strip shall also be responsible for the maintaining and weeding of the planting strip."

SECTION 7. Section 12.24A.080, Maui County Code, is amended to read as follows:

"12.24A.080 [Planting of park] Park trees. A. The director of parks and recreation shall be responsible for overseeing and coordinating the planting and maintenance of all trees and landscaping in public parks.

B. Any person may plant a tree within any park or recreational facility of the [county] County with the permission of the director of parks and recreation consistent with the landscape planting [plan.] plan's recommendations relating to planting methods, irrigation, and types of trees.

[B.]C. The department of parks and recreation shall perform all general maintenance on park trees."

SECTION 8. Section 12.24A.090, Maui County Code, is amended to read as follows:

"12.24A.090 Hazardous trees and shrubs. A. Any hazardous tree or shrub planted on private property shall be trimmed by the owner of the premises on which such tree or shrub grows so that the hazard shall cease.

B. Any tree or shrub not planted on private property and which interferes with utility lines shall be trimmed by the utility companies whose lines may be affected. Except for electric power lines, private property owners are responsible for trimming trees and shrubs which interfere with utility lines over their property.

C. When a landowner fails to trim a hazardous tree or shrub pursuant to section 12.24A.090(A), the director of [parks and recreation] public works upon being notified of such hazardous

condition may notify the owner of record in writing of the hazardous tree or shrub, describing the conditions, and establishing a reasonable time within which corrective steps shall be taken. For the purpose of this chapter, a "reasonable time" shall be no more than fourteen calendar days from the date of mailing of the notification, which mailing shall be by certified mail. In the event that effective steps to correct the dangerous condition are not taken within the time specified, it shall be lawful for the [county] County to abate such condition to the extent necessary to assure compliance with the foregoing requirements. The costs thereof shall be assessed to the responsible owner.

D. Should the [county] County take action to abate dangerous conditions, the cost of such abatement shall constitute a lien against the property which will run with the land. Notification of the imposition of the lien shall be sent to the owner of record. Failure to discharge such lien shall be enforceable in the same manner as a default in payment of real property taxes."

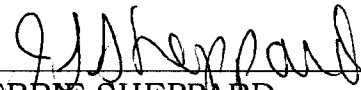
SECTION 9. Chapter 18.20, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"18.20.095 Street trees. For any subdivision of property into four or more lots, the property owner shall provide a landscape planting and irrigation plan which follows the landscape planting plan's recommendations relating to planting methods, irrigation, and types of trees."

SECTION 10. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 11. This ordinance shall take effect on July 1, 2018; provided that subdivisions that have received preliminary subdivision approval prior to the effective date of this ordinance shall not have to comply with Section 9 and may be processed for subdivision under the previous applicable laws.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE SHEPPARD
Deputy Corporation Counsel
County of Maui

bf:misc:109abill01:mmy