

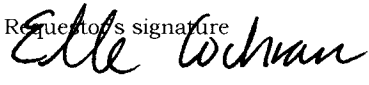
# REQUEST FOR LEGAL SERVICES

**Date:** February 8, 2017  
**From:** Elle Cochran, IEM Committee Chair  
TRANSMITTAL  
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Patrick K. Wong, Esq.

**Subject:** INTEGRATED PEST AND ENVIRONMENTAL MANAGEMENT ON COUNTY PROPERTY (IEM-9)

**Background Data:** Proposed bill to establish an integrated pest management program for County property to protect the public health and welfare and to minimize the potential pesticide hazard to people and the environment on County property.

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

Requestor's signature  Elle Cochran	Contact Person <u>Gary Saldana</u> (Telephone Extensions: 7134)
--	---

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): February 17, 2017  
REASON: \_\_\_\_\_

### FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
--------------	----------------	-----

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 \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

iem:ltr:009acc01:ske

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 8.36,  
MAUI COUNTY CODE, RELATING TO INTEGRATED PEST MANAGEMENT ON  
COUNTY PROPERTY

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

SECTION 1. The purpose of this Ordinance is to establish an integrated pest management program for County property to protect the public health and welfare by minimizing and, where possible, eliminating the potential pesticide hazard to people and the environment on County property.

SECTION 2. Title 8, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“Chapter 8.36**

**INTEGRATED PEST MANAGEMENT ON COUNTY PROPERTY**

Sections:

- 8.36.010 Purpose.
- 8.36.020 Applicability and scope.
- 8.36.030 Definitions.
- 8.36.040 Integrated pest management on county property.
- 8.36.050 Prohibition for non-enclosed county property; requirements for exceptions.
- 8.36.060 Signage; reporting.
- 8.36.070 Penalties.

**8.36.010 Purpose.** The purpose of this chapter is to establish an integrated pest management program on county property to protect the public health and welfare and to minimize and, where possible, eliminate the potential pesticide hazard to people and the environment on county property, consistent with the public interest

in the benefits derived from avoiding hazardous pesticide use and adopting preventive and ecologically sensitive practices.

**8.36.020 Applicability and scope.** The provisions of this chapter shall govern the use of pesticides on county property.

**8.36.030 Definitions.** Whenever used in this chapter, unless a different meaning clearly appears from the context, certain words and terms are defined as follows:

“Department” means the department of public works.

“Director” means the director of public works.

“Emergency application” means a situation where reasonable alternative methods to pesticide use have been exhausted, and an application of a non-listed pesticide, as defined in this section, is necessary based on an imminent threat to public health.

“Inert ingredient” means any substance or group of substances with similar chemical structures designated by the U.S. Environmental Protection Agency as other than an active ingredient which is intentionally included in any pesticide product.

“Integrated pest management” means a decision making, record-keeping process for managing pests that uses monitoring to determine pest injury levels, and prioritizes biological, cultural, mechanical, and physical methods, “listed” substances as defined in this section, and other management practices to control pests in a safe, cost-effective, and environmentally sound manner that contributes to the protection of public health and sustainability. This method uses extensive knowledge about pests, such as infestations, thresholds, life histories, environmental requirements, and natural control of pests. The method involves the use of non-chemical pest-control methods first, and the careful use of listed pesticides only after non-chemical methods have been exhausted or are not feasible.

“Imminent Threat to Public Health” means an unpredictable outbreak of a poisonous, stinging, or biting insect, or poisonous or stinging plant that threatens public health.

“Invasive species” means an animal pest or weed that does not arrive into an ecosystem through natural means, but rather through human-assisted activities, and negatively impacts indigenous species and ecosystems.

“Larvicide” means a pesticide designed to kill larval pests.

“Listed Pesticide” means a pesticide that is:

1. Made out of non-synthetic, natural materials, with the exception of prohibited non-synthetic materials listed under 7 CFR 205.602.
2. Made out of synthetic materials listed under 7 CFR 205.601 that is labeled for turf uses, subject to discretionary authority to require disclosure of inert ingredients.
3. A minimum risk pesticide listed under 40 CFR 152.25.

“Non-enclosed county property” means any real property that is not enclosed by walls and a ceiling, and owned by or under the management or control of the county.

“Non-synthetic materials” or “natural materials” means any substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process as defined in section 6502(21) of the Organic Foods Production Act (7 United States Code 6502(21)).

“Park” means a public park located in, owned, and operated by the county, including, but not limited to, any park, park roadway, parking area, playground, athletic field, beach right-of-way, or tennis court, and other recreational areas under the control, management and operation of the county.

“Pest” means an insect, snail, slug, rodent, nematode, fungus, weed, or other form of plant or animal life or microorganism (except a microorganism on or in a living human or animal) that is normally considered to be a pest or defined as a pest by applicable state law.

“Pesticide” means a substance or mixture of substances intended or used:

1. To prevent, destroy, repel, or mitigate any pest;
2. As a plant regulator, defoliant, or desiccant; or
3. As a spray adjuvant, such as a wetting agent or adhesive.

However, pesticide does not include an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer used for cleaning that is not considered a pesticide under any federal or state law.

“Rodenticide” means a pesticide designed to kill rodent pests.

“Synthetic materials” means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

“Vector” or “disease vector” means an animal, insect, or microorganism that carries and transmits an infectious pathogen into another organism.

**8.36.040 Integrated pest management on county property.** A. Program. An integrated pest management program for the county is established within the department. The program shall be managed by the director, in consultation with the director of parks and recreation.

B. Duties. The pest management program shall:

1. Monitor county turf or landscapes for pests, as appropriate.

2. Evaluate county properties for any injury caused by a pest and determine an appropriate treatment plan by exhausting the list of all non-chemical methods and organic treatments available for the targeted pest before using any synthetic chemical or other treatments.

3. Maintain accurate records documenting each identified potential and actual pest problem, treatment plan, and implementation of treatment.

C. Management plan requirements. For each pest problem on county property, the treatment plan shall use only listed pesticides and methods that are the least hazardous to human health, the least damaging to the general environment, best preserves the natural ecosystem, and the most likely to prevent pest problems and produce long-term reductions in pest control requirements. The treatment plan shall minimize negative impacts to non-target organisms, be operationally feasible and cost-effective in the short- and long-term, and least disruptive of natural controls available. For non-enclosed county property, the treatment plan shall utilize only listed pesticides.

D. Safer Parks Program. The director of parks and recreation shall develop a safer parks program incorporating the requirements of the county’s integrated pesticide management program. The program shall include a publicly-available plan of pest control practices and procedures for county parks designed to eliminate the use of the most potentially hazardous pesticides and reduce overall pesticide use in parks. The director of parks and recreation shall make publicly-available on the department of parks and recreation’s website, information concerning the safer parks program. Signage including a reference to the safer parks program and website address for the department of parks and recreation shall be posted conspicuously at each park entrance.

E. Pesticide use on non-enclosed county property shall include only listed pesticides.

F. Training. The department shall provide training in integrated pest management for county employees responsible for pest management.

**8.36.050 Prohibition for non-enclosed county property; requirements for exceptions.** A. Prohibition. Except as provided in section 8.36.050(B), a person shall not apply a non-pesticide to any non-enclosed county property.

B. Exceptions. The prohibition in section 8.36.050(A) shall not apply to:

1. Larvicide or rodenticide for a public health measure to reduce the spread of disease vectors under recommendations and guidance provided by the Centers for Disease Control and Prevention, the U. S. Environmental Protection Agency, or the State Department of Agriculture. Rodenticides shall be in a tamper-proof product, unless designed and registered for a specific environment inaccessible to humans and pets.

2. Pesticide for pest control, while engaged in agriculture.

3. Pesticide, if the managing director determines that an emergency application of a non-listed pesticide is necessary to prevent an imminent threat to public health, including damage from invasive species, and that no reasonable alternative is available.

C. Requirements for exceptions.

1. Approval. Prior to the application of a pesticide to a non-enclosed county property as an exception to the prohibition under section 8.36.050(B)(3) of this section:

a. The director or, the director of parks and recreation for all properties under the jurisdiction and control of the department of parks and recreation, shall make a written request to the managing director, including the common name of the pesticide; the intended location, date, time, and amount of the application; and the reason for its use; and

b. The managing director shall determine whether the pesticide application is warranted and maintain a record of the determination and the reasons therefor.

2. If a pesticide is applied to county property as an exception to the prohibition under section 8.36.050(B)(3) of this section, the managing director shall, within 10 days after the date the pesticide is applied, submit a report to the council that includes the common name of the pesticide; the location

of the application; the date, time, and amount of the application; and the reason for its use.

3. The director shall make publicly available on the department's website, a list of the pesticides applied as an exception to the prohibition under section 8.36.050(B)(3) of this section. The list, updated by the director at least monthly, shall include the scientific and common names of pesticides that are used, and the location and date of application for each pesticide.

**8.36.060 Signage; reporting.**

A. Signage. 1. If a pesticide is applied to non-enclosed county property under section 8.36.050(B), signage shall be posted conspicuously at the property to inform the public of the application of the pesticide.

2. Except where the director determines immediate application is necessary to protect human health or prevent significant economic damage, signage for each pesticide application under section 8.36.050(B) shall be posted at least 48 hours before and after its application. The signage shall include the common name of the pesticide, the location of the application, the date and time of the application, the reason for its use, and the department's website address for information concerning the pesticide and its application.

B. Reporting. Not later than March 1st of each year, the director shall submit to the mayor and council a report of all applications of pesticides applied to county property under section 8.36.050(B) during the preceding year. The report shall include the scientific and common names of the pesticide; the location, date, time, and amount of the application; and the reason for its use.

**8.36.070 Penalties.** Any person violating this chapter, upon conviction, shall be fined not less than \$150 and not more than \$500 for each violation."

SECTION 3. This ordinance shall take effect 60 days after its approval.

APPROVED AS TO FORM AND LEGALITY:

---

Department of the Corporation Counsel  
County of Maui

iem:misc:009abill01:ske