

REQUEST FOR LEGAL SERVICES

Date: December 31, 2020
From: Shane M. Sinenci, Chair
Environmental, Agricultural, and Cultural Preservation Committee

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie Chen, Esq.

Subject: INTEGRATED PEST AND ENVIRONMENTAL MANAGEMENT ON COUNTY PROPERTY (EACP-1)

Background Data: Please see the attached bill.

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

Requestor's signature  Shane M. Sinenci	Contact Person <u>Kasie Apo Takayama or James B. Forrest</u> (Telephone Extension: 7665 or 7661, respectively)
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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): _____
REASON: _____

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	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 _____

By _____

(Rev. 7/03)

eacp:ltr:001acc03:kmat

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE ESTABLISHING CHAPTER 2.50, MAUI COUNTY
CODE, RELATING TO PESTICIDE AND FERTILIZER USE ON COUNTY
PROPERTY

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

SECTION 1. Title 2, Maui County Code, is amended by adding a new
chapter to be appropriately designated and to read as follows:

“Chapter 2.50

PESTICIDE AND FERTILIZER USE ON COUNTY PROPERTY

Sections:

2.50.010	Purpose.
2.50.020	Administrative rules.
2.50.030	Pesticide and fertilizer use on County property.
2.50.040	Waiver.
2.50.050	Reporting.
2.50.060	Public notifications and signage.
2.50.070	No conflict with federal or state law.

2.50.010 Purpose. This chapter’s purpose is to exercise the County’s proprietary function, as a property owner and manager, by determining the categories of pesticide and fertilizer allowed for use on County property.

2.50.020 Administrative rules. The director of public works and director of parks and recreation may adopt administrative rules to implement this chapter.

2.50.030 Pesticide and fertilizer use on County property.
A. The following are allowed for use on County property:
1. Pesticides and fertilizers that are derived from mineral, plant, or animal matter and do not undergo a “synthetic” process as defined in the Organics Food

Production Act of 1990 (7 U.S.C. 6501 et seq.) unless listed as a prohibited substance in title 7 Code of Federal Regulations section 205.602 or section 205.604.

2. Pesticides and fertilizers listed as “allowed” for various uses on the National List of Allowed and Prohibited Substances as listed in title 7 Code of Federal Regulations 205.601, 205.603, 205.605, and 205.606, irrespective of the type of use on County property.

3. “Minimum risk pesticides” exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act as provided in title 40 Code of Federal Regulations section 152.25(f).

4. The following when used in compliance with manufacturer specifications:

- a. Disinfectants, germicides, bactericides, miticides, and virucides.
- b. Insect repellents.
- c. Rat and rodent extermination products.
- d. Swimming pool supplies.
- e. General use paints, stains, and wood preservatives, and sealants.
- f. Citric acid.

B. Unless a waiver is approved under section 2.50.050, use of pesticides and fertilizers on County property not allowed under section 2.50.040(A) is prohibited, except that otherwise prohibited substances may be used to control:

1. Mosquitoes.
2. Animals or insects, such as fire ants or termites, that may cause damage to buildings and structures.
3. Invasive species whose introduction does, or is likely to, cause economic or environmental harm or harm to human health, when the use is applied by the Maui invasive species committee.

C. “County property” means the same as in section 13.04A.030.

2.50.040 Waiver. A. Agencies may apply to the council for a waiver from section 2.50.040 before using a prohibited fertilizer or pesticide.

B. The waiver application must include:

1. A location map for the proposed usage area.
2. A landscape plan.
3. Photographs of areas and vegetation.
4. A summary of the existing plants, soils, and environmental conditions for each area.

5. A history of vegetation management practices, including fertilizer and pesticide application amounts and frequency.

6. Cost estimates and a timeline.

7. Information on how the public's health and safety is threatened.

8. An evaluation and list of the results of alternative methods and materials.

9. An explanation of how the application of otherwise prohibited substances will, to the greatest extent practical, minimize the impact of the application on abutting properties, human health, and the environment.

C. The council may approve a waiver or waiver extension by resolution upon finding:

1. A situation exists that threatens the public's health and safety.

2. Alternative control methods and allowed substances have been evaluated and determined to be insufficient.

3. The application of otherwise prohibited substances will, to the greatest extent practical, minimize the impact of the application on abutting properties.

D. Waivers may be granted for a period of up to two years and may include conditions such as signage requirements to protect public health and safety.

E. Waiver extension requests must be submitted at least ninety days before the expiration date and must include the same information as a waiver application.

2.50.050 Reporting. Each agency that uses pesticides or fertilizers on County property must submit an annual report to the council no later than January 15 of each year detailing compliance with this chapter.

2.50.060 Public notifications and signage. A. If synthetic pesticides or fertilizers are used by an agency, the agency must place conspicuous notification signs in compliance with this chapter and in accordance with manufacturer specifications. "Synthetic" means the same as in title 7 United States Code section 6502.

B. A schedule of pesticide applications and a contact phone number for additional information must be posted on the department of public works website and the department of parks and recreation website.

2.50.070 No conflict with federal or state law. Nothing in this chapter may be interpreted or applied so as to create any conflict with any federal or state law.”

SECTION 2. This Ordinance takes effect one year after its approval, except for pesticides and fertilizers used at the Waiehu Golf Course, War Memorial Complex, and Ichiro “Iron” Maehara Baseball Stadium, which takes effect two years after its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

eacp:misc:001abill02:kmat